# Laws 2001
# 1st Regular Session, Forty-Fifth Legislature

# 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 true and correct copies of the **ENROLLED AND ENGROSSED LAWS** that were passed by the Forty-Fifth State Legislature of New Mexico at its First Regular Session, which convened on the 16th day of January, 2001, and adjourned on the 17th day of March, 2001, in Santa Fe, the Capital of the State, as said copies appear on the 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-Fifth State Legislature of the State of New Mexico, First Regular 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 11th day of April,

2001

Rebecca Vigil-Giron
Secretary of State

# CHAPTER CA1

# CONSTITUTIONAL AMENDMENT 1, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO TO PHASE IN AN ADDITIONAL EXEMPTION FROM PROPERTY TAXATION OF TWO THOUSAND DOLLARS ($2,000) OF

PROPERTY OF HONORABLY DISCHARGED VETERANS WHO SERVED IN THE UNITED STATES ARMED FORCES DURING AN ARMED CONFLICT.

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

## Constitutional Amendment 1 Section 1 Laws 2001

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 to 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 who served in such armed forces during any period in which they were or are engaged in armed conflict under orders of the president 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 two thousand dollars ($2,000) in tax years prior to 2003; two thousand five hundred dollars ($2,500) in 2003; 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."

## Constitutional Amendment 1 Section 2 Laws 2001

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

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SENATE JOINT RESOLUTION 1

# CHAPTER CA2

# CONSTITUTIONAL AMENDMENT 2, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 7, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO REMOVE THE PROHIBITION AGAINST CERTAIN PERSONS EXERCISING THE RIGHT TO VOTE.

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

## Constitutional Amendment 2 Section 1 Laws 2001

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

"Every citizen of the United States, who is over the age of eighteen years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors. All school elections shall be held at different times from other elections.

The legislature shall have the power to require the registration of the qualified electors as a requisite for voting, and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot, the purity of elections and guard against the abuse of elective franchise. Not more than two members of the board of registration, and not more than two judges of election shall belong to the same political party at the time of their appointment."

## Constitutional Amendment 2 Section 2 Laws 2001

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

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SENATE JOINT RESOLUTION 10

# CHAPTER CA3

# CONSTITUTIONAL AMENDMENT 3, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 6 OF THE CONSTITUTION OF NEW MEXICO TO ELIMINATE AN OUTDATED SECTION REGARDING DESIGNATION OF JUDICIAL DISTRICTS.

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

## Constitutional Amendment 3 Section 1 Laws 2001

Section 1. It is proposed to amend Article 6 of the constitution of New Mexico by repealing Section 25.

## Constitutional Amendment 3 Section 2 Laws 2001

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

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SENATE JOINT RESOLUTION 21

# CHAPTER CA4

# CONSTITUTIONAL AMENDMENT 4, LAWS 2001

A JOINT RESOLUTION

PROPOSING TO REPEAL ARTICLE 2, SECTION 22 OF THE CONSTITUTION OF NEW MEXICO, WHICH STATES THAT ALIENS CANNOT OWN LAND OR ANY INTEREST IN LAND IN THE STATE UNLESS OTHERWISE PROVIDED BY LAW.

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

## Constitutional Amendment 4 Section 1 Laws 2001

Section 1. It is proposed to amend Article 2 of the constitution of New Mexico by repealing Section 22.

## Constitutional Amendment 4 Section 2 Laws 2001

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

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SENATE JOINT RESOLUTION 22

# CHAPTER CA5

# CONSTITUTIONAL AMENDMENT 5, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO TO EXEMPT FROM PROPERTY TAXATION THE PRINCIPAL PLACE OF RESIDENCE OCCUPIED BY A VETERAN OF THE ARMED FORCES OF THE UNITED STATES OF AMERICA WHO HAS A ONE HUNDRED PERCENT PERMANENT AND TOTAL SERVICE-CONNECTED DISABILITY.

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

## Constitutional Amendment 5 Section 1 Laws 2001

Section 1. It is proposed to amend Article 8, Section 15 of the constitution of New Mexico to read:

"The legislature shall exempt from taxation the property, including the community or joint property of husband and wife, of every veteran of the armed forces of the United States who has been determined pursuant to federal law to have a one hundred percent permanent and total service-connected disability, if the veteran occupies the property as his principal place of residence. The legislature shall also provide this exemption from taxation for property owned by the widow or widower of a veteran who was eligible for the exemption provided in this section, if the widow or widower continues to occupy the property as his principal place of residence. The burden of proving eligibility for the exemption in this section is on the person claiming the exemption."

## Constitutional Amendment 5 Section 2 Laws 2001

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

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HOUSE JOINT RESOLUTION 5, AS AMENDED

# CHAPTER CA6

# CONSTITUTIONAL AMENDMENT 6, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT THE STATE AND LOCAL GOVERNMENTS TO PROVIDE LAND, BUILDINGS OR INFRASTRUCTURE TO CREATE AFFORDABLE HOUSING.

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

## Constitutional Amendment 6 Section 1 Laws 2001

Section 1. It is proposed to amend Article 9, Section 14 of the constitution of New Mexico to read:

"Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through F of this section.

A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.

B. Nothing in this section prohibits the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States.

C. The state may establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law.

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law.

E. Nothing in this section prohibits the state, a county or a municipality from:

(1) donating land owned by the state, county or municipality for the construction on it of affordable housing;

(2) donating an existing building owned by the state, county or municipality for conversion or renovation into affordable housing; or

(3) providing or paying the costs of infrastructure necessary to support affordable housing projects.

F. The provisions of Subsection E of this section are not self-executing. Before the described assistance may be provided, enabling legislation shall be enacted by a majority vote of the members elected to each house of the legislature. This enabling legislation shall:

(1) define "affordable housing";

(2) establish eligibility criteria for the recipients of land, buildings and infrastructure;

(3) contain provisions to ensure the successful completion of affordable housing projects supported by assistance authorized pursuant to Subsection E of this section;

(4) require a county or municipality providing assistance pursuant to Subsection E of this section to give prior formal approval by ordinance for a specific affordable housing assistance grant and include in the ordinance the conditions of the grant; and

(5) require prior approval by law of a specific affordable housing assistance grant by the state."

## Constitutional Amendment 6 Section 2 Laws 2001

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

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HOUSE JOINT RESOLUTION 10

# CHAPTER CA7

# CONSTITUTIONAL AMENDMENT 7, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 20 OF THE CONSTITUTION OF NEW MEXICO TO DESIGNATE THE LAST FRIDAY IN MARCH AS A LEGAL HOLIDAY IN HONOR OF CESAR CHAVEZ.

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

## Constitutional Amendment 7 Section 1 Laws 2001

Section 1. It is proposed to amend Article 20 of the constitution of New Mexico by adding a new Section 23 to read:

"The last Friday in March shall be designated a legal holiday in honor of Cesar Chavez."

## Constitutional Amendment 7 Section 2 Laws 2001

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

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HOUSE JOINT RESOLUTION 16

# CHAPTER CA8

# CONSTITUTIONAL AMENDMENT 8, LAWS 2001

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO BROADEN ELIGIBILITY FOR VIETNAM VETERANS' SCHOLARSHIPS.

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

## Constitutional Amendment 8 Section 1 Laws 2001

Section 1. It is proposed to amend Article 9, Section 14 of the constitution of New Mexico to read:

"Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad; provided:

A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;

B. nothing in this section shall prohibit the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States;

C. the state may also establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law; and

D. nothing in this section shall be construed to prohibit the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law."

## Constitutional Amendment 8 Section 2 Laws 2001

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

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HOUSE JOINT RESOLUTION 18

# CHAPTER CA9

# CONSTITUTIONAL AMENDMENT 9, LAWS 2001

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 5, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO CHANGE THE NAME OF THE STATE HIGHWAY COMMISSION TO THE STATE TRANSPORTATION COMMISSION.

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

## Constitutional Amendment 9 Section 1 Laws 2001

Section 1. It is proposed to amend Article 5, Section 14 of the constitution of New Mexico to read:

"There is created a "state transportation commission". The members of the state transportation commission shall be appointed, shall have such power and shall perform such duties as may be provided by law. Notwithstanding the provisions of Article 5, Section 5 of the constitution of New Mexico, state transportation commissioners shall only be removed as provided by law."

## Constitutional Amendment 9 Section 2 Laws 2001

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

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HOUSE JOINT RESOLUTION 27

# CHAPTER 1

**CHAPTER 1, LAWS 2001, WITH LINE-ITEM VETO**

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-FIFTH LEGISLATURE, FIRST

SESSION, 2001 AND FOR OTHER LEGISLATIVE EXPENSES, INCLUDING THE LEGISLATIVE COUNCIL SERVICE, THE LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE EDUCATION STUDY COMMITTEE, THE SENATE RULES COMMITTEE, THE HOUSE CHIEF CLERK'S OFFICE AND THE SENATE CHIEF CLERK'S OFFICE; DECLARING AN EMERGENCY.

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

## Section 1. SESSION EXPENSES.--

A. There is appropriated for the expense of the legislative department of the state of New Mexico for the forty-fifth legislature, first session, for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, six million eight hundred forty-three thousand nine hundred forty-six dollars ($6,843,946) or so much thereof as may be necessary for such purposes.

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

(1) per diem for senators ---------- $342,720;

(2) per diem for members of the house of representatives ---------- $571,200;

(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 ---------- $4,305;

(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 ---------- $ 6,700;

(5) salaries and employee benefits of senate employees ---------- $2,143,176;

(6) salaries and employee benefits of house of representatives employees ----------$1,930,441;

(7) for expense of the senate not itemized above, four hundred ninety-two thousand two hundred four dollars ($492,204). 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 nineteen thousand eight hundred dollars ($419,800). No part of this item may be transferred to salaries or employee benefits.

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

D. There is appropriated for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, nine hundred thirty-three thousand four hundred dollars ($933,400) to be disbursed upon vouchers signed by the director of the legislative council service. Following adjournment of the session, expenditures authorized under Paragraphs (1) through (8) of Subsection B of this section shall be disbursed upon vouchers signed by the director of the legislative council service.

E. Computers purchased by the legislature are to be placed in the custody of the legislative council service by the chief clerks of the respective houses as soon after the session as practicable.

F. Under the printing contracts entered into for the forty-fifth legislature, first session, the chairman of the committees' committee of the senate, subject to the approval of the committee, and the speaker of the house of representatives are authorized and directed to provide for the printing of all bills, resolutions, joint resolutions, memorials and joint memorials introduced in the senate or house, the printing of the weekly bill locator and the printing of all necessary stationery required for use in the respective houses. They are further directed to provide for the purchase of all supplies necessary for use in the respective houses within the appropriation provided. The orders for printing, stationery and supplies shall be approved by the chairman of the committees' committee in the senate or by the speaker for the house.

## Section 2. BILLS AND OTHER PRINTED MATERIALS.--

A. For the first session of the forty-fifth 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 therefor, one copy to each state department, commission, board, institution or agency, each elected state official, each

incorporated municipality, each district attorney, each ex-governor, each member of the New Mexico congressional delegation and each public school district in the state; and

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

B. Any person not enumerated 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 dollars ($600), which deposit shall be paid to the state treasurer to the credit of the legislative expense fund. Additional single copies of items of legislation shall be sold for 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 fifty dollars ($150) for the entire session.

**Section 3. LEGISLATIVE COUNCIL SERVICE.--There is appropriated from the general fund to the legislative council service for fiscal year 2002 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:**

| | |
|---|---|
| A. Personal Services | $ 2,252,500 |
| Employee Benefits | 714,600 |
| Travel | 95,700 |
| Maintenance & Repairs | 16,900 |
| Supplies & Materials | 42,100 |
| Contractual Services | 186,900 |
| Operating Costs | 371,000 |
| Other Operating Costs | 250,000 |
| Capital Outlay | 74,000 |
| Out-of-State Travel | 103,000 |
| Total | $ 4,106,700; |

B. for travel expenses of legislators other than New Mexico legislative council members, on legislative council business, for committee travel, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for fiscal year 2002, eight hundred eighty-six thousand dollars ($886,000) from the general fund; provided that the New Mexico legislative council service may transfer amounts from the appropriation in this subsection, during the fiscal year for which appropriated, to any other legislative appropriation as 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, the sum of 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 2002, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:**

| | |
|---|---|
| Personal Services | $ 1,763,800 |
| Employee Benefits | 515,100 |
| Travel | 160,000 |
| Maintenance & Repairs | 15,300 |
| Supplies & Materials | 29,700 |
| Contractual Services | 177,000 |
| Operating Costs | 120,600 |
| Capital Outlay | 25,600 |
| Out-of-State Travel | 32,100 |
| Operating Transfer | 700 |
| Total | $ 2,839,900. |

**Section 5. LEGISLATIVE EDUCATION STUDY COMMITTEE.--There is appropriated from the general fund to the legislative education**

**study committee for fiscal year 2002, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:**

| | |
|---|---|
| Personal Services | $ 498,300 |
| Employee Benefits | 136,700 |
| Travel | 70,000 |
| Maintenance & Repairs | 15,000 |
| Supplies & Materials | 14,500 |
| Contractual Services | 25,000 |
| Operating Costs | 21,700 |
| Capital Outlay | 17,800 |
| Out-of-State Travel | 12,000 |
| Other Financing Sources | 200 |
| Total | $ 811,200. |

**Section 6. SENATE RULES COMMITTEE.--There is appropriated from the general fund to the legislative council service for fiscal year 2002 for the interim duties of the senate rules committee twenty-one thousand six hundred dollars ($21,600).**

**Section 7. HOUSE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for fiscal year 2002 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 | $ 505,100 |
| Employee Benefits | 225,020 |
| Travel | 3,800 |
| Maintenance & Repairs | 1,200 |

| | |
|---|---|
| Supplies | 1,450 |
| Contractual Services | 55,500 |
| Operating Costs | 13,900 |
| Capital Outlay | 2,000 |
| Out-of-State Travel | 32,800 |
| Total | $ 840,770. |

**Section 8. SENATE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2002 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 | $ 523,284 |
| Employee Benefits | 221,793 |
| Travel | 4,900 |
| Maintenance & Repairs | 425 |
| Supplies | 1,450 |
| Contractual Services | 81,752 |
| Operating Costs | 17,245 |
| Capital Outlay | 2,000 |
| Out-of-State Travel | 29,503 |
| Total | $ 882,352. |

**Section 9. REAPPORTIONMENT AND REDISTRICTING.--There is appropriated from the general fund to the legislative council service for expenditure during fiscal years 2001 through 2003 for legal and technical services related to reapportionment, six hundred eighty-two thousand dollars ($682,000).**

**[Section 10. SENATE DISTRICT ASSISTANCE.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2002 for in-district assistance to each senator in a manner to be determined by the New Mexico legislative council an amount not to exceed four hundred dollars ($400) per month plus any applicable gross receipts tax, one hundred sixty thousand dollars ($160,000).]**

**Section 11. CATEGORY TRANSFER.--Amounts set out in Sections 3 through 8 of this act are provided for informational purposes only and may be freely transferred among categories.**

**Section 12. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 1, AS AMENDED, WITH EMERGENCY CLAUSE.

SIGNED JANUARY 25, 2001

# CHAPTER 2

**CHAPTER 2, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO POSSESS AN OBSCENE VISUAL OR PRINT MEDIUM THAT DEPICTS A SEXUAL ACT INVOLVING A CHILD; PROVIDING A CRIMINAL PENALTY; AMENDING SECTIONS OF THE SEXUAL EXPLOITATION OF CHILDREN ACT.

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

## Section 1. Section 30-6A-2 NMSA 1978 (being Laws 1984, Chapter 92, Section 2, as amended) is amended to read:

"30-6A-2. DEFINITIONS.--As used in the Sexual Exploitation of Children Act:

A. "prohibited sexual act" means:

(1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;

(2) bestiality;

(3) masturbation;

(4) sadomasochistic abuse for the purpose of sexual stimulation; or

(5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

(1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or

(2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and

E. "obscene" means any material, when the content if taken as a whole:

(1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;

(2) portrays a prohibited sexual act in a patently offensive way; and

(3) lacks serious literary, artistic, political or scientific value."

## Section 2. Section 30-6A-3 NMSA 1978 (being Laws 1984, Chapter 92, Section 3, as amended) is amended to read:

"30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that

one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.

E. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978."

**Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 17, AS AMENDED

# CHAPTER 3

**CHAPTER 3, LAWS 2001**

AN ACT

MAKING AN APPROPRIATION TO THE OFFICE OF THE SECRETARY OF STATE TO COVER A BUDGET SHORTFALL DUE TO INCREASED COSTS OF THE 2000 PRIMARY AND GENERAL ELECTIONS; DECLARING AN EMERGENCY.

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

**Section 1. APPROPRIATION.--Four hundred thirteen thousand five hundred thirty dollars ($413,530) is appropriated from the general fund to the office of the secretary of state for expenditure in fiscal year 2001 to pay for a budget shortfall due to increased costs of the 2000 primary and general elections and increased costs related to increases in voter registration and increases in printing, publication and supply costs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 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.**

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HOUSE BILL 510, WITH EMERGENCY CLAUSE

SIGNED MARCH 1, 2001

# CHAPTER 4

**CHAPTER 4, LAWS 2001**

AN ACT

MAKING AN APPROPRIATION TO CONTRIBUTE STATE FUNDS TO THE NATIONAL WORLD WAR II MEMORIAL.

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

**Section 1. APPROPRIATION.--One hundred thousand dollars ($100,000) is appropriated from the general fund to the New Mexico veterans' service commission for expenditure in fiscal year 2002 to contribute state funds to the national World War II memorial in Washington, D.C. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.**

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SENATE BILL 100, AS AMENDED

# CHAPTER 5

**CHAPTER 5, LAWS 2001**

AN ACT

RELATING TO ELECTRIC UTILITIES; DELAYING CUSTOMER CHOICE PROVISIONS AND IMPLEMENTATION OF THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999.

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

## Section 1. Section 62-3A-3 NMSA 1978 (being Laws 1999, Chapter 294, Section 3) is amended to read:

"62-3A-3. DEFINITIONS.--As used in the Electric Utility Industry Restructuring Act of 1999:

A. "ancillary services" means those services that are auxiliary to basic generation, transmission or distribution services, but are determined by the commission to be necessary for the provision of the basic generation, transmission or distribution service being provided;

B. "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. Control includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities;

C. "bundled service" means the combination of supply, distribution and transmission services provided to customers prior to customer choice;

D. "commission" means the public regulation commission or, before January 1, 1999, the New Mexico public utility commission;

E. "competitive power supplier" means any person offering competitive service to customers in the state, whether directly or as an intermediary or agent of the seller or purchaser;

F. "competitive service" means any supply service or energy-related service available to customers from multiple suppliers on an unregulated basis;

G. "customer" means a retail electric customer or consumer;

H. "customer choice" means the opportunity for an individual customer to purchase supply service or energy-related service from a competitive power supplier;

I. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act;

J. "distribution company" means a person who owns, operates, leases or controls distribution facilities for distribution of electricity to or for the public and is regulated by the commission;

K. "distribution facilities" means those facilities by and through which electricity is distributed to the customer and that are owned, operated, leased or controlled by a distribution company;

L. "distribution service" means the regulated component of service provided by distribution facilities and includes ancillary services;

M. "energy-related service" means any competitive service that relates to or supports the provision of electric energy, but does not include supply service;

N. "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;

O. "monopoly coercion" means any action by a public utility or affiliate of a public utility, including any action of employees, officers or directors of those companies that the company permits or condones, that causes a customer to reasonably believe that regulated or gas service will be impaired or diminished if that customer acquires competitive goods or services from a person other than an affiliate of the public utility, or causes a customer to reasonably believe that regulated service will be augmented or improved if that customer acquires competitive goods or services from an affiliate rather than from another person;

P. "municipal utility" means an electric utility owned or controlled by a municipal corporation organized pursuant to the laws of the state or a class A or an H class county;

Q. "non-discriminatory" means that no preference or competitive advantage will be given to any person;

R. "open access" means non-discriminatory transmission and distribution services for the delivery of supply service by all competitive power suppliers to facilitate customer choice;

S. "person" means an individual, association, joint venture, organization, partnership, firm, syndicate, corporation, cooperative or any other legal entity;

T. "public utility" means any person or that person's lessee, trustee or receiver, not engaged solely in interstate business and except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control any plant, property or facility for regulated services to or for the public of electricity for light, heat or power or other uses**,** and includes a distribution company, a transmission company or both;

U. "regulated services" means bundled services prior to the date the involved class of service is granted customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999; and, only standard offer, distribution and transmission services after customer choice begins, pursuant to that act and in any event, after July 1, 2007;

V. "renewable energy" means electrical energy generated by means of a low- or zero-emissions 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;

W. "service customer" means a customer receiving supply service over a public utility's, distribution cooperative utility's or municipal utility's distribution or transmission facilities in areas served by the utility;

X. "small business customer" means a customer that purchases less than two hundred thousand kilowatt-hours per year or at a demand level that does not exceed fifty kilowatts;

Y. "standard offer service" means supply service acquired and delivered by a public utility after the date customer choice begins to residential and small business customers that are eligible for customer choice after that date but do not elect to acquire their power supplies from the retail competitive marketplace; and as to a distribution cooperative utility, means supply service acquired and delivered by the distribution cooperative utility to residential and small business customers that either do not elect to acquire their supply service from a competitive power supplier or are not eligible to make such election pursuant to the terms of the Electric Utility Industry Restructuring Act of 1999;

Z. "stranded costs" means the net present value of the difference between:

(1) the regulated revenue requirements for all utility-generation-related functions, including purchased power, fuel contracts and lease and lease-related obligations, which as of the date of open access, were being recovered in rates or, if not

previously recovered in rates, which the commission determines would be recoverable in rates; and

(2) the revenues that could be earned from selling the same generation-related services as specified in Paragraph (1) of this subsection at competitive retail market rates pursuant to retail competition.

Regulated revenue requirements include all regulatory assets, net liabilities, deferred taxes, costs associated with construction, operation and decommissioning or removal from service of generation facilities, costs associated with purchased power, water and fuel contracts, lease and lease-related costs, gains or benefits to which ratepayers are entitled and all other accounting categories of costs and credits, including credit for taxes already recovered by the utility, recognized under cost-of-service regulation and attributable to the generation function of each utility. "Stranded costs" shall not include costs that are unreasonable, imprudent or mitigable or that have been determined to not be recoverable in rates. "Stranded costs" shall be calculated for the period ending when the useful lives for all generation assets or obligations of the particular utility as described in Paragraph (1) of this subsection are anticipated to expire. Retiring assets are presumed to be replaced at market prices;

AA. "supply service" means the unregulated electric energy or capacity component of electric service;

BB. "system benefits charges" means costs to benefit customers and the public that are collected and disbursed by a public utility, a distribution cooperative utility or a municipal utility pursuant to law;

CC. "transition costs" means those 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 in accordance with 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, 2009, 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;

DD. "transition period" means that period of time during which a public utility is permitted to charge customers for stranded costs or transition costs;

EE. "transmission company" means a person who owns, operates, leases or controls transmission facilities for transmission of electricity to or for the public and is regulated by the commission;

FF. "transmission facilities" means those facilities that are used to provide transmission service as determined by the commission or the federal energy regulatory commission;

GG. "transmission service" means the regulated component of service provided by transmission facilities and includes ancillary services; and

HH. "unbundled services" means the separation of electric power supply service into separate components, including supply, distribution and transmission services."

## Section 2. Section 62-3A-4 NMSA 1978 (being Laws 1999, Chapter 294, Section 4) is amended to read:

"62-3A-4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR PLANS AND APPROVALS--REVIEW BY COMMISSION.--

A. Except as provided in Sections 62-3A-16 and

62-3A-17 NMSA 1978, customer choice service shall be available as follows:

(1) for public post-secondary educational institutions and public schools and for residential and small business customers, on January 1, 2007; and

(2) for all other customers of electricity, on July 1, 2007.

B. A plan or approval for customer choice, disposition of stranded costs, preparation for open access or competitive supply service for a public utility granted by the commission between January 1, 1997 and December 31, 1998 may be reviewed by the commission, in conjunction with the Electric Utility Industry Restructuring Act of 1999. After notice and public hearing, the plan or approval shall be confirmed, rejected or modified by the commission on or before November 30, 1999. Modifications to a plan or an approval may be recommended by the commission, the public utility subject to the plan or approval or a party with standing.

C. A public utility having had a plan or approval granted by the commission after January 1, 1997 shall be subject to the requirements of the Electric Utility Industry Restructuring Act of 1999 to the extent the requirements of that act are not inconsistent with the plan or approval, as confirmed, rejected or modified in accordance with Subsection B of this section.

D. The commission may delay customer choice and other dates established in the Electric Utility Industry Restructuring Act of 1999 by up to one year upon finding that an orderly implementation of customer choice cannot be accomplished without the delay.

E. No later than July 1, 2001, the commission shall approve an application for creation of a holding company filed by a public utility prior to January 1, 2001, as part of a transition plan, subject to such terms and conditions as are in the public interest. The formation of a holding company under this subsection shall not result in any loss of commission jurisdiction over corporate allocations or over any costs that are charged to ratepayers. This subsection is not subject to Subsection D of Section 62-3A-4 NMSA 1978."

## Section 3. Section 62-3A-6 NMSA 1978 (being Laws 1999, Chapter 294, Section 6) is amended to read:

"62-3A-6. TRANSITION PLANS.--

A. A public utility shall file a transition plan that complies with the Electric Utility Industry Restructuring Act of 1999 with the commission no later than January 1, 2005 for commission approval on or before June 1, 2006. The transition plan shall include a detailed description of the public utility's:

(1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 62-3A-8 NMSA 1978;

(2) associated unbundled cost-of-service studies and an explanation of all cost allocations made to the unbundled services;

(3) proposed methodologies to allow residential and small business customers to have customer choice without requiring additional end-use metering equipment;

(4) proposals to implement customer choice and open access;

(5) proposed standard offer service tariffs, exclusive of price terms that shall be incorporated prior to customer choice, for residential and small business customers that do not select a power supplier pursuant to customer choice eligibility;

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

(7) proposed tariffs for distribution service for customers and competitive power suppliers, and transmission service, either on file with a federal regulatory agency having jurisdiction or as proposed by the public utility;

(8) the projected amounts of stranded costs and transition costs sought to be recovered by the public utility;

(9) proposed non-bypassable wires charges for recovery of transition costs and stranded costs allocated among customer classes;

(10) proposed system for the collection, recovery and accounting of the system benefits charge and stranded and transition costs through wires charges;

(11) proposed customer education programs, necessary computer hardware and software modifications and meter upgrades necessary to provide open access;

(12) proposed procedures for balancing, settlements and communications with competitive power suppliers; and

(13) any other information, documentation or justification requested by the commission.

B. The commission in making its determination of the amount of stranded costs to be recovered by a public utility in its transition plan filing shall order no less than fifty percent recovery of stranded costs. The commission may allow up to one hundred percent recovery of stranded costs only if it finds that recovery of more than fifty percent of stranded costs:

(1) is in the public interest;

(2) is necessary to maintain the financial integrity of the public utility;

(3) is necessary to continue adequate and reliable service by the public utility; and

(4) will not cause an increase in rates to residential or small business customers during the transition period.

C. The commission in quantifying stranded costs shall consider:

(1) mitigation efforts and results;

(2) reasonable methods for determining market valuations, including:

(a) the use of standard offer bid prices;

(b) appraisal by independent third-party professionals;

(c) a competitive bid sale for generation; and

(d) any other method designed to provide a reasonable valuation;

(3) for residential and small business customers, that the standard offer bid price may reflect the current market value of supply service; and

(4) that recoverable stranded costs must be fair and equitable to customers, utility investors and the public.

D. Before July 1, 2005, the commission shall approve the procurement procedure proposed by the public utility in its transition plan for the acquisition of supply service for standard offer service. On or before January 1, 2005, a public utility shall update its pending transition plan filing by providing the price of supply service procured for standard offer service pursuant to the procurement procedure approved by the commission. The approval of stranded costs to be recovered from the residential and small business classes shall be made after the public utility has contracted to procure power for the standard offer, but prior to December 1, 2006.

E. After notice and public hearing, the commission shall issue a final order approving or modifying a public utility's transition plan, including tariffs for just and reasonable rates for distribution service, transmission service, subject to federal jurisdiction, and standard offer services. All interested parties shall be afforded an opportunity to participate and be heard on any matter contained in a transition plan filing. The commission may initiate an inquiry into an approved transition plan's implementation and operation, if the public interest requires."

## Section 4. Section 62-3A-7 NMSA 1978 (being Laws 1999, Chapter 294, Section 7) is amended to read:

"62-3A-7. RECOVERY OF TRANSITION AND STRANDED COSTS--

OPPORTUNITIES AND LIMITS.--

A. The commission shall determine the non-bypassable wires charges for the recovery of transition costs and stranded costs as described in Section 62-3A-6 NMSA 1978.

B. As to stranded cost recovery, the non-bypassable wires charge established shall:

(1) be calculated to begin on the eligibility date of customer choice for each customer class;

(2) not extend longer than five years thereafter, provided that the commission may separate nuclear decommissioning for recovery over a longer period of time through a separate wires charge if it determines that such recovery is in the public interest; and

(3) shall be equitably designed in a competitively neutral manner that ensures that the class pays no more than the stranded costs associated with that class.

C. In its approval of a transition plan provided for in Section 62-3A-6 NMSA 1978, the commission shall determine a non-bypassable wires charge for recovery of transition costs through December 31, 2012, after which date further transition charges shall not be recoverable through a separate wires charge.

D. The commission or the public utility may seek to consider and modify or continue the wires charge established to achieve collection of the transition costs. If an over-collection of transition costs is determined by the commission to have occurred, a wires credit shall be applied to customers' bills to return the over-collection of transition costs in an amount and for such time as the commission may determine.

E. Nothing in the Electric Utility Industry Restructuring Act of 1999 is intended to affect the ability of a public utility to recover wholesale stranded costs, including stranded costs recovered from wholesale customers under contract.

F. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be interpreted to require the commission to make any order involving rates or wires charges that would result in a public utility losing its eligibility:

(1) for accelerated depreciation or other tax benefits for federal income tax purposes; or

(2) to exclusively use external sinking fund methods for decommissioning obligations pursuant to federal guidelines."

## Section 5. Section 62-3A-8 NMSA 1978 (being Laws 1999, Chapter 294, Section 8) is amended to read:

"62-3A-8. DIVESTITURE NOT REQUIRED--AFFILIATES--SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND ANTI-COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST ACTIONS.--

A. The Electric Utility Industry Restructuring Act of 1999 does not require nor shall it be construed to require nor shall the commission require a public utility to divest itself of any of its assets owned, leased or in which an interest is held, owned or leased on the effective date of that act.

B. Not before September 1, 2005, but before January 1, 2006, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis. If a public utility is indebted on pollution control revenue or revenue refunding bonds issued prior to January 1, 2001 and maturing after October 1, 2016, all of the corporations surviving or created by the separation which retained or acquired generation and power supply facilities or transmission or distribution facilities shall be liable for payment of the interest and principal of the bonds, either by direct obligation or by guarantee of that obligation. The commission shall impute a cost of capital and capital structure to the transmission and distribution utility that reflects the direct obligation or guarantee of the transmission and distribution utility. If the utility is directly obligated, one hundred percent of the bonds will be imputed. If the utility guarantees the obligation, fifty percent of the bonds shall be imputed.

C. Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties. A public utility may provide all competitive and ancillary services within a single unregulated company and provide all non-competitive and ancillary services within a separate regulated company. Unregulated service shall not be provided by a regulated company.

Until corporate separation is implemented, 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. Nothing herein shall 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 any 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.

D. Prior to customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999, the commission shall adopt codes of conduct applicable to public utilities that shall contain provisions that:

(1) prevent undue discrimination in favor of affiliates;

(2) prevent any anti-competitive practices that could harm competition in any market for competitive services, including practices that unfairly impede a customer from self-generating a portion of his supply service requirements;

(3) grant customers and their competitive power suppliers access to a public utility's retail distribution and transmission facilities on a non-discriminatory basis at the same rates, terms and conditions of service of use by the public utility and its affiliates;

(4) prevent the disclosure of any individual customer information to any person, including an affiliate, unless the customer provides written consent except as otherwise directed in a rulemaking by the commission;

(5) prevent the disclosure of any aggregated customer information to any person, including an affiliate, unless the same information is timely made available on the same basis to all competitors;

(6) require that any person, including an affiliate, possessing customer information obtained in a manner contrary to Paragraphs (4) and (5) of this subsection shall make no commercial use of the information and either destroy the information or return it to the public utility;

(7) provide that transactions between a public utility and an affiliate do not involve any subsidies between them and do not jeopardize reliability of the electric system, including its interconnections; and

(8) prevent an affiliate from identifying its affiliation with the public utility unless the affiliate also discloses in a reasonable manner that it is neither the same company as the public utility nor is it regulated by the commission.

E. A public utility shall not subsidize competitive services provided by an affiliate. A public utility shall file with the commission a statement of policy and procedure, consistent with the commission's codes of conduct and subject to commission approval, to avoid any subsidy to an affiliate. The statement of policy and procedure shall:

(1) describe the separation of services made pursuant to Subsection B of this section; and

(2) describe the safeguards instituted to prevent the sharing with an affiliate of employees, goods, services or facilities, except that common costs for essential corporate-wide services shall be allocated between the public utility and affiliates to reflect the proportional benefit that the public utility receives from those services compared to the affiliates receiving the services, and provided that a public

utility may purchase goods, services or facilities from an affiliate if the items cannot be provided internally or obtained from an independent person at an equal or lower price or other factors such as quality or service that justify a higher purchase price. The commission may promulgate rules regarding the transfer of employees, provided that the commission shall not require or approve a policy or procedure that interferes with an employee's ability to apply for and be considered for a position of his choice.

F. A public utility shall not coerce or entice, either by act or omission, a customer to purchase the goods or services of an affiliated unregulated company over the goods or services of its competitors.

G. A public utility shall not engage in monopoly coercion. Complaints alleging monopoly coercion may be filed with the commission or district court and, if filed, shall be placed at the head of the docket; and after notice and hearing, shall be resolved expeditiously. Filing a complaint for monopoly coercion with the commission pursuant to this section neither precludes nor excludes other remedies available pursuant to law and is not a prerequisite for seeking relief otherwise available. The attorney general shall have standing on behalf of consumers to file a complaint initiating or to intervene in a case before the commission alleging monopoly coercion.

H. If the commission finds and orders that monopoly coercion has occurred, after notice and hearing, the commission may fine the public utility or its affiliate or issue such cease and desist orders as are deemed necessary in accordance with the Electric Utility Industry Restructuring Act of 1999. Attorney fees and costs shall be awarded to a prevailing complainant. If the defendant prevails, attorney fees and costs shall be awarded upon a commission finding that the complaint was either frivolous or made in bad faith.

I. The state and all regulatory bodies and agencies acting pursuant to state policy do not supervise or condone any actions of a competitive power supplier or monopoly coercion activities of a public utility that are or would be unlawful pursuant to the Antitrust Act or any federal antitrust act. The provisions of Section 57-1-16 NMSA 1978 are not a defense to an antitrust violation or monopoly coercion charge against a competitive power supplier or monopoly coercion charge against a public utility.

J. Public utilities that provide both electricity and natural gas distribution services shall not be required to functionally separate their electric and gas transmission, transportation and distribution operations from each other, and any rule or order to the contrary is void; and provided that any regulated natural gas distribution operations operated within the same legal entity as regulated electric operations shall be subject to Subsections E and G of this section; and provided further that 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.

K. Nothing in this section shall be construed to require any commission act or order prior to filing an action pursuant to the Antitrust Act or any federal antitrust act or to limit the authority of the attorney general granted in the Antitrust Act."

## Section 6. Section 62-3A-13 NMSA 1978 (being Laws 1999, Chapter 294, Section 13) is amended to read:

"62-3A-13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system benefits charge" in the amount of three hundredths of one cent ($.0003) per kilowatt-hour is created and imposed on all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2007. On January 1, 2012, the system benefits charge shall increase to six hundredths of one cent ($.0006) per kilowatt-hour. The commission shall eliminate any portion of the system benefits charge that is not being used for the purposes specified in Section 62-3A-15 NMSA 1978. The system benefits charge shall be separately identified on bills rendered to customers beginning on January 1, 2007."

## Section 7. Section 62-3A-16 NMSA 1978 (being Laws 1999, Chapter 294, Section 16) is amended to read:

"62-3A-16. DISTRIBUTION COOPERATIVE UTILITIES.--

A. Notwithstanding any other provisions of the Electric Utility Industry Restructuring Act of 1999, this section governs distribution cooperative utilities and generation and transmission cooperatives with respect to that act.

B. A generation and transmission cooperative may provide power and energy to its members and shall be subject to regulation by the commission pursuant to the Public Utility Act. A generation and transmission cooperative shall not provide supply service at retail unless it is a licensed competitive power supplier and provides open access in accordance with the Electric Utility Industry Restructuring Act of 1999.

C. A distribution cooperative utility is not a public utility for the purposes of the Electric Utility Industry Restructuring Act of 1999. A distribution cooperative utility, however, remains subject to the jurisdiction and authority of the commission to the same extent it was regulated by the commission prior to the effective date of that act.

D. To the extent that it elects a business method option pursuant to Subsection I of this section other than load aggregator, a distribution cooperative utility shall file a business method plan with the commission within sixty days of the election that shall include the following:

(1) the business method option elected, the method of election and other relevant authorizations and approvals of the option;

(2) the costs, liabilities and investments that the distribution cooperative utility seeks to recover from customers who choose supply service other than from the distribution cooperative utility;

(3) the amount of the costs, liabilities and investments and the methodologies used by the distribution cooperative utility to determine the amount of costs, liabilities and investments that the distribution cooperative utility reasonably expected to recover through rates if bundled service had continued, reduced by the results of appropriate mitigation efforts taken by the distribution cooperative utility to offset the costs, liabilities and investments;

(4) the methodologies by which the distribution cooperative utility shall compute an exit fee or a non-bypassable non-discriminatory charge for customers choosing a competitive power supplier to provide supply services;

(5) a description of the implementation and operation of the business method option, the period during which it is estimated to be implemented, the customer information and notification that the distribution cooperative utility intends to provide to its service customers; and

(6) tariffs for service to its service customers, including either exit fees or non-bypassable non-discriminatory charges to seek to recover costs, liabilities and investments sought to be recovered due to the change from bundled to unbundled service.

E. The business method plan is deemed approved by the commission within six months after the date of its filing, unless after notice and hearing the commission either rejects or modifies the business method plan filing.

F. Notwithstanding the business method option elected by the distribution cooperative utility, the distribution cooperative utility shall:

(1) make standard offer service, as approved by the commission, available to its residential and small business customers;

(2) provide distribution service to its service customers; and

(3) not provide or permit a competitive advantage to a competitive power supplier.

G. A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on the effective date of the Electric Utility Industry Restructuring Act of 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

organized. The commission shall approve the application if the distribution cooperative utility:

(1) does not provide supply service to other than its service customers in this state; and

(2) remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

H. On or before January 1, 2007, a distribution cooperative utility shall elect through its board of trustees a business method of providing supply service to its service customers from the options described in Subsection I of this section. The chosen business method may be implemented over a three-year period or less, after commission approval. The distribution cooperative utility shall not:

(1) transmit supply service over its facilities for competitive power suppliers to any service customer, except in accordance with provisions of a business method plan approved by the commission; or

(2) convert or permit the conversion of a retail service delivery point on its system to a wholesale service delivery point without the approval of the commission.

I. A distribution cooperative utility may elect to provide service to its service customers using one of the following business methods of supply service:

(1) load aggregator method, pursuant to which the distribution cooperative utility:

(a) shall acquire and provide supply service;

(b) may aggregate its customers by class or otherwise;

(c) shall provide supply, transmission and distribution services; and

(d) shall remain subject to regulation by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and its election;

(2) customer-directed supplier, pursuant to which a retail customer may select a competitive service provider from a list of competitive supply service proposals obtained by the distribution cooperative utility. The distribution cooperative utility shall determine the competitive supply service proposals that will be offered to customers by competitive power suppliers pursuant to non-discriminatory rules adopted by the distribution cooperative utility and approved by the commission;

(3) customer class direct access, pursuant to which one or more classes of retail customers satisfying criteria determined by the distribution cooperative utility and approved by the commission may contract directly with a competitive power supplier. The criteria established for class eligibility may be expanded to permit greater eligibility for customer class direct access, subject to commission approval. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for customer class direct access customers; and

(4) direct access, pursuant to which all retail customers may contract with a competitive power supplier for supply service and the distribution cooperative utility distributes power from the competitive power supplier's delivery point on its system to the retail customer's premises. Direct access shall be provided in a non-discriminatory manner. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for direct access customers.

J. A distribution cooperative utility may set a reasonable exit fee or a non-bypassable non-discriminatory charge to recover costs, liabilities and investments that would have reasonably been recovered, if not mitigated, pursuant to cost-of-service ratemaking for bundled service. An exit fee or a non-bypassable non-discriminatory charge may be assessed to a customer eligible to select and selecting supply service other than from the distribution cooperative utility's standard offer service or otherwise.

K. Distribution cooperative utilities shall notify their customers within twelve months after the effective date of the Electric Utility Industry Restructuring Act of 1999 concerning the terms of this section and other applicable terms of that act. A distribution cooperative utility electing an option of conducting its business other than as a load aggregator shall inform its service customers of the major impacts of the customer choices available pursuant to the elected option.

L. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be deemed:

(1) to require a distribution cooperative utility to do any act that might result in the loss of its exemption from income taxes; or

(2) to apply to, interfere with, abrogate or change the rights of a party under a wholesale power supply, mortgage or other financing agreement to which a distribution cooperative utility is a party."

## Section 8. Section 62-3A-17 NMSA 1978 (being Laws 1999, Chapter 294, Section 17) is amended to read:

"62-3A-17. MUNICIPAL UTILITIES.--

A. This section governs municipal utilities in relation to the Electric Utility Industry Restructuring Act of 1999. Except as provided in Subsection E of this section, a

municipal utility is neither a public utility, a distribution company nor a transmission company pursuant to that act.

B. Except for a municipality authorized to condemn facilities pursuant to Subsections E and F of Section 3-24-1 NMSA 1978, which is deemed to have chosen to participate in customer choice for its service customers effective January 1, 2007, a municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access for competitive services to its service customers. A municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access to offer supply service and competitive services to customers in addition to its service customers. A decision by a municipal governing body to participate in customer choice and open access for its service customers only or its service customers and other customers at any time after January 1, 2007 shall be made by the adoption of an appropriate ordinance or resolution, which decision once made is thereafter irrevocable. A municipal utility may not participate in customer choice or open access for customers other than its service customers unless and until its service customers are eligible for customer choice with open access available to fulfill a customer's choice of supply service.

C. If a municipal governing body elects not to participate in customer choice and open access, its municipal utility shall be regulated by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and shall not offer any service to retail customers other than to its service customers.

D. A municipality deemed by the provisions of Subsections E and F of Section 3-24-1 NMSA 1978 to have elected to participate in customer choice for its service customers or any other municipality that elects by its governing body to participate in customer choice and open access for its service customers, shall, by its municipal governing body:

(1) establish rates, terms and conditions pursuant to which the municipal utility shall provide open access over its distribution facilities and unbundled services to its service customers, including standard offer service;

(2) provide open access on a non-discriminatory, competitively neutral basis pursuant to terms and conditions comparable to that applied to itself;

(3) establish procedures for complaint to and hearing by the municipal governing body by any person aggrieved by the terms and conditions and operation of open access to the distribution facilities of the municipal utility. Decisions of the municipal governing body may be appealed by an aggrieved person to the district court in the district where the municipal utility is located;

(4) not provide or permit a competitive advantage to a competitive power supplier; and

(5) regulate its operation and service to its service customers.

E. When a municipal governing body elects for its municipal utility to provide competitive service to a customer other than its service customers, the municipal utility becomes and shall be subject to the applicable provisions of the Electric Utility Industry Restructuring Act of 1999 to the extent competitive service is to be made available by the municipal utility to customers other than its service customers.

F. A municipal governing body shall notify the service customers of its municipal utility of the Electric Utility Industry Restructuring Act of 1999 and its specific terms applicable to municipal utilities.

G. Nothing in the Electric Utility Industry Restructuring Act of 1999 impairs the tax-exempt status of municipalities and municipal utilities.

H. For purposes of this section, "municipal governing body" means a commission, council or other entity vested with the power to control the management and operation of the municipal utility, in accordance with law."

## Section 9. Section 62-3A-18 NMSA 1978 (being Laws 1999, Chapter 294, Section 18) is amended to read:

"62-3A-18. FRANCHISE FEES--GROSS RECEIPTS TAX--COAL DECOMMISSIONING--TAX REVENUES ANALYSIS.--

A. A franchise fee charge shall be stated as a separate line entry on a public utility's or distribution cooperative utility's bills and shall only be recovered from customers located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric service received by retail customers 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.

C. Upon application by a public utility, the commission shall authorize the public utility to begin amortizing over five years the unrecovered costs of decommissioning mines serving coal-fired generating plants, with amortization beginning on January 1, 2002. The commission's order authorizing the amortization shall establish a separate nonbypassable wires charge for the decommissioning cost in the public utility's tariffs, which does not have to be separately shown on customer bills, and which shall not change the total rates for electric service paid by any customer in effect at the time of the order. Nothing in this subsection shall prevent the commission from determining stranded costs in accordance with the Electric Utility Industry Restructuring Act of 1999 or the appropriate manner or duration of recovery of the reasonable unamortized portion of these decommissioning costs in any rate proceeding subsequent to the application.

D. The New Mexico legislative council shall refer to the revenue stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

E. The revenue stabilization and tax policy committee shall recommend legislative changes, if any, to establish comparable state and local taxation burdens on all market participants in the supply of electricity considering the impacts and changes that have resulted from the restructure and competition in the electric industry in the state."

**Section 10. Section 62-3A-22 NMSA 1978 (being Laws 1999, Chapter 294, Section 22) is amended to read:**

"62-3A-22. COMMISSION REVIEW AND RECOMMENDATIONS.--The commission shall docket a proceeding to review the system benefits charge and the system benefits fund, their operation and effectiveness, and then to make recommendations to the legislature by January 10, 2009 for any repeal of or changes to these provisions."

**Section 11. COMMISSION REPORT.--No later than December 15, 2002, the commission shall report to the legislature regarding the state of electricity markets in the western United States together with its recommendations regarding open access and customer choice in New Mexico.**

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SENATE BILL 266, AS AMENDED

# CHAPTER 6

**CHAPTER 6, LAWS 2001**

AN ACT

RELATING TO MOTORCYCLES; REMOVING THE RESTRICTION ON THE HEIGHT OF MOTORCYCLE HANDLEBARS; REPEALING A SECTION OF THE NMSA 1978.

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

**Section 1. REPEAL.--Section 66-3-841 NMSA 1978 (being Laws 1969, Chapter 266, Section 5, as amended) is repealed.**

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 387

# CHAPTER 7

**CHAPTER 7, LAWS 2001**

AN ACTRELATING TO DISASTERS; DECLARING A DISASTER IN CERTAIN AREAS OF THE NATIONAL FORESTS IN NEW MEXICO; USING THE POLICE POWER OF THE STATE TO EMPOWER COUNTY BOARDS OF COMMISSIONERS TO TAKE ACTIONS NECESSARY FOR CLEARING AND THINNING UNDERGROWTH AND FOR REMOVING AND LOGGING FIRE-DAMAGED TREES; DECLARING AN EMERGENCY.

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

## Section 1. FINDINGS--DECLARATION OF DISASTER--POWERS OF COUNTY COMMISSIONS.--

A. The legislature finds that:

(1) numerous citizens and government officials in the state of New Mexico have repeatedly petitioned the United States forest service both collectively and individually at public meetings, by correspondence and by telephone to request that the forest service take appropriate action to remove or eliminate the conditions that have created a state of emergency caused by a present risk to the lives and property of citizens in and adjacent to national forests within New Mexico;

(2) all the petitions have for all practical purposes been either ignored or discounted by the United States forest service resulting only in what can be reasonably characterized as inaction on the part of the forest service to appropriately reduce, if not remove, the risk to the lives and property of the citizens of New Mexico;

(3) because the United States forest service has failed to exercise its responsibilities as a sovereign to protect the lives and property of the citizens of New Mexico and because it is a fundamental principle under the laws of any just society that the persistent failure of a sovereign to fulfill such obligations constitutes grounds for the

forfeiture of jurisdictional supremacy, such a forfeiture must hereby be recognized and declared; and

(4) because of recognition and declaration of this forfeiture of jurisdictional supremacy, a jurisdictional vacuum has been created that requires the state of New Mexico to acknowledge its obligations as a sovereign power to protect the lives and property of its citizens and consequently to authorize any action it presently deems necessary to fill the vacuum created by the federal government by assuming jurisdiction to reduce to acceptable levels, if not remove, the threat of catastrophic fires posed by present conditions in national forests within its borders.

B. The legislature declares a disaster within those areas of the national forests of New Mexico that suffered severe fire damage, as determined by the local board of county commissioners, where large amounts of forest undergrowth have created the potential for damaging fires in the future. The legislature also declares that the disaster is of such magnitude that the police power of the state should be exercised to the extent necessary to provide the resources and services that will end the disaster and mitigate its effects.

C. After consulting with the state forester and the regional United States forester, taking surveys, holding those public hearings as may be necessary and developing a plan to mitigate the effects of the disaster, a board of county commissioners for a county in which a disaster has been declared pursuant to Subsection A of this section may take such actions as are necessary to clear and thin undergrowth and to remove or log fire-damaged trees within the area of the disaster. A county may enter into an agreement with a contractor, licensee or other agent to carry out the purposes of this subsection.

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

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SENATE BILL 1, AS AMENDED, WITH EMERGENCY CLAUSE

SIGNED MARCH 13, 2001

# CHAPTER 8

**CHAPTER 8, LAWS 2001**

AN ACT

RELATING TO LIVESTOCK; CLARIFYING THAT LIVESTOCK INSPECTORS HAVE JURISDICTION OVER CRIMES INVOLVING LIVESTOCK.

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

## Section 1. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"LIVESTOCK CRIMES--LIVESTOCK INSPECTORS TO ENFORCE.--Livestock inspectors who are certified peace officers may enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock."

## Section 2. Section 77-2-1.1 NMSA 1978 (being Laws 1993, Chapter 248, Section 2, as amended) is amended to read:

"77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

A. "animals" or "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock";

B. "bill of sale" means an instrument in substantially the form specified in The Livestock Code by which the owner or his authorized agent transfers to the buyer the title to animals described in the bill of sale;

C. "bison" or "buffalo" means a bovine animal of the species bison;

D. "board" means the New Mexico livestock board;

E. "bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board;

F. "brand" means a symbol or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other livestock;

G. "brand inspector" means an inspector who is not certified as a peace officer;

H. "carcasses" means dead or dressed bodies of livestock or parts thereof;

I. "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock;

J. "dairy cattle" means animals of the genus bos raised not for consumption but for dairy products and distinguished from meat breed cattle;

K. "director" means the executive director of the board;

L. "disease" means a communicable, infectious or contagious disease;

M. "district" means a livestock inspection district;

N. "estray" means livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

O. "inspector" means a livestock or brand inspector;

P. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code and other criminal laws relating to livestock;

Q. "mark" means an ear tag or ownership mark that is not a brand;

R. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;

S. "mule" means a hybrid resulting from the cross of a horse and an ass; and

T. "person" means an individual, firm, partnership, association, corporation or similar legal entity."

## Section 3. Section 77-2-9 NMSA 1978 (being Laws 1967, Chapter 213, Section 8, as amended) is amended to read:

"77-2-9. REPORTS OF INSPECTORS--PROSECUTION OF VIOLATIONS OF LIVESTOCK LAWS.--

A. The board shall keep reports of its veterinarians and inspectors in accordance with the Public Records Act.

B. The board shall assist in the prosecution of persons charged with the violation of the livestock laws, including criminal laws relating to livestock, and may call upon a livestock inspector or other peace officer to execute its orders, and when it does, the peace officer shall obey the order of the board.

C. Livestock inspectors may arrest persons found in the act or whom they have probable cause to believe to be guilty of driving, holding or slaughtering stolen livestock; of violating the inspection laws of the state; or of violating any provision of Chapter 30, Article 18 NMSA 1978 relating to livestock or other criminal law relating to livestock."

## Section 4. Section 77-9-33 NMSA 1978 (being Laws 1891, Chapter 34, Section 7, as amended) is amended to read:

"77-9-33. INSPECTION OF EXPORTED LIVESTOCK--REPORT--INSPECTION OF SLAUGHTERHOUSES--PENALTY.-- Every inspector shall be an inspector of brands and ear marks and also an inspector of hides and slaughterhouses, and it is the duty of the inspectors to inspect the brands and ear marks of all livestock transported or driven from a district or out of this state and to make a sworn report to the director of the result of such inspection at least once every thirty days and more often if, in the opinion of the board, it is necessary. Every slaughterhouse in this state shall be carefully inspected by the inspectors, and all hides found in slaughterhouses shall be carefully compared with the records of the slaughterhouses and a report in writing setting forth the number of livestock killed at the slaughterhouse since the last inspection, the names of the persons for whom each of the livestock were slaughtered, the brands and marks upon each hide and any information that may be obtained touching the violation by the owner of any slaughterhouse, or any other person, of any of the provisions of Sections 77-17-9 and 77-17-10 NMSA 1978. For the purpose of making an inspection, an inspector has the right to enter in the day or night any slaughterhouse or other place where livestock are killed in this state and to carefully examine the premises and all books and records required by law to be kept on the premises and to compare the hides found with the records. A person who hinders or obstructs or attempts to hinder or obstruct an inspector in the performance of any of the duties required of him by law is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

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SENATE BILL 64, AS AMENDED

# CHAPTER 9

**CHAPTER 9, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING A SECTION OF THE MOTOR VEHICLE CODE TO PROVIDE THAT NEW MEXICO RESIDENCY IS NOT A REQUIREMENT FOR REGISTRATION OF CERTAIN RECREATIONAL VEHICLES IN NEW MEXICO.

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

## Section 1. Section 66-3-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 24, as amended) is amended to read:

"66-3-4. APPLICATION FOR REGISTRATION AND CERTIFICATE OF TITLE.--

A. Every owner of a vehicle of a type required to be registered in this state shall make application to the division for the registration and issuance of a certificate of title for the vehicle. Applications shall be upon the appropriate forms furnished by the division and shall bear the signature of the owner written with pen and ink. All applications presented to the division shall contain:

(1) for a vehicle other than a recreational vehicle, the name, bona fide New Mexico residence address and mail address of the owner or, if the owner is a firm, association or corporation, the name, bona fide New Mexico business address and mail address of the firm, association or corporation and for a recreational vehicle, the name, bona fide residence address and mail address of the owner and proof of delivery in New Mexico;

(2) a description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, type of fuel used, the serial number of the vehicle, the odometer reading, the engine or other identification number provided by the manufacturer of the vehicle, whether new or used and, if a vehicle not previously registered, the date of sale by the manufacturer or dealer to the person intending to operate the vehicle. In the event a vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its rated capacity as established by the manufacturer of the chassis or the complete vehicle;

(3) a statement of the applicant's title and of all liens or encumbrances upon the vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest and the name and address of the person to whom the certificate of title shall be delivered by the division;

(4) if the vehicle required to be registered is a house trailer, as defined in the Motor Vehicle Code, a certificate from the treasurer or assessor of the county in which the house trailer is located showing that either:

(a) all property taxes due or to become due on the house trailer for the current tax year or any past tax years have been paid; or

(b) no liability for property taxes on the house trailer exists for the current year or any past tax years; and

(5) further information as may reasonably be required by the division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

B. Any owner of a vehicle subject to registration which has never been registered in this state and which has been registered in another state shall have such vehicle examined and inspected for its identification number or engine number by the division or an officer or designated agent thereof incident to securing registration, reregistration or a certificate of title from the division.

C. When such application refers to a vehicle not previously registered and the vehicle is purchased from a dealer licensed in this state or a dealer licensed or recognized as such in any other state, territory or possession of the United States, the application shall be accompanied by a manufacturer's certificate of origin duly assigned by the dealer to the purchaser. In the event that a vehicle not previously registered is sold by the manufacturer to a dealer in a state not requiring a manufacturer's certificate of origin and in the event that the vehicle is subsequently purchased by a dealer or any person in this state, the application for title shall be accompanied by the evidence of title accepted by the state in which the vehicle was sold by the manufacturer to a dealer in that state together with evidence of subsequent transfers."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 88

# CHAPTER 10

**CHAPTER 10, LAWS 2001**

AN ACT

RELATING TO EMINENT DOMAIN; CHANGING THE RATE OF INTEREST IN CERTAIN CONDEMNATION PROCEEDINGS.

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

## Section 1. Section 42A-1-24 NMSA 1978 (being Laws 1981, Chapter 125, Section 20) is amended to read:

"42A-1-24. DETERMINATION OF COMPENSATION AND DAMAGES--INTEREST.--

A. For the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer.

B. Whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded interest at the rate of ten percent a year upon the unpaid portion of the compensation awarded from the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned. The judgment shall not include interest upon the amount represented by funds deposited by the condemnor pursuant to the provisions of Sections 42A-1-19 and 42A-1-22 NMSA 1978.

C. The court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation and to make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges.

D. The judgment shall credit against the total amount awarded to the condemnee any payments or deposits paid over to him made before the date of entry of judgment by the condemnor as compensation for the property taken, including any funds which the condemnee withdrew from the amount deposited by the condemnor pursuant to the provisions of Section 42A-1-19 or 42A-1-22 NMSA 1978.

E. If the amount to be credited against the award under Subsection D of this section exceeds the total amount awarded, the court shall require that the condemnee pay the excess to the condemnor.

F. The price paid for similar property by one other than the condemnor may be considered on the question of the value of the property condemned or damaged if there is a finding that there have been no material changes in conditions between the date of the prior sale and the date of taking, that the prior sale was made in a free and open

market and that the property is sufficiently similar in the

relevant market with respect to situation, usability,

improvements and other characteristics."

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SENATE BILL 103

# CHAPTER 11

**CHAPTER 11, LAWS 2001**

AN ACT

RELATING TO MUNICIPALITIES; PROVIDING FOR FLOOD PLAIN REGULATION.

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) is amended to read:

"3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD AND MUDSLIDE HAZARD AREAS--BUILDING AND 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 may 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 shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance and in accordance with this section and so long as it is enforced by an approved inspector 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 shall take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

E. 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.

F. 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.

G. Within their respective jurisdiction, the department of public safety, the department of environment or the construction industries division of the regulation and

licensing department may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance."

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SENATE BILL 145, AS AMENDED

# CHAPTER 12

**CHAPTER 12, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; CHANGING THE MEMBERSHIPOF THE RADIOACTIVE WASTE CONSULTATION TASK FORCE.

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

## Section 1. Section 74-4A-6 NMSA 1978 (being Laws 1979, Chapter 380, Section 5, as amended) is amended to read:

"74-4A-6. TASK FORCE.--There is created the "radioactive waste consultation task force". The task force shall consist of the secretaries of energy, minerals and natural resources; health; environment; public safety; and highway and transportation or their designees. The chairman and vice chairman, or their designees from the committee, shall be advisory members of the task force. The state fire marshal or his designee shall serve as a nonvoting member of the task force."

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SENATE BILL 233

# CHAPTER 13

**CHAPTER 13, LAWS 2001**

AN ACT

RELATING TO AGRICULTURE; ENACTING THE PINK BOLLWORM CONTROL ACT; PROVIDING FOR CONTROL OF PINK BOLLWORM INFESTATION OF COTTON CROPS.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Pink Bollworm Control Act".

## Section 2. DEFINITIONS.--As used in the Pink Bollworm Control Act:

A. "board" means the board of regents of New Mexico state university;

B. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Pink Bollworm Control Act, only one person from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a pink bollworm control district;

C. "department" means the New Mexico department of agriculture;

D. "director" means the director of the New Mexico department of agriculture;

E. "organic cotton producer" means any person growing cotton who is certified by the organic commodity commission as a producer of organic or transitional cotton;

F. "pink bollworm" means any life stage of the cotton insect Pectinophora gossypiella;

G. "pink bollworm control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers voting in a designated pink bollworm control district; and

H. "pink bollworm control district" means a designated area duly established under the Pink Bollworm Control Act wherein a program to suppress or eradicate the pink bollworm is administered.

## Section 3. DEPARTMENT ADMINISTRATION.--The department shall administer the Pink Bollworm Control Act.

## Section 4. EXEMPTION FROM PROCUREMENT CODE AND PERSONNEL ACT.--Pink bollworm control committees are exempt from the provisions of the Procurement Code and the Personnel Act. The committee members and committee 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 5. ESTABLISHMENT OF PINK BOLLWORM CONTROL DISTRICT.--Any five or more persons producing cotton for which it is proposed to establish a pink bollworm control district may file a petition with the department asking that a pink bollworm control district be established. The petition shall set forth:

A. a concise statement of the reasons for the establishment of a pink bollworm control district;

B. a request that a referendum be held among the cotton producers on the question of the establishment of a pink bollworm control district;

C. the name and address of the individual who is authorized to represent the petitioners;

D. the maximum per unit assessment on the cotton acreage or production for which the pink bollworm control district is established; and

E. the method of levy and collection of an assessment upon cotton producers for the support of the pink bollworm control district.

## Section 6. DIRECTOR--DUTIES AND POWERS.--

A. The director shall:

(1) determine any critically infested or threatened agricultural areas within New Mexico, hold public hearings within the proposed pink bollworm control district determined to be critically infested or at risk and provide technical support and advice in the formulation of plans for the control or eradication of such infestation;

(2) estimate the cost of the proposed hearings and referendum for the creation or abolishment of a pink bollworm control district and prepare a budget for the petitioners who shall remit to the director the amount of the cost within thirty days of receiving it;

(3) within sixty days after a petition has been filed and payment of the cost received, publish a notice in a newspaper of general circulation in the proposed pink bollworm control district of the proposed hearings;

(4) send a copy of the public hearing notice directly to the organic commodity commission, at least fourteen days prior to the date of the hearing; and

(5) after the public hearing, based on facts and other relevant data, determine if there is a need for the creation or abolishment of a pink bollworm control district and if the need is sufficient to justify the holding of a referendum.

B. The director may not take action on a second petition relating to the same locale within one year from the date the director denies the need for establishment or abolishment of a pink bollworm control district.

## Section 7. REFERENDUM--PINK BOLLWORM CONTROL

DISTRICTS--LOCAL PINK BOLLWORM CONTROL COMMITTEES.--

A. If the director decides there is justification for creating or abolishing a pink bollworm control district, the department shall hold a referendum. A pink bollworm control district shall be created or abolished if:

(1) two-thirds or more of the eligible cotton producers voting vote in favor of the referendum; or

(2) those voting in favor of the referendum represent more than fifty percent, as determined by the director, of the cotton acreage within the area threatened with or infested by the pink bollworm.

## Section 8. PINK BOLLWORM CONTROL COMMITTEES ESTABLISHED--DUTIES AND POWERS.--

A. Cotton producers within a pink bollworm control district shall establish and elect a local pink bollworm control committee composed of not less than three or more than seven members. The committee members shall not receive per diem or compensation for their services.

B. A pink bollworm control committee may:

(1) adopt regulations to set the method for determining the assessment amount due;

(2) conduct programs to suppress or eradicate pink bollworms within a pink bollworm control district;

(3) cooperate with and enter into contracts or cooperative agreements with state, federal or local agencies;

(4) publish information and conduct seminars on the distribution and control of the pink bollworm;

(5) levy and collect a special assessment, based on cotton acreage or cotton yield per acre, within the pink bollworm control districts; or

(6) borrow money or accept grants, donations or contributions for any purpose consistent with the powers and duties of the pink bollworm control committee.

C. A pink bollworm control committee shall:

(1) prescribe control measures for any cotton planted within a pink bollworm control district. When prescribing control measures, the committee shall make every effort to adhere to integrated pest management practices, to allow organic cotton producers to choose organic pest management practices that will allow them to maintain their organic certification and to adhere to the management goals of individual cotton producers consistent with the goal of complete eradication of the pink bollworm;

(2) provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the pink bollworm control district;

(3) send notice of the establishment of a pink bollworm control district and its defined boundaries to the organic commodity commission within fourteen days of its establishment; and

(4) select an organic cotton producer operating within the district to serve on the pink bollworm control committee if the pink bollworm control district includes certified organic cotton acreage.

## Section 9. ORGANIC COTTON REGULATIONS.--

A. Each organic cotton producer within an established pink bollworm control district shall notify the pink bollworm control committee in writing at least thirty days prior to planting of the number of acres on which organic cotton will be planted.

B. Organic cotton producers shall pay the assessment established for the pink bollworm control district in the same manner as producers of conventionally grown cotton in the district.

C. After crop planting, the pink bollworm control committee shall notify an organic cotton producer of the status of pink bollworm on his acreage and the status of pink bollworm on surrounding acres, as documented by the committee's normal pink bollworm trapping program.

D. The pink bollworm control committee shall confer with an organic cotton producer to determine measures that might be taken to attempt to keep all or a portion of the organic cotton producer's cotton acreage below trigger levels for required treatment. If the organic cotton producer chooses to use a nonconventional method, the committee shall pay the costs of the nonconventional method used by the organic cotton producer, provided the costs do not exceed the equivalent costs of conventional

control methods. If pink bollworm trigger levels are reached on the organic cotton producer's acres and pink bollworm migration from outside these acres has been eliminated as a cause of these levels, the organic cotton producer shall be allowed to harvest these acres but shall not be allowed to grow cotton on the acreage for one year.

## Section 10. AGRICULTURAL LAND ASSESSMENT--ENFORCED COLLECTION.--A cotton producer shall pay a special assessment levied by a local pink bollworm control committee, payable upon the cotton producer's receipt of an assessment statement. The committee's statement shall indicate:

A. the total number of acres treated within the pink bollworm control district;

B. the total treated acres under the control of the land user;

C. the total amount of money expended or estimated to be spent in the pink bollworm control district for the control program;

D. the total acres or yield per acre of lands under the control of the land user assessed; and

E. the amount assessed against the land user.

## Section 11. PETITION FOR ABOLISHMENT OF A PINK BOLLWORM CONTROL DISTRICT.--

A. Any five or more persons producing cotton within a pink bollworm control district may file a petition with the department asking for a referendum to be held to abolish the pink bollworm control district. The petition shall set forth:

(1) the name and description of the pink bollworm control district to be abolished;

(2) a concise statement of the reasons for the abolishment of the pink bollworm control district;

(3) a request that a referendum be held among the producers of the crop on the question of the abolishment of the pink bollworm control district; and

(4) the name and address of the individual who is authorized to represent the petitioners.

B. The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum. The petitioners,

within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

C. If a referendum is held and is adopted to abolish a pink bollworm control district, the district:

(1) may be abolished when the committee and the director determine that all financial and legal obligations have been satisfied; and

(2) shall cease expenditures of pink bollworm control district funds and make an accounting of funds spent and refund the remaining funds.

**Section 12. DISPOSITION OF ASSESSMENT PROCEEDS.--Money collected by a local pink bollworm control committee is not state funds and is not required to be deposited in the state treasury. A local committee shall deposit all money collected in a state chartered bank or other insured depository. Funds collected by local committees shall be held separate from each other. Money remaining after the abolishment of a pink bollworm control district shall be distributed to cotton producers in proportion to the percentage they contributed during the life of the pink bollworm control district.**

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SENATE BILL 484

# CHAPTER 14

**CHAPTER 14, LAWS 2001**

AN ACT

RELATING TO INSURANCE; PROVIDING COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS OR DEVICES APPROVED BY THE FOOD AND DRUG ADMINISTRATION.

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-22-42 NMSA 1978, is enacted 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, and which offers a prescription drug benefit, shall offer 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 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. No blanket or group health insurance policy or contract shall contain any provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

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

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

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

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

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

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

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

(4) Section 59A-22-34.3 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; and

(11) Section 59A-22-42 NMSA 1978."

## Section 3. A new section of the Health Maintenance Organization Law is enacted to read:

"COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS OR DEVICES.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state, and which offers a prescription drug benefit, shall offer 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 4. 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. 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;

U. The Insurance Holding Company Law, except Section 59A-37-7 NMSA 1978;

V. Section 59A-46-15 NMSA 1978; and

W. the Patient Protection Act."

**Section 5. APPLICABILITY.--The provisions of this act apply to policies, plans, contracts and certificates delivered or issued for delivery or renewed, extended or amended in this state on or after July 1, 2001.**

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HOUSE BILL 59, AS AMENDED

# CHAPTER 15

**CHAPTER 15, LAWS 2001**

AN ACT

RELATING TO DOMESTIC ABUSE; PROVIDING FINANCIAL REMEDIES FOR VICTIMS OF DOMESTIC ABUSE; AMENDING A SECTION OF THE FAMILY VIOLENCE PROTECTION ACT.

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

**Section 1. Section 40-13-5 NMSA 1978 (being Laws 1987, Chapter 286, Section 5, as amended) is amended to read:**

"40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE TO PROPERTY NOT AFFECTED.--

A. Upon finding that domestic abuse has occurred, the court shall enter an order of protection ordering the respondent to refrain from abusing the petitioner or any other household member. The court shall specifically describe the acts the court has ordered the respondent to do or refrain from doing. As a part of any order of protection, the court may:

(1) grant sole possession of the residence or household to the petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for the petitioner and any children to whom the respondent owes a legal obligation of support;

(2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the petitioner on a basis that gives primary consideration to the safety of the victim and the children;

(3) order that the respondent shall not initiate contact with the petitioner;

(4) restrain the parties from transferring, concealing, encumbering or otherwise disposing of the petitioner's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the party restrained in court;

(5) order the respondent to reimburse the petitioner or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;

(6) order the respondent to participate in, at the respondent's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and

(7) order other injunctive relief as the court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this section.

B. The order shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.

C. If the order supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action

relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

D. No order issued under the Family Violence Protection Act shall affect title to any property or allow the petitioner to transfer, conceal, encumber or otherwise dispose of the respondent's property or the joint property of the parties.

E. Either party may request a review hearing to amend the order. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 130, AS AMENDED

# CHAPTER 16

**CHAPTER 16, LAWS 2001**

AN ACT

RELATING TO TAXATION; PROVIDING FOR MANAGED AUDITS; GRANTING RELIEF FROM PENALTY AND INTEREST IN CERTAIN CIRCUMSTANCES; 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:

"MANAGED AUDITS.--

A. A managed audit may be limited in scope to gross receipts tax, local option gross receipts taxes or compensating tax due from 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 2. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

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

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

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. "division" or "oil and gas accounting division" means the department;

D. "director" means the secretary;

E. "director or his delegate" means the secretary or the secretary's delegate;

F. "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;

G. "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;

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

I. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

J. "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;

K. "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;

L. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with the Gross Receipts and Compensating Tax Act and local option gross receipts taxes and the presentation of the results to the department for assessment of tax found to be due;

M. "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;

N. "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;

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

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

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

R. "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;

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

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

U. "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;

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

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

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

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

Z. "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

AA. "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 3. Section 7-1-10 NMSA 1978 (being Laws 1965, Chapter 248, Section 15, as amended) is amended to read:

"7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER

RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION RETURNS.--

A. Every person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which he is required to keep records.

B. Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

C. Prior to changing his method of accounting in keeping his books and records for tax purposes, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. If consent is not secured, the department upon audit may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

D. Prior to changing his method of reporting taxes, other than for changes required by law, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the secretary or the secretary's delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. Upon the written application of a taxpayer and at the sole discretion of the secretary or the secretary's delegate, the secretary or the secretary's delegate may enter into an agreement with a taxpayer allowing the taxpayer to report gross receipts, deductions or the value of property on an estimated basis for gross receipts and compensating tax purposes for a limited period of time not to exceed four years. As used in this section, "estimated basis" means a methodology that is reasonably

expected to approximate the tax that will be due over the period of the agreement using summary rather than detail data, provided that:

(1) nothing in this section shall be construed to require the secretary or the secretary's delegate to enter into such an agreement; and

(2) the agreement must:

(a) specify the receipts, deductions or values to be reported on an estimated basis and the methodology to be followed by the taxpayer in making the estimates;

(b) state the term of the agreement and the procedures for terminating the agreement prior to its expiration;

(c) be signed by the taxpayer or the taxpayer's representative and the secretary or the secretary's delegate; and

(d) contain a declaration by the taxpayer or the taxpayer's 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.

F. The secretary may, by regulation, require any person doing business in the state to submit to the department information reports that are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act applies."

## Section 4. Section 7-1-11 NMSA 1978 (being Laws 1965, Chapter 248, Section 16, as amended) is amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--CREDENTIALS.--

A. The department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Those auditors and officials of the department so designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

C. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who properly identifies himself to the taxpayer.

D. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all tax programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done, sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and other related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures. Nothing in this section shall be construed to require the department to provide information that is confidential pursuant to Section 7-1-8 NMSA 1978, nor shall the department be required to provide information concerning how taxpayers are selected for audit."

## Section 5. 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.

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 6. 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 any 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. Any refund of tax and interest erroneously paid and amounting to more than five thousand dollars ($5,000) may be made to any one 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 any 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.

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 five thousand dollars ($5,000) 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 7. 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; and

(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.

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 8. 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 seventy-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;

(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) gasoline tax is refunded or credited under the Gasoline Tax Act to users of gasoline off the highways; or

(7) 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 9. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

"7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A RETURN.--

A. Except as provided in Subsection B of this section, in the case of failure due to negligence or disregard of rules and regulations, but without intent to evade or defeat 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 as penalty the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed ten percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed ten percent of the tax liability established in the late return; or

(3) a minimum of five dollars ($5.00), but the five-dollar ($5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

C. In the case of failure, with willful intent to evade or defeat 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.

D. 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.

E. 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.

F. 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 10. TEMPORARY PROVISION--TRANSITION.--Sections 6 through 8 of this act apply to assessments made on or after the effective date of this act.**

**Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 154, AS AMENDED

# CHAPTER 17

**CHAPTER 17, LAWS 2001**

AN ACT

RELATING TO FINANCE; REVOKING LEGISLATIVE AUTHORIZATION TO THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS FROM THE PUBLIC PROJECT REVOLVING FUND FOR CERTAIN PUBLIC PROJECTS; DECLARING AN EMERGENCY.

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

**Section 1. PUBLIC PROJECT REVOLVING FUND--REVOCATION OF LEGISLATIVE AUTHORIZATION.--The legislative authorization granted to the New Mexico finance authority, pursuant to the provisions of Section 6-21-6 NMSA 1978, to make loans from the public project revolving fund is revoked with respect to the following qualified entities for the specified public projects:**

A. the village of Angel Fire for a wastewater facility project as specified in Subsection O of Section 1 of Chapter 187 of Laws 1995;

B. the city of Alamogordo for a water project as specified in Subsection A of Section 1 of Chapter 72 of Laws 1998;

C. the Alamogordo public schools for a computer software project as specified in Subsection C of Section 1 of Chapter 18 of Laws 2000;

D. Chaves county for an administration building project as specified in Subsection O of Section 1 of Chapter 68 of Laws 1999;

E. the city of Clovis for a manufacturing facility project as specified in Subsection B of Section 1 of Chapter 166 of Laws 1997;

F. the village of Cuba for a courthouse project as specified in Subsection R of Section 1 of Chapter 72 of Laws 1998;

G. the Edgewood water cooperative for a water project and refinancing a water project as specified in Subsection W of Section 1 of Chapter 72 of Laws 1998;

H. the city of Farmington for a water project as specified in Subsection AA of Section 1 of Chapter 72 of Laws 1998;

I. the city of Las Vegas for a westside water project as specified in Subsection FFFFF of Section 1 of Chapter 68 of Laws 1999;

J. the city of Las Vegas for a computer system acquisition project as specified in Subsection NN of Section 1 of Chapter 72 of Laws 1998;

K. the city of Las Vegas for a wastewater project as specified in Subsection LLL of Section 1 of Chapter 18 of Laws 2000;

L. Los Alamos county for a recreation project as specified in Subsection AAA of Section 1 of Chapter 68 of Laws 1999;

M. the village of Los Lunas for a wastewater and street improvement project as specified in Subsection RR of Section 1 of Chapter 72 of Laws 1998;

N. the village of Magdalena for an airport facility project as specified in Subsection Pof Section 1 of Chapter 166 of Laws 1997;

O. McKinley county for a multipurpose recreational facility project as specified in Subsection F of Section 1 of Chapter 166 of Laws 1997;

P. the town of Mountainair for a wastewater project as specified in Subsection DDDDDD of Section 1 of Chapter 18 of Laws 2000;

Q. the village of Roy for a water system project as specified in Subsection G of Section 1 of Chapter 187 of Laws 1995;

R. the village of Roy for a solid waste project as specified in Subsection Q of Section 1 of Chapter 8 of Laws 1996 (S.S.);

S. the Sangre de Cristo solid waste authority for a regional solid waste disposal project as specified in Subsection T of Section 1 of Chapter 187 of Laws 1995;

T. the city of Santa Rosa for a parks and recreation project as specified in Subsection EEEE of Section 1 of Chapter 68 of Laws 1999;

U. the city of Santa Rosa for a solid waste project as specified in Subsection FFF of Section 1 of Chapter 72 of Laws 1998;

V. South Central solid waste authority for a solid waste project as specified in Subsection JJJ of Section 1 of Chapter 72 of Laws 1998;

W. the town of Taos for a water rights acquisition project as specified in Subsection T of Section 1 of Chapter 8 of Laws 1996 (S.S.);

X. the village of Taos Ski Valley for a municipal office building project as specified in Subsection QQQ of Section 1 of Chapter 72 of Laws 1998;

Y. Torrance county for a judicial complex project as specified in Subsection NNNNN of Section 1 of Chapter 18 of Laws 2000;

Z. the village of Tularosa for a land acquisition project as specified in Subsection OOOO of Section 1 of Chapter 68 of Laws 1999;

AA. Valencia county for the Valencia Rio Grande fire department for an equipment acquisition project as specified in Subsection VVVVV of Section 1 of Chapter 18 of Laws 2000; and

BB. Valencia county and Socorro county for a central solid waste authority project as specified in Subsection Y of Section 1 of Chapter 8 of Laws 1996 (S.S.).

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

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HOUSE BILL 161, WITH EMERGENCY CLAUSE

SIGNED MARCH 13, 2001

# CHAPTER 18

**CHAPTER 18, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO EXPAND THE DEDUCTION FOR CERTAIN SPACE ACTIVITIES; REPEALING A SECTION OF LAWS 1997.

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

## Section 1. 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. For the period from July 1, 2001 through June 30, 2006, receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. For the period from July 1, 2001 through June 30, 2006, receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. For the period from July 1, 2001 through June 30, 2006, 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 designed and constructed 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 2. REPEAL.--Laws 1997, Chapter 73, Section 2 is repealed.

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 220, AS AMENDED

# CHAPTER 19

**CHAPTER 19, LAWS 2001**

AN ACT

RELATING TO FLOOD CONTROL; AMENDING THE ARROYO FLOOD CONTROL ACT TO PROVIDE FOR ELECTION OF DIRECTORS FROM SINGLE-MEMBER DISTRICTS.

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

## Section 1. Section 72-16-10 NMSA 1978 (being Laws 1963, Chapter 311, Section 10) is amended to read:

"72-16-10. ELECTION OF DIRECTORS.--

A. At each general election, directors shall be elected from single-member districts in which they reside. The board shall ensure that the districts remain contiguous, compact and as equal in population as is practicable, assessing the existing districts following each federal decennial census to accomplish that objective. A redistricting shall be effective at the following regular board election. Incumbent board members whose residences are redistricted out of their districts may serve out their term of office.

B. The qualified electors of the authority shall elect similarly one or two qualified electors as directors to serve six-year terms as directors and as successors to the directors whose terms end on the first day of January next following each election. Nothing herein may be construed as preventing a qualified elector of the authority from any single-member district from being elected or reelected as a director to succeed himself."

## Section 2. Section 72-16-11 NMSA 1978 (being Laws 1963, Chapter 311, Section 11, as amended) is amended to read:

"72-16-11. NOMINATION OF DIRECTORS.--Not later than forty-five days before a proposal to incur debt is first submitted to the taxpaying electors or at the first general election next following the effective date of the Arroyo Flood Control Act, whichever occurs first, written nominations of any candidate as director may be filed with the secretary of the board. Each nomination of any candidate shall be signed by not less than fifty taxpaying electors who reside within the district for which the candidate has been nominated, shall designate therein the name of the candidates thereby nominated and shall recite that the subscribers are taxpaying electors of the district for which the candidate is nominated and that the candidate or candidates designated therein are qualified electors of the authority and reside within the district for which they are nominated. No taxpaying elector may nominate more than one candidate for any vacancy. If a candidate does not withdraw his name before the time established by the county for purposes of absentee ballots or as set forth in the Election Code, whichever is earlier, his name shall be placed on the ballot. For any election held after November 6, 1984, nominations shall be made by qualified electors in accordance with the procedures and limitations of this section, except that such nominations shall be filed with the secretary of the board not later than the fourth Tuesday in June preceding the general election."

## Section 3. Section 72-16-12 NMSA 1978 (being Laws 1963, Chapter 311, Section 12) is amended to read:

"72-16-12. FILLING VACANCIES ON BOARD.--Upon a vacancy occurring in the board by reason of death, change of residence, resignation or for any other reason, the governor shall appoint a qualified elector of the authority who resides within the district where the vacancy exists as successor to serve the unexpired term."

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HOUSE BILL 222

# CHAPTER 20

**CHAPTER 20, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CREATING A PERMANENT AUTHORIZATION FOR ISSUANCE OF OVERWEIGHT PERMITS FOR CERTAIN LIQUID HAULING TANK VEHICLES; 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 66-6-23 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; and

(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;

(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 67-16-14 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 2. A new section of the Motor Vehicle Code, Section 66-7-413.4 NMSA 1978, is enacted to read:

"66-7-413.4. PERMITS FOR EXCESSIVE WEIGHT.--

A. In addition to the authority granted in Section 66-7-413 NMSA 1978, the motor transportation division of the department of public safety may issue special permits authorizing an increase of up to twenty-five percent in axle weight for liquid hauling tank vehicles whenever the liquid hauling tank vehicles would have to haul less than a full tank under the maximum weights authorized in Section 66-7-409 and 66-7-410 NMSA 1978. A special permit under this section may be issued for a single trip or

for a year. The fee for the permits shall be thirty-five dollars ($35.00) for a single-trip permit and one hundred twenty dollars ($120) for an annual permit. Revenue from the permit fee shall be used to build, maintain, repair or reconstruct the highways and bridges of this state.

B. The special permits authorized by this section shall not be valid for transportation of excessive weights on the interstate system as currently defined in federal law or as that system may be defined in the future. No special permit issued pursuant to this section shall be valid for gross vehicle weights in excess of eighty-six thousand four hundred pounds or for any combination vehicle.

C. If the federal highway administration of the United States department of transportation gives official notice that money will be withheld or that this section violates the grandfather provision of 23 USCA 127, the secretary may withdraw all special permits and discontinue issuance of all special permits authorized in this section until such time that final determination is made. If the final determination allows the state to issue the special permits without sanction of funds or weight tables, then the secretary shall reissue the special permits previously withdrawn and make the special permits available pursuant to this section."

## Section 3. REPEAL.--Section 66-7-413.3 NMSA 1978 (being Laws 1991, Chapter 227, Section 1, as amended) is repealed.

## Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL 223, WITH EMERGENCY CLAUSE

SIGNED MARCH 13, 2001

# CHAPTER 21

**CHAPTER 21, LAWS 2001**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; CLARIFYING THE REQUIREMENT FOR SECURITY FOR PUBLIC DEPOSITS; DECLARING AN EMERGENCY.

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

## Section 1. Section 6-10-16.1 NMSA 1978 (being Laws 1981, Chapter 332, Section 20) is amended to read:

"6-10-16.1. SECURITY FOR PUBLIC DEPOSITS.--All deposits of public funds shall be secured by securities as defined in Section 6-10-16 NMSA 1978 in the amount required by law or by surety bonds as provided for in Section 6-10-15 NMSA 1978. A surety company that issues a surety bond pursuant to this section shall be rated in the highest category by at least one nationally recognized statistical rating agency."

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

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HOUSE BILL 254, AS AMENDED

# CHAPTER 22

**CHAPTER 22, LAWS 2001**

AN ACT

RELATING TO MANUFACTURED HOUSING; AMENDING CERTAIN SECTIONS OF THE MANUFACTURED HOUSING AND ZONING ACT CONCERNING IMPERMISSIBLE REGULATIONS.

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

## Section 1. Section 3-21A-2 NMSA 1978 (being Laws 1987, Chapter 196, Section 2) is amended to read:

"3-21A-2. DEFINITIONS.--As used in the Manufactured Housing and Zoning Act:

A. "multi-section manufactured home" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by

twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations;

B. "mobile home" means a movable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and

urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code; and

C. "excavated site" means a site that results in the upper plane of the concrete slab, or similar component of any other authorized permanent foundation system, being below ground level or grade."

## Section 2. Section 3-21A-5 NMSA 1978 (being Laws 1987, Chapter 196, Section 5, as amended) is amended to read:

"3-21A-5. IMPERMISSIBLE REGULATIONS.--

A. No ordinance or regulation authorized by the Manufactured Housing and Zoning Act shall regulate the original construction of the manufactured home or mobile home.

B. No ordinance or regulation otherwise authorized or permitted by the Manufactured Housing and Zoning Act shall be permissible or enforceable if it would have the direct or indirect effect of requiring that a multi-section manufactured home be installed in an excavated site in order to be included in a specific-use district in which site-built, single-family housing is allowed."

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HOUSE BILL 264, AS AMENDED

# CHAPTER 23

**CHAPTER 23, LAWS 2001**

AN ACT

RELATING TO AGRICULTURE; REPEALING THE APPLE COMMISSION ACT; PROVIDING FOR TRANSFER OF ASSETS TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO PROMOTE NEW MEXICO APPLES.

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

## Section 1. TEMPORARY PROVISION--TRANSFER OF PROPERTY--CONTRACTUAL OBLIGATIONS--NEW MEXICO DEPARTMENT OF AGRICULTURE TO PROMOTE NEW MEXICO APPLES.--

A. On the effective date of this act, all money, appropriations, records, files, furniture, equipment and other property of the New Mexico apple commission shall be transferred to the New Mexico department of agriculture.

B. On the effective date of this act, all obligations of the New Mexico apple commission shall be binding on the New Mexico department of agriculture.

C. The New Mexico department of agriculture shall use the assets of the New Mexico apple commission to promote New Mexico apples.

## Section 2. REPEAL.--Sections 76-23-1 through 76-23-9 NMSA 1978 (being Laws 1994, Chapter 33, Sections 1 through 9) are repealed.

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HOUSE BILL 591

# CHAPTER 24

**CHAPTER 24, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE PROPERTY TAX CODE TO CLARIFY A TAXPAYER'S RIGHT TO PROTEST DENIAL OF A CLAIM FOR A LIMITATION ON INCREASE IN VALUE OF CERTAIN RESIDENTIAL PROPERTY OWNED AND OCCUPIED BY A PERSON SIXTY-FIVE YEARS OF AGE OR OLDER.

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

## Section 1. Section 7-38-21 NMSA 1978 (being Laws 1973, Chapter 258, Section 61, as amended) is amended to read:

"7-38-21. PROTESTS--ELECTION OF REMEDIES.--

A. A property owner may protest the value or classification determined for his property for property taxation purposes, the allocation of value of his property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

(1) filing a petition of protest with the director or the county assessor as provided in the Property Tax Code; or

(2) filing a claim for refund after paying his taxes as provided in the Property Tax Code.

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

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

## Section 2. 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; or

(b) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption 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 3. APPLICABILITY.--The provisions of this act apply to the 2001 and subsequent property tax years.

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HOUSE BILL 268, AS AMENDED

# CHAPTER 25

**CHAPTER 25, LAWS 2001**

AN ACT

RELATING TO TRANSPORTATION; AMENDING THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT AND CHANGING PROVISIONS FOR DESIGNATION OF STATE REPRESENTATIVES ON THE COOPERATING COMMITTEE.

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

## Section 1. Section 11-14-2 NMSA 1978 (being Laws 1997, Chapter 191, Section 2) is amended to read:

"11-14-2. PROVISIONS OF AGREEMENT.--The provisions of this multistate agreement are as follows:

"MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

ARTICLE I. FINDINGS AND PURPOSE

(a) The participating jurisdictions find that:

(1) Highway transportation is the major mode for movement of people and goods in the western states.

(2) Uniform application of state vehicle regulations and laws may result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity.

(b) The purposes of this agreement are to:

(1) Adhere to the principle that each participating jurisdiction has the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(2) Establish a system that would promote more efficient operation of vehicles traveling between two or more participating jurisdictions regarding necessary state government vehicle laws and regulations.

(3) Encourage uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement when the objectives are compatible with the safe operation of the vehicles on each member's highway system, and when these size and weight standards do not have an adverse impact on state and local highway, street or road maintenance programs.

(4) Encourage uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(5) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in paragraph (a) of this article.

(6) Facilitate communication among legislators, state transportation administrators and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

## ARTICLE II. DEFINITIONS

(a) As used in this agreement:

(1) "Cooperating committee" means a committee composed of the designated representatives from participating jurisdictions.

(2) "Designated representative" means a legislator or other person authorized to represent the jurisdiction.

(3) "Jurisdiction" means a state of the United States or the District of Columbia.

(4) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards and which operates in two or more participating jurisdictions.

## ARTICLE III. GENERAL PROVISIONS

(a) Participation in this agreement is open to jurisdictions which subscribe to the findings, purpose and objectives of this agreement and which seek legislation necessary to accomplish these objectives.

(b) The particular jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

(c) Article headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or paragraph hereof.

(d) This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or rules or regulations thereof.

(e) The final decisions regarding the interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions acting through their designated representatives. Results of all such actions shall be in writing.

(f) This agreement may be amended by unanimous joint action of the participating jurisdictions acting through their designated representatives. Any amendments shall be in writing and shall become a part of the agreement.

(g) Any jurisdiction entering this agreement shall provide each of the other participating jurisdictions with a list of any of its restrictions, conditions, or limitations on the general terms of this agreement.

(h) Any jurisdiction may become a member of this agreement by signing and accepting the terms of the agreement.

## ARTICLE IV. COOPERATING COMMITTEE

(a) Each participation jurisdiction shall have two designated representatives. Pursuant to paragraph (b) of Article III, the representatives of the participating jurisdictions shall constitute the cooperating committee which shall have the power to:

(1) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size, vehicle weight-related matters, highway safety and bridge maintenance problems caused by heavy vehicles.

(2) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Recommend changes in law or policy, including the compatibility of laws and uniformity of rules and regulations which would assist effective governmental action or coordination in the field of vehicle size and weight-related matters.

(4) Recommend improvements in highway operations, in vehicular safety and in state administration of highway transportation laws.

(5) Perform functions necessary to facilitate the purposes of this agreement.

(b) Each designated representative of a participating jurisdiction shall be entitled to one vote only. No action of the committee shall be approved unless a majority of the designated representatives of the participating jurisdictions are in favor thereof.

(c) The committee shall meet at least once annually and shall elect, from among its members, a vice chairman and a secretary.

(d) The committee shall submit annually to the legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable.

## ARTICLE V. OBJECTIVES OF THE PARTICIPATING JURISDICTIONS

The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain safer, more economical transportation by motor vehicles among the participating jurisdictions and to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of twenty thousand pounds, a tandem-axle weight not in excess of thirty-four thousand pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$W=500((LN/(N-1)) + 12N + 36)$ where:

W=maximum weight in pounds carried on any group of two or more axles computed to the nearest five hundred pounds; L=distance in feet between the extremes of any group of two or more consecutive axles; and N=number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that the operation of a vehicle, or combination of vehicles pursuant in interstate commerce to the objectives stated in paragraph (a) of this article be authorized under special permit authority by each participating jurisdiction for vehicle combinations in excess of the statutory weight of eighty thousand pounds or statutory lengths.

(c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle, or combination of vehicles, among the participating jurisdictions. To that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size weight-related matters including, but not limited to, the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; traffic safety and highway maintenance; and such other matters as may be pertinent.

(d) The cooperating committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically, of the vehicle size and weight standards set forth in paragraph (a) of this article.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional needs and to promote an efficient, safe and compatible transportation network.

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety.

(3) Establish programs to increase productivity and reduce congestion, fuel consumption and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

## ARTICLE VI. ENTRY INTO FORCE AND WITHDRAWAL

(a) This agreement shall be in force in the State of New Mexico when enacted into law by two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in paragraph (g) of Article III.

(b) Any participating jurisdiction may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all the other participating jurisdictions.

ARTICLE VII. CONSTRUCTION AND SEVERABILITY

(a) This agreement shall be liberally construed so as to effectuate the purposes thereof.

(b) The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII. FILING OF DOCUMENTS

(a) A copy of this agreement, its amendments, and rules and regulations promulgated thereunder and interpretations thereof, shall be filed in the highway department of each participating jurisdiction and shall be made available for review by interested parties."

## Section 2. Section 11-14-3 NMSA 1978 (being Laws 1997, Chapter 191, Section 3) is amended to read:

"11-14-3. DESIGNATED REPRESENTATIVE TO COOPERATING COMMITTEE--APPOINTMENT.--The process for selecting the designated representatives to the cooperating committee shall be established by law pursuant to this section as follows:

A. the persons authorized to represent the state as the designated representatives to the cooperating committee shall be the chair of the standing senate corporations and transportation committee and the chair of the house transportation committee or a legislator or state agency official that the chair designates; and

B. the chairs designated in Subsection A of this section shall also designate one alternate designated representative who shall also be a legislator or state agency official to serve in the absence of the designated chair."

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HOUSE BILL 830, AS AMENDED

# CHAPTER 26

**CHAPTER 26, LAWS 2001**

AN ACT

RELATING TO WATER; PROVIDING FOR PUBLIC NOTIFICATION OF A WATER APPROPRIATION IN THE COUNTY OF THAT APPROPRIATION.

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

## Section 1. Section 72-5-4 NMSA 1978 (being Laws 1907, Chapter 49, Section 26, as amended) is amended to read:

"72-5-4. NOTICE--PUBLICATION.--Upon the filing of an application that complies with the provisions of this article and the rules established thereunder, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof, in a form and in a newspaper prescribed by the state engineer, in some newspaper that is published and distributed in each county affected by the diversion and in each county where the water will be or has been put to beneficial use, or if there is no such newspaper, then in some newspaper of general circulation in the stream system, once a week for three consecutive weeks. The notice shall give all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the state engineer for consideration. Proof of publication as required shall be filed with the state engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules within the time required, the application shall be treated as an original application filed on the date of receipt of proofs of publication in proper form."

## Section 2. Section 72-12-3 NMSA 1978 (being Laws 1931, Chapter 131, Section 3, as amended) is amended to read:

"72-12-3. APPLICATION FOR USE OF UNDERGROUND WATER--PUBLICATION OF NOTICE--PERMIT.--

A. Any person, firm or corporation or any other entity desiring to appropriate for beneficial use any of the waters described in Chapter 72, Article 12 NMSA 1978 shall apply to the state engineer in a form prescribed by him. In the application, the applicant shall designate:

(1) the particular underground stream, channel, artesian basin, reservoir or lake from which water will be appropriated;

(2) the beneficial use to which the water will be applied;

(3) the location of the proposed well;

(4) the name of the owner of the land on which the well will be located;

(5) the amount of water applied for;

(6) the place of the use for which the water is desired; and

(7) if the use is for irrigation, the description of the land to be irrigated and the name of the owner of the land.

B. If the well will be located on privately owned land and the applicant is not the owner of the land or the owner or the lessee of the mineral or oil and gas rights under the land, the application shall be accompanied by an acknowledged statement executed by the owner of the land that the applicant is granted access across the owner's land to the drilling site and has permission to occupy such portion of the owner's land as is necessary to drill and operate the well. This subsection does not apply to the state or any of its political subdivisions. If the application is approved, the applicant shall have the permit and statement, executed by the owner of the land, recorded in the office of the county clerk of the county in which the land is located.

C. No application shall be accepted by the state engineer unless it is accompanied by all the information required by Subsections A and B of this section.

D. Upon the filing of an application, the state engineer shall cause to be published in a newspaper that is published and distributed in the county where the well will be located and in each county where the water will be or has been put to beneficial use or where other water rights may be affected, or if there is no such newspaper, then in some newspaper of general circulation in the county in which the well will be located, at least once a week for three consecutive weeks, a notice that the application has been filed and that objections to the granting of the application may be filed within ten days after the last publication of the notice. Any person, firm or corporation or other entity objecting that the granting of the application will impair the objector's water right shall have standing to file objections or protests. Any person, firm or corporation or other entity objecting that the granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their

agencies, instrumentalities and institutions shall have standing to file objections or protests.

E. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that there are in the underground stream, channel, artesian basin, reservoir or lake unappropriated waters or that the proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

F. If objections or protests have been filed within the time prescribed in the notice or if the state engineer is of the opinion that the permit should not be issued, the state engineer may deny the application without a hearing or, before he acts on the application, may order that a hearing be held. He shall notify the applicant of his action by certified mail sent to the address shown in the application."

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HOUSE BILL 833, AS AMENDED

# CHAPTER 27

**CHAPTER 27, LAWS 2001**

AN ACT

RELATING TO HEALTH; REQUIRING HEALTH PLAN COVERAGE OF CERTAIN PATIENT COSTS INCURRED AS A RESULT OF TREATMENT PROVIDED TO A PATIENT PARTICIPATING IN CANCER CLINICAL TRIALS.

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

## Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"REQUIRED COVERAGE OF PATIENT COSTS INCURRED IN CANCER CLINICAL TRIALS.--

A. A health care plan shall provide coverage for routine patient care costs incurred as a result of the patient's participation in a phase II, III or IV cancer clinical trial if:

(1) the clinical trial is undertaken for the purposes of the prevention of reoccurrence of cancer, early detection or treatment of cancer for which no equally or more effective standard cancer treatment exists;

(2) the clinical trial is not designed exclusively to test toxicity or disease pathophysiology and it has a therapeutic intent;

(3) the clinical trial is being provided in this state as part of a scientific study of a new therapy or intervention and is for the prevention of reoccurrence, early detection, treatment or palliation of cancer in humans and in which the scientific study includes all of the following:

(a) specific goals;

(b) a rationale and background for the study;

(c) criteria for patient selection;

(d) specific direction for administering the therapy or intervention and for monitoring patients;

(e) a definition of quantitative measures for determining treatment response;

(f) methods for documenting and treating adverse reactions; and

(g) a reasonable expectation that the treatment will be at least as efficacious as standard cancer treatment;

(4) the clinical trial is being conducted with approval of at least one of the following:

(a) one of the federal national institutes of health;

(b) a federal national institutes of health cooperative group or center;

(c) the federal department of defense;

(d) the federal food and drug administration in the form of an investigational new drug application;

(e) the federal department of veterans affairs; or

(f) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility;

(5) the clinical trial is being provided as part of a study being conducted in a phase II, phase III or phase IV cancer clinical trial;

(6) the proposed clinical trial or study has been reviewed and approved by an institutional review board that has a multiple project assurance contract approved by the office of protection from research risks of the federal national institutes of health;

(7) the personnel providing the clinical trial or conducting the study:

(a) are providing the clinical trial or conducting the study within their scope of practice, experience and training and are capable of providing the clinical trial because of their experience, training and volume of patients treated to maintain their expertise;

(b) agree to accept reimbursement as payment in full from the health care plan at the rates that are established by that plan and are not more than the level of reimbursement applicable to other similar services provided by health care providers within the plan's provider network; and

(c) agree to provide written notification to the health plan when a patient enters or leaves a clinical trial;

(8) there is no non-investigational treatment equivalent to the clinical trial; and

(9) the available clinical or preclinical data provide a reasonable expectation that the clinical trial will be at least as efficacious as any non-investigational alternative.

B. Pursuant to the patient informed consent document, no third party is liable for damages associated with the treatment provided during a phase of a cancer clinical trial.

C. If a patient is denied coverage of a cost and contends that the denial is in violation of this section, the patient may appeal the decision to deny the coverage of a cost to the superintendent, and that appeal shall be expedited to ensure resolution of the appeal within no more than thirty days after the date of appeal to the superintendent.

D. A health plan shall not provide benefits that supplant a portion of a cancer clinical trial that is customarily paid for by government, biotechnical, pharmaceutical or medical device industry sources.

E. The provisions of this section do not create a private right or cause of action for or on behalf of a patient against the health plan providing coverage. This section provides only an administrative remedy to the superintendent for violation of this section or a related rule promulgated by the superintendent.

F. A health plan may impose deductibles, coinsurance requirements or other standard cost-sharing provisions on benefits provided pursuant to this section.

G. In no event shall the health plan be responsible for out-of-state or out-of-network costs unless the health plan pays for standard treatment out of state or out of network.

H. The provisions of this section do not apply to:

(1) short-term travel, accident-only or limited or specified disease contracts or policies issued by a health plan; or

(2) policies, plans, contracts and certificates delivered or issued for delivery or renewed, extended or amended in this state on or after July 1, 2002.

I. As used in this section:

(1) "clinical trial" means a course of treatment provided to a patient for the purpose of prevention of reoccurrence, early detection or treatment of cancer;

(2) "cooperative group" means a formal network of facilities that collaborate on research projects and have an established federal national institutes of health-approved peer review program operating within the group;

(3) "health plan":

(a) means: 1) a health insurer; 2) a nonprofit health service provider; 3) a health maintenance organization; 4) a managed care organization; 5) a provider service organization; or 6) the state's medical assistance program, whether providing services on a managed care or

fee-for-service basis; and

(b) does not include individual policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies;

(4) "institutional review board" means a board, committee or other group that is both:

(a) formally designated by an institution to approve the initiation of and to conduct periodic review of biomedical research involving human subjects and in which the primary purpose of the review is to assure the protection of the rights and welfare of the human subjects and not to review a clinical trial for scientific merit; and

(b) approved by the federal national institutes of health for protection of the research risks;

(5) "investigational drug or device" means a drug or device that has not been approved by the federal food and drug administration;

(6) "multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to that department and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects participating in clinical trials;

(7) "patient" means an individual who participates in a cancer clinical trial and who is an insured, a member or a beneficiary of a health plan; and

(8) "routine patient care cost":

(a) means: 1) a medical service or treatment that is a benefit under a health plan that would be covered if the patient were receiving standard cancer treatment; or 2) a drug provided to a patient during a cancer clinical trial if the drug has been approved by the federal food and drug administration, whether or not that organization has approved the drug for use in treating the patient's particular condition, but only to the extent that the drug is not paid for by the manufacturer, distributor or provider of the drug; and

(b) does not include: 1) the cost of an investigational drug, device or procedure; 2) the cost of a non-health care service that the patient is required to receive as a result of participation in the cancer clinical trial; 3) costs associated with managing the research that is associated with the cancer clinical trial; 4) costs that would not be covered by the patient's health plan if non-investigational treatments were provided; 5) costs of those tests that are necessary for the research of the clinical trial; and 6) costs paid or not charged for by the cancer clinical trial providers."

## Section 2. DELAYED REPEAL.--Section 1 of this act is repealed on July 1, 2004.

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SENATE BILL 240, AS AMENDED

# CHAPTER 28

**CHAPTER 28, LAWS 2001**

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; REMOVING AN EXCEPTION TO THE PROHIBITION AGAINST ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN MOTOR VEHICLES; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 66-8-138 NMSA 1978 (being Laws 1989, Chapter 316, Section 2, as amended) is amended to read:

"66-8-138. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN A MOTOR VEHICLE PROHIBITED--EXCEPTIONS.--

A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any public highway within this state.

B. No person shall knowingly have in his possession on his person, while in a motor vehicle upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed.

C. It is unlawful for the registered owner of any motor vehicle to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:

(1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;

(2) the living quarters of a motor home or recreational vehicle;

(3) a truck camper; or

(4) the bed of a pick-up truck when the bed is occupied by passengers.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to any passenger in a bus,

taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act or proper legal authority.

D. The provisions of this section do not apply to:

(1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes; or

(2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or agent's motor vehicle."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 246

# CHAPTER 29

**CHAPTER 29, LAWS 2001**

AN ACT

RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR THE CONSIDERATION OF DNA EVIDENCE NOT AVAILABLE AT THE TIME OF AN OFFENDER'S CRIMINAL TRIAL; ENACTING A NEW SECTION OF THE CRIMINAL PROCEDURE ACT.

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 CONSIDERATION OF DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a criminal offense, who claims that DNA evidence not available at the time of his initial trial will establish his innocence, may petition the district court in which he was convicted to set aside his judgment and sentence or grant him a new trial. 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;

(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; and

(3) authorize the district attorney's use of the DNA test results to investigate or prosecute cases unrelated to the case that the petitioner is seeking to reopen.

C. The petitioner shall prove by clear and convincing evidence that:

(1) he was convicted of the criminal offense at a bench trial or a jury trial;

(2) he has no pending appeal regarding his conviction for the criminal offense;

(3) his identity was an issue during the initial trial;

(4) the evidence he wants the court to order DNA testing upon was secured and preserved by the law enforcement agency that investigated the case;

(5) the evidence he wants the court to order DNA testing upon was subject to a chain of custody sufficient to establish that it was not substituted, tampered with, replaced or altered in any material respect;

(6) the evidence he wants the court to order DNA testing upon was not tested previously because the technology for performing DNA testing was not available at the time of the petitioner's initial trial;

(7) the evidence he wants the court to order DNA testing upon will be highly likely to produce evidentiary results that would have been admissible at the petitioner's initial trial; and

(8) if the evidence he wants the court to order DNA testing upon had been admitted at the petitioner's initial trial, a reasonable judge or jury would not have been able to find him guilty beyond a reasonable doubt.

D. The district court may grant the petition and order DNA testing if the petitioner satisfies the requirements set forth in Subsection C of this section and the court finds that:

(1) the DNA test has the scientific potential to produce new, noncumulative evidence material to the petitioner's assertion of innocence; and

(2) the DNA test employs a scientific method generally accepted within the relevant scientific community.

E. The district court may impose any additional, reasonable conditions on the DNA testing to protect the state's interests in the integrity of the evidence.

F. The district court may order the petitioner to pay for the expense of the DNA testing.

G. The district court shall make specific, written findings of fact with respect to the requirements or conditions set forth in Subsections C, D and E of this section.

H. A petitioner shall file a petition pursuant to the provisions of this section prior to July 1, 2002. The district court shall not accept any petitions after that date.

I. As used in this section, "DNA" means deoxyribonucleic acid."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 337, AS AMENDED

# CHAPTER 30

**CHAPTER 30, LAWS 2001**

AN ACT

RELATING TO HEALTH CARE; AMENDING THE INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT TO EXPAND THE DEFINITION OF "SOLE COMMUNITY PROVIDER HOSPITAL"; RECONCILING CONFLICTING AMENDMENTS.

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

**Section 1. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended by Laws 1999, Chapter 37, Section 1 and also by Laws 1999, Chapter 270, Section 4) 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 or admitted to a hospital for care or treated by a health care provider or all three;

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:

(l) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by

regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

F. "fund" means a county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means:

(1) a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act; 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 services in a hospital or outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient;

O. "health care services" means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

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."

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SENATE BILL 689

# CHAPTER 31

**CHAPTER 31, LAWS 2001**

AN ACT

RELATING TO CHILD PROTECTION; ENACTING THE SAFE HAVEN FOR INFANTS ACT; PROVIDING PROTECTIONS FOR INFANT CHILDREN WHO MIGHT OTHERWISE BE ABANDONED; 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. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Safe Haven for Infants Act".

## Section 2. DEFINITIONS.--As used in the Safe Haven for Infants Act:

A. "hospital" means an acute care general hospital or health care clinic licensed by the state;

B. "Indian child" means an infant who is the biological child of an enrolled member of an Indian nation, pueblo or tribe;

C. "infant" means a child no more than ninety days old, as determined within a reasonable degree of medical certainty; and

D. "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the hospital.

## Section 3. LEAVING AN INFANT.--

A. A person may leave an infant with the staff of a hospital without being subject to prosecution for abandonment or abuse if the infant was born within ninety days of being left at the hospital, as determined within a reasonable degree of medical certainty and if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to Section 30-6-1 NMSA 1978.

B. A hospital may ask the person leaving the infant for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the hospital.

C. The hospital is deemed to have received consent for medical services provided to an infant left at a hospital in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the hospital.

## Section 4. HOSPITAL PROCEDURES.--

A. A hospital shall accept an infant who is left at the hospital in accordance with the provisions of the Safe Haven For Infants Act.

B. In conjunction with the children, youth and families department, a hospital shall develop procedures for appropriate staff to accept and provide necessary

medical services to an infant left at the hospital and to the person leaving the infant at the hospital, if necessary.

C. Upon receiving an infant who is left at a hospital in accordance with the provisions of the Safe Haven for Infants Act, the hospital may provide the person leaving the infant with:

(1) information about adoption services, including information about the availability of confidential adoption services;

(2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and

(3) written information regarding who to contact at the children, youth and families department if the parent decides to seek reunification with the infant.

D. No later than twenty-four hours after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a hospital shall inform the children, youth and families department that the infant has been left at the hospital.

## Section 5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The children, youth and families department shall be deemed to have immediate custody of an infant who has been left at a hospital according to the provisions of the Safe Haven for Infants Act.

B. Upon receiving a report of an infant left at a hospital pursuant to the provisions of the Safe Haven for Infants Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act.

C. When an infant is taken into custody by the children, youth and families department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child, pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of Section 32A-5-5 NMSA 1978 regarding Indian child placement preferences.

D. The children, youth and families department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and distributing it to hospitals.

E. An infant left at a hospital in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services.

**Section 6. CONFIDENTIALITY.--Information regarding a person leaving an infant at a hospital in compliance with the Safe Haven for Infants Act or information received during an abuse or neglect investigation by the children, youth and families department shall remain confidential, pursuant to the confidentiality section of the Abuse and Neglect Act.**

**Section 7. PROCEDURE IF REUNIFICATION IS SOUGHT.--**

A. If a person seeks reunification with the infant previously left at the hospital and the person's DNA matches the infant's DNA, that person shall have standing to participate in all proceedings regarding the infant pursuant to the provisions of the Abuse and Neglect Act.

B. There shall be no presumption of abuse or neglect against a person seeking reunification pursuant to Subsection A of this section provided that the person seeks reunification within thirty days of the date the infant was left at a hospital in accordance with the provisions of the Safe Haven for Infants Act.

**Section 8. IMMUNITY.--A hospital and its staff are immune from criminal liability and civil liability for accepting an infant in compliance with the provisions of the Safe Haven for Infants Act but not for subsequent negligent medical care or treatment of the infant.**

**Section 9. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:**

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm or death to the child, he is guilty of a first degree felony.

E. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital."

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

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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILLS 94 AND 366, AS AMENDED WITH

EMERGENCY CLAUSE, SIGNED MARCH 14, 2001

# CHAPTER 32

**CHAPTER 32, LAWS 2001**

AN ACT

REPEALING SECTION 30-10-2 NMSA 1978 (BEING LAWS 1963, CHAPTER 303, SECTION 10-2), WHICH MAKES COHABITATION UNLAWFUL.

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

## Section 1. REPEAL.--Section 30-10-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 10-2) is repealed.

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SENATE BILL 95

# CHAPTER 33

**CHAPTER 33, LAWS 2001**

AN ACT

RELATING TO CORRECTIONS; PLACING CONDITIONS ON CONTRACTS TO PROVIDE INMATES WITH ACCESS TO TELECOMMUNICATIONS SERVICES IN A CORRECTIONAL FACILITY OR JAIL.

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

## Section 1. CONTRACT TO PROVIDE INMATES WITH ACCESS TO TELECOMMUNICATIONS SERVICES IN A CORRECTIONAL FACILITY OR JAIL--CONDITIONS.--

A. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall be negotiated and awarded to an entity that meets the correctional facility's or jail's technical and functional requirements for services, and that provides the lowest cost of service to inmates or any person who pays for inmate telecommunication services.

B. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail.

C. As used in this section:

(1) "correctional facility" means a state correctional facility or a privately operated correctional facility; and

(2) "jail" means a county jail, a municipal jail or a privately operated jail.

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SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 102

# CHAPTER 34

**CHAPTER 34, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC DEFENDER DEPARTMENT; PROVIDING THE CHIEF PUBLIC DEFENDER WITH AUTHORITY TO CERTIFY CERTAIN CONTRACTS AND EXPENDITURES FOR LITIGATION EXPENSES; AUTHORIZING REPRESENTATION OF A PERSON WHO IS UNDER INVESTIGATION FOR ALLEGEDLY COMMITTING MURDER OR ANY OTHER FELONY CRIMINAL OFFENSE; AMENDING SECTIONS OF THE PUBLIC DEFENDER ACT.

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

## Section 1. Section 31-15-7 NMSA 1978 (being Laws 1973, Chapter 156, Section 7, as amended) is amended to read:

"31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND POWERS.--

A. The chief is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to:

(1) administer and carry out the provisions of the Public Defender Act with which he is charged; and

(2) exercise authority over and provide general supervision of employees of the department.

B. To perform his duties, the chief has every power implied as necessary for that purpose, those powers expressly enumerated in the Public Defender Act or other laws and full power and authority to:

(1) exercise general supervisory authority over all employees of the department subject to the Personnel Act;

(2) delegate authority to subordinates as he deems necessary and appropriate;

(3) within the limitations of applicable appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(4) organize the department into those units he deems necessary and appropriate to carry out his duties;

(5) conduct research and studies that will improve the operation of the department and the administration of the Public Defender Act;

(6) provide courses of instruction and practical training for employees of the department that will improve the operation of the department and the administration of the Public Defender Act;

(7) purchase or lease personal property and lease real property for the use of the department;

(8) maintain records and statistical data that reflect the operation and administration of the department;

(9) submit an annual report covering the operation of the department together with appropriate recommendations to the governor, secretary of corrections and legislature;

(10) serve as defense counsel under the Public Defender Act as necessary and appropriate;

(11) formulate a fee schedule for attorneys who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act;

(12) adopt a standard to determine indigency;

(13) provide for the collection of reimbursement from each person who has received legal representation or another benefit under the Public Defender Act after a determination is made that he was not indigent according to the standard for indigency adopted by the department. Any amounts recovered shall be paid to the state treasurer for credit to the general fund;

(14) require each person who desires legal representation or another benefit under the Public Defender Act to enter into a contract with the department agreeing to reimburse the department if a determination is made that he was not indigent according to the standard for indigency adopted by the department; and

(15) certify contracts and expenditures for litigation expenses, including contracts and expenditures for professional and nonprofessional experts, investigators and witness fees, but not including attorney contracts, pursuant to the provisions of the Procurement Code, Section 13-1-98 NMSA 1978."

## Section 2. Section 31-15-10 NMSA 1978 (being Laws 1973, Chapter 156, Section 10) is amended to read:

"31-15-10. DUTIES OF DISTRICT PUBLIC DEFENDER.--

A. Under the supervision and control of the chief, each district public defender shall administer the operation of the department office within his district.

B. The district public defender or the chief may authorize the representation of a person who is without counsel and who is financially unable to obtain counsel when that person is under investigation for allegedly committing murder or any other felony criminal offense.

C. The district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in any court within the district with any crime that carries a possible sentence of imprisonment. The representation shall begin not later than the time of the initial appearance of the person before any court and shall continue throughout all stages of the proceedings against him, including any appeal, as directed by the chief.

D. The district public defender shall represent any person within the district who is without counsel and who is financially unable to obtain counsel in any state postconviction proceeding.

E. The district public defender shall notify the chief if, for any reason, he is unable to represent a person entitled to his representation, and the chief shall make provision for representation.

F. The district public defender may confer with any person who is not represented by counsel and who is being forcibly detained."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

SENATE BILL 198

# CHAPTER 35

**CHAPTER 35, LAWS 2001**

AN ACT

RELATING TO COURTS; AUTHORIZING EARLY RELEASE OF INMATES FROM A CORRECTIONAL FACILITY TO A REENTRY DRUG COURT PROGRAM SUPERVISED BY A DISTRICT COURT.

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

## Section 1. REENTRY DRUG COURT PROGRAM FOR INMATES--DISTRICT COURT SUPERVISION.--

A. The corrections department shall develop criteria regarding the eligibility of an inmate for early release into a reentry drug court program, including requirements that the inmate:

(1) was incarcerated following conviction for a nonviolent, drug-related offense; and

(2) is within eighteen months of release or eligibility for parole.

B. The corrections department may petition a district court that operates a reentry drug court program to accept limited jurisdiction of an inmate. If the district court grants the petition, the district court shall have jurisdiction over the inmate and the corrections department shall retain its jurisdiction over the inmate pursuant to the terms of the inmate's judgment and sentence.

C. The provisions of this section shall not be interpreted to change the jurisdictional authority of the sentencing court, pursuant to the provisions of the Rules of Criminal Procedure for the District Courts, as promulgated by the supreme court. The jurisdictional authority conferred upon a reentry drug court pursuant to this section is limited to acceptance and supervision of a released inmate by the reentry drug court program.

D. The provisions of this section shall not be interpreted to limit the statutory authority vested in the adult probation and parole division of the corrections department, pursuant to the provisions of the Probation and Parole Act.

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE JUDICIARY COMMITTEE SUBSITUTE

FOR SENATE BILL 200

# CHAPTER 36

**CHAPTER 36, LAWS 2001**

AN ACT

RELATING TO AGRICULTURE; REPEALING THE APPLE COMMISSION ACT; PROVIDING FOR TRANSFER OF ASSETS TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO PROMOTE NEW MEXICO APPLES.

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

## Section 1. TEMPORARY PROVISION--TRANSFER OF PROPERTY--CONTRACTUAL OBLIGATIONS--NEW MEXICO DEPARTMENT OF AGRICULTURE TO PROMOTE NEW MEXICO APPLES.--

A. On the effective date of this act, all money, appropriations, records, files, furniture, equipment and other property of the New Mexico apple commission shall be transferred to the New Mexico department of agriculture.

B. On the effective date of this act, all obligations of the New Mexico apple commission shall be binding on the New Mexico department of agriculture.

C. The New Mexico department of agriculture shall use the assets of the New Mexico apple commission to promote New Mexico apples.

## Section 2. REPEAL.--Sections 76-23-1 through 76-23-9 NMSA 1978 (being Laws 1994, Chapter 33, Sections 1 through 9) are repealed.

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SENATE BILL 394

# CHAPTER 37

**CHAPTER 37, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING CERTAIN SECTIONS OF THE SEVERANCE TAX BONDING ACT.

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

## Section 1. Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended) is amended to read:

"7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.

C. Proceeds from supplemental severance tax bonds shall be used only for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act or for infrastructure renovation and expansion at the state's public post-secondary educational institutions and other institutions confirmed as state educational institutions in Article 12, Section 11 of the constitution of New Mexico pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

D. The state board of finance shall issue and sell all supplemental severance tax bonds when authorized to do so by any law that sets out the amount of the issue and names the public school capital outlay council or the commission on higher education as the recipient of the money. The state board of finance shall issue and sell supplemental severance tax bonds only when so instructed by resolution of the public school capital outlay council or by resolution of the commission on higher education."

## Section 2. Section 7-27-18 NMSA 1978 (being Laws 1961, Chapter 5, Section 15) is amended to read:

"7-27-18. PROCEDURE FOR SALE OF BONDS.--

A. Severance tax bonds and supplemental severance tax bonds shall be sold by the state board of finance at such times and in such manner as the board may elect, consistent with the need of the board, commission or agency that is the recipient of the bond money, to the highest bidder for cash at not less than par and accrued interest.

B. The state board of finance 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 at least five business days prior to the date fixed for such 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 bids therefor shall be received and publicly examined. All bids shall be sealed or sent by facsimile or other electronic transmission to the state board of finance as set forth in the notice. All bids, except that of the state, shall be accompanied by a deposit of two percent of the bid price, either in the form of a financial surety bond or in cash or by cashier's check or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond shall be issued by an insurance company licensed to issue such a bond in New Mexico. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

C. At the time and place specified in such notice, bids shall be publicly examined and the bonds, or any part thereof, shall be awarded to the bidder or bidders offering the best price therefor. Before delivering any bonds sold, the state treasurer shall detach therefrom and cancel all interest coupons that may have matured prior to the date of delivery. The state board of finance may reject any or all bids and readvertise. The state board of finance may sell a severance tax bond or supplemental severance tax bond issue, or any part thereof, to the state at private sale."

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HOUSE BILL 170, AS AMENDED

# CHAPTER 38

**CHAPTER 38, LAWS 2001**

AN ACT

RELATING TO LIVESTOCK; LIMITING THE INSPECTION FEES FOR COMMUTING SHEEPOR GOATS.

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

## Section 1. Section 77-8-20 NMSA 1978 (being Laws 1963, Chapter 129, Section 6, as amended) is amended to read:

"77-8-20. COMMUTING SHEEPOR GOATS--FEES.--

A. For the purpose of this section, "commuting sheep or goats" means sheep or goats that are transferred from New Mexico to some other state with which New Mexico shares a common boundary and back again or from some other state that shares a common boundary with New Mexico, to New Mexico and back again:

(1) during any twelve-month period;

(2) by one owner; and

(3) for the purpose of seasonal grazing, breeding, lambing or kidding on lands owned or leased by that owner in the course of his normal operations in each of the two states.

B. Owners of commuting sheep or goats shall have them inspected for each movement but shall pay the inspection fees for transporting commuting sheep or goats only once in any twelve-month period. For subsequent movements in a twelve-month period, the owner shall pay the inspection fees on those sheep or goats over the number involved in the first movement. If the owner of commuting sheep or goats transports them for a purpose other than regular commuting they shall, at that time, lose their special character of commuting sheep or goats and be subject to the fees normally required by law."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 194

# CHAPTER 39

**CHAPTER 39, LAWS 2001**

AN ACT

RELATING TO HIGHER EDUCATION; ESTABLISHING AN INSTITUTE FOR COMPLEX ADDITIVE SYSTEMS ANALYSIS AT THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY; ENACTING A NEW SECTION OF THE NMSA 1978.

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

## Section 1. A new section of Chapter 21, Article 11 NMSA 1978 is enacted to read:

"INSTITUTE FOR COMPLEX ADDITIVE SYSTEMS ANALYSIS ESTABLISHED--FUNCTION OF INSTITUTE.--

A. The board of regents of the New Mexico institute of mining and technology shall establish an institute for complex additive systems analysis.

B. The function of the institute for complex additive systems analysis is to:

(1) offer formal degree programs that integrate components of the computer science, engineering and management departments at the New Mexico institute of mining and technology;

(2) use joint faculty appointments and fellowships to recruit teachers from the ranks of academia, government and private industry;

(3) perform basic research and applied research for the purpose of analyzing and understanding complex interdependent systems;

(4) use research developed at the institute to help solve issues regarding complex interdependent systems that arise in the public and private sectors; and

(5) stimulate commerce by serving as an information age extension service for New Mexico businesses."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 229, AS AMENDED

# CHAPTER 40

**CHAPTER 40, LAWS 2001**

AN ACT

RELATING TO VETERANS; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 23-4-1 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 1, as amended) is amended to read:

"23-4-1. VETERANS' HOME CREATED--ADVISORY BOARD.--

A. The "New Mexico state veterans' home" located near Truth or Consequences, New Mexico is declared to be a state home for veterans of service in the armed forces of the United States.

B. The "Fort Bayard medical center veterans' unit", a separate and distinct unit of the Fort Bayard medical center, located near Silver City, New Mexico is declared to be a state home for veterans of service in the armed forces of the United States.

C. There is created the "New Mexico veterans' advisory board". The advisory board shall consist of seven members as follows:

(1) the chairman of the New Mexico veterans' service commission or his designee;

(2) the director of veterans' affairs;

(3) a veteran of World War II;

(4) the administrator of a private nursing home;

(5) a registered nurse who is employed by a public or private nursing home;

(6) a veteran of the Korean conflict; and

(7) a veteran of the Vietnam conflict.

D. The governor shall appoint the members designated in Paragraphs (3), (4), (5), (6) and (7) of Subsection C of this section, and their terms shall be for three years each.

E. The New Mexico state veterans' home shall be under the control of the department of health.

F. The New Mexico veterans' advisory board shall provide advice to the secretary of health and the administrators of the New Mexico state veterans' home and the Fort Bayard medical center regarding veterans' services."

## Section 2. Section 23-4-3 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 4, as amended) is amended to read:

"23-4-3. ELIGIBILITY FOR CARE--STANDARDS.--

A. Occupancy in the New Mexico state veterans' home and the Fort Bayard medical center veterans' unit shall be for veterans of service in the armed forces of the United States who have served on active duty pursuant to rules adopted by the secretary of health consistent with federal guidelines. To be eligible for admission and continued occupancy, a veteran must be:

(1) a citizen of the United States who enlisted or was drafted, inducted or commissioned in the armed forces of the United States, who was accepted for and assigned to active duty in the armed forces and was not separated from the armed forces under circumstances amounting to a dishonorable discharge from the armed forces; and

(2) a resident of New Mexico at the time of entering or discharge from the armed forces or, in the alternative, a resident of New Mexico at the date of admission.

B. Additionally, no more than twenty-five percent of the occupancy in the New Mexico state veterans' home shall consist of nonveterans from the following categories:

(1) spouses;

(2) surviving spouses; and

(3) gold star parents.

C. Whenever a law, rule or regulation of the veterans' administration of the federal government or any other law permits the state to receive federal funds for the use and benefit of the New Mexico state veterans' home, upon acceptance of a veteran of the armed forces of the United States not meeting the requirements of Subsection A of this section, the board of trustees may adopt rules to authorize such veteran's acceptance."

## Section 3. Section 23-4-4.1 NMSA 1978 (being Laws 1983, Chapter 329, Section 5, as amended) is amended to read:

"23-4-4.1. DONATIONS--GIFTS--BEQUESTS.--The New Mexico state veterans' home may accept donations, gifts and bequests of land, money or other things of value for the purposes of Sections 23-4-1 and 23-4-3 NMSA 1978. The title to such lands, together with all improvements thereon, shall vest in the state, and the deeds thereto, all insurance policies, certificates of water rights and other evidences of ownership of the land or improvements of the New Mexico state veterans' home shall be filed as provided by law. Except as provided by the conditions of such donations, gifts and bequests, all donations and gifts of money shall be deposited by law."

## Section 4. Section 23-4-7 NMSA 1978 (being Laws 1983, Chapter 329, Section 7, as amended) is amended to read:

"23-4-7. FUTURE TRANSFER OF LANDS--RESTRICTIONS.--

A. The secretary of health shall designate not more than thirty acres of land immediately surrounding the old Carrie Tingley crippled children's hospital building, including the support buildings and three adjoining houses, which may not be designated as surplus property by the department of finance and administration pursuant to this section. Subsequent to such a designation, the department of finance and administration may determine, after the New Mexico state veterans' home has been established, that there exists acreage that is surplus to the needs of the New Mexico state veterans' home.

B. The department of finance and administration, with approval of the state board of finance, may transfer a portion of the designated surplus property not to exceed twenty-five acres to the Truth or Consequences school board to be used for a site for construction of a middle school.

C. Subsequent to the official decision of the Truth or Consequences school board to proceed or not to proceed with the construction of a middle school on property adjacent to the New Mexico state veterans' home, the department of finance and administration may transfer, with approval of the state board of finance, part or all of the remaining surplus property to the city of Truth or Consequences for use in future economic development projects.

D. All transfers of land provided for in this section shall be subject to the following conditions:

(1) the governor or his designee shall approve any plans for development of any part of the original site before commencement of any construction under such plans;

(2) if the Truth or Consequences school board has not developed a master plan for use of any property transferred to it by January 1, 1987 or has not substantially initiated this plan by January 1, 1993, the surplus property transferred to that school board shall revert to the state;

(3) if the city of Truth or Consequences has not developed a master plan for use of any property transferred to it by January 1, 1987 or has not substantially initiated this plan by January 1, 1993, the surplus property transferred to that city shall revert to the state;

(4) the department of finance and administration shall not transfer as surplus property either the access to any well already existing on the site or any buildings on the site without the consent of the board of trustees; and

(5) no commitment on any parcel of land at the original site shall be made to the Truth or Consequences school board or to the city of Truth or Consequences until after such time as the New Mexico state veterans' home is approved by the legislature."

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HOUSE BILL 285

# CHAPTER 41

**CHAPTER 41, LAWS 2001**

AN ACT

RELATING TO CHILDREN; PROVIDING THAT PARENTAL RIGHTS SHALL NOT BE TERMINATED UPON THE SOLE BASIS THAT A PARENT IS INCARCERATED; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

## Section 1. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

"32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION DECREE.--

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

B. The court shall terminate parental rights with respect to a child when:

(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect

and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

(a) there is a clear showing that the efforts would be futile;

(b) the parent has subjected the child to aggravated circumstances; or

(c) the parental rights of the parent to a sibling of the child have been terminated involuntarily; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

(e) the substitute family desires to adopt the child; and

(f) a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.

C. A finding by the court that all of the conditions set forth in Subparagraphs (a) through (f) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights when the sole factual basis for the motion is that a child's parent is incarcerated.

E. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

F. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective

adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 455

# CHAPTER 42

**CHAPTER 42, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO PROVIDE FOR TAX CREDITS WITH THE PUEBLOS OF ISLETA AND SANDIA; AMENDING THE TAXATION AND REVENUE DEPARTMENT ACT TO AUTHORIZE THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO CERTAIN COOPERATIVE AGREEMENTS.

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 PUEBLOS.--

A. If on a taxable transaction taking place on pueblo land a qualifying gross receipts, sales or similar tax has been levied by the pueblo, the amount of the

pueblo tax may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any 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 pueblo 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 pueblo shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the pueblo;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the pueblo;

(4) provides a credit against the pueblo tax equal to the lesser of twenty-five percent of the tax imposed by the pueblo on the receipts from the 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 pueblo and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section, "pueblo land" means all land located within the exterior boundaries of the reservation or pueblo grant and all land held by the United States in trust for one of the following:

(1) the Pueblo of Isleta;

(2) the Pueblo of Laguna;

(3) the Pueblo of Nambe;

(4) the Pueblo of Sandia; or

(5) the Pueblo of Santa Ana."

## 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. COOPERATIVE AGREEMENTS WITH THE PUEBLOS OF ISLETA, LAGUNA, NAMBE, SANDIA, SANTA ANA AND SANTA CLARA.--

A. The secretary may enter into cooperative agreements with the Pueblos of Isleta, Laguna, Nambe, Sandia, Santa Ana and Santa Clara 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 pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due a pueblo and for the receipt of money collected by a pueblo for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the pueblo, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or a pueblo to tax persons or transactions that federal law prohibits that government from taxing or as authorizing a state or pueblo court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the pueblo. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or a pueblo that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

E. Nothing in an agreement entered into with Santa Clara pueblo pursuant to this section shall apply to a taxable transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978, except

that such agreement shall apply to such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by a municipality after January 1, 1997."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 471, AS AMENDED

# CHAPTER 43

**CHAPTER 43, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING THE SPECIAL FUELS SUPPLIER TAX ACT TO SIMPLIFY A DEDUCTION TO PROVIDE A CREDIT FOR CERTAIN FUEL USED OFF-ROAD.

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

## Section 1. Section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10, as amended) is amended to read:

"7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section

9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel sold to the holder of a special bulk storage user permit and delivered into special bulk storage pursuant to the provisions of Section 7-16A-8 NMSA 1978; and

F. special fuel dyed in accordance with federal regulations."

## Section 2. A new section of the Special Fuels Supplier Tax Act, Section 7-16A-13.1 NMSA 1978, is enacted to read:

"7-16A-13.1. CLAIM FOR REFUND OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL USED OFF-ROAD.--

A. Upon the submission of proof satisfactory to the department, a user of special fuel, other than a holder of a bulk storage user permit, may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a non-automotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.

B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.

D. This section applies to special fuel purchased on or after July 1, 2001."

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HOUSE BILL 568

# CHAPTER 44

**CHAPTER 44, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; ALLOWING AN INCREASE IN COMPENSATION FOR PRECINCT BOARD MEMBERS.

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

## Section 1. Section 1-2-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 36, as amended) is amended to read:

"1-2-16. PRECINCT BOARD--COMPENSATION.--

A. Members of a precinct board shall be compensated for their services at the rate of not less than the federal minimum hourly wage rate nor more than one hundred fifty dollars ($150) for an election day.

B. Compensation shall be paid within thirty days following the date of election."

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SENATE BILL 16, AS AMENDED

# CHAPTER 45

**CHAPTER 45, LAWS 2001**

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING THE EDUCATION QUALIFICATIONS FOR NEW STATE POLICE OFFICERS; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 29-2-6 NMSA 1978 (being Laws 1941, Chapter 147, Section 6, as amended) is amended to read:

"29-2-6. QUALIFICATIONS OF MEMBERS.--

A. Members of the New Mexico state police, except the chief, shall:

(1) at the time of their appointment, be citizens of the United States;

(2) at the time of their appointment, have reached twenty-one years of age;

(3) at the time of their appointment:

(a) have completed not less than sixty hours of college credit; or

(b) have completed not less than thirty hours of college credit and, no later than two years following appointment, have completed not less than an additional thirty hours of college credit;

(4) be of good moral character and not have been convicted of a felony or infamous crime in the courts of this state or other state or any country or in the federal courts; and

(5) pass a physical examination the New Mexico state police may require.

B. A person shall not be commissioned a member of the New Mexico state police who is related by blood or marriage within the fourth degree to a member of the public safety advisory commission."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 61

# CHAPTER 46

**CHAPTER 46, LAWS 2001**

AN ACTRELATING TO ELECTIONS; RESTORING THE RIGHT TO VOTE TO A PERSON CONVICTED OF A FELONY WHO HAS SATISFIED ALL CONDITIONS OF A SENTENCE; AMENDING, 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 Election Code is enacted to read:

"CANCELLATION OF REGISTRATION FOLLOWING CONVICTION--ELIGIBILITY FOR REGISTRATION UPON SATISFACTION OF CONDITIONS.--

A. When a voter has been convicted of a felony, the clerk of the district court where the conviction occurred shall file a certificate of felony conviction with the county clerk of the county where the convicted felon is registered to vote.

B. For purposes of cancellation of registration, verification of a felony conviction may be obtained by comparing the voter's registration record with the certificate of felony conviction filed by the clerk of the district court.

C. The certificate of felony conviction shall include the voter's:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birthplace;

(6) birth date;

(7) social security number, if any;

(8) date of conviction; and

(9) address.

D. When a voter convicted of a felony, for which a sentence of imprisonment is authorized but deferred or suspended by order of the court, has completed the conditions of the court order, the clerk of the court shall notify the county clerk of the county where the convicted felon was registered to vote that the person is eligible for registration.

E. When a voter convicted of a felony is unconditionally discharged from a correctional facility under the jurisdiction of the corrections department, or is conditionally discharged from a facility under the jurisdiction of the corrections department and has completed all conditions of probation or parole, the corrections department shall notify the county clerk of the county where the felon was registered to vote that the person is eligible for registration.

F. When a voter convicted of a federal offense constituting a felony is unconditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency, or is conditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency, and has completed all conditions of probation or parole, the federal agency having jurisdiction of that person shall notify the county clerk of the county where the felon was registered to vote that the person is eligible for registration."

## Section 2. Section 31-13-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-14) is amended to read:

"31-13-1. FELONY CONVICTION--RESTORATION OF CITIZENSHIP.--

A. A person who has been convicted of a felony shall not be permitted to vote in any statewide, county, municipal or district election held pursuant to the provisions of the Election Code, unless the person:

(1) has completed the terms of a suspended or deferred sentence imposed by a court;

(2) was unconditionally discharged from a correctional facility under the jurisdiction of the corrections department or was conditionally discharged from a correctional facility under the jurisdiction of the corrections department and has completed all conditions of probation or parole;

(3) was unconditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency or was conditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency and has completed all conditions of probation or parole; or

(4) has presented the governor with a certificate verifying the completion of his sentence and was granted a pardon or a certificate by the governor restoring his full rights of citizenship.

B. A person who has served the entirety of a sentence imposed for a felony conviction, including a term of probation or parole shall, upon his request to the corrections department, be issued a certificate of completion by the corrections department. Presentation of the certificate of completion to a county clerk shall entitle the person to register to vote. Additionally, a county clerk may accept the following documents as proof that a person has served the entirety of his sentence for a felony conviction:

(1) a judgment and sentence from a court of this state, another state or the federal government, which shows on its face that the person has completed the entirety of his sentence; or

(2) a certificate of completion from another state or the federal government.

C. A person who has been convicted of a felony shall not be permitted to hold an office of public trust for the state, a county, a municipality or a district, unless the person has presented the governor with a certificate verifying the completion of his sentence and was granted a pardon or a certificate by the governor restoring his full rights of citizenship."

## Section 3. Section 1-20-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 442, as amended) is amended to read:

"1-20-18. PERMITTING A PRISONER TO VOTE.--

A. Permitting a prisoner to vote consists of a warden of a penitentiary, a sheriff or jailer or any other person having custody of a convict or prisoner taking him or permitting him to be taken to a polling place for the purposes of voting in any election.

Whoever permits a prisoner to vote is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. This section does not prohibit permitting a prisoner convicted of a misdemeanor from voting by absentee ballot pursuant to the provisions of the Absent Voter Act."

## Section 4. REPEAL.--Section 1-4-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 83, as amended) is repealed.

## Section 5. APPLICABILITY.--The provisions of Sections 1 and 2 of this act apply to a person convicted of a felony offense prior to, on or after July 1, 2001.

**Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE RULES COMMITTEE SUBSTITUTE

FOR SENATE BILL 204, AS AMENDED

# CHAPTER 47

**CHAPTER 47, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CLARIFYING THAT A PERSON IN POSSESSION OF A LIMITED DRIVER'S LICENSE MAY LAWFULLY DRIVE TO AND FROM A COURT-ORDERED TREATMENT PROGRAM; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended) 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;

(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;

(3) for a limited license when the person's license was revoked pursuant to an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code, except that a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs may apply for and shall receive

a limited license if he complies with the requirements set forth in Subsections C and D of this section; or

(4) 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 or for the second or third time pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license or permit 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;

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

(3) if the person's driver's license is revoked pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978, proof that each motor vehicle to be operated by the person, if he receives a limited license, shall be equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau; and:

(a) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment;

(b) proof that the person is enrolled in school and needs a limited license to travel to and from school; or

(c) proof that the person is enrolled in a court-ordered treatment program and needs a limited license to travel to and from the treatment program.

C. A person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs may apply for and shall receive a limited 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 rule by the department and provides the department with documented proof:

(1) of enrollment in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

(2) of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

(3) of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

(4) of enrollment in school and that the person needs a limited license to travel to and from school; or

(5) of enrollment in a court-ordered treatment program and that the person needs a limited license to travel to and from the treatment program.

D. In addition to the requirements set forth in Subsection C of this section, a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs shall provide the department with his judgment and sentence. The judgment and sentence shall attest that the person will be on probation for the entire period that a limited license will be in effect and that, as a condition of probation, the person shall provide proof that each motor vehicle to be operated by the person is equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau. The ignition interlock device shall be installed on the appropriate motor vehicle at the person's expense.

E. Upon receipt of a fully completed application that complies with statutes and rules for a limited license and payment of the fee specified in this subsection, the department shall issue a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited 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.

F. 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.

G. 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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 251

# CHAPTER 48

**CHAPTER 48, LAWS 2001**

AN ACT

RELATING TO TRANSPORTATION; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW SCHOOL BUSES TO TRANSPORT THE GENERAL PUBLIC UNDER CERTAIN CIRCUMSTANCES.

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

**Section 1. Section 22-8-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 76, as amended) is amended to read:**

"22-8-26. TRANSPORTATION DISTRIBUTION.--

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to-and-from school transportation costs of students in grades kindergarten through twelve attending public school within the school district and of three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's transportation allocation exceeds the amount required to meet obligations to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation, fifty percent of the remaining balance shall be deposited in the transportation emergency fund.

C. Of the excess amount retained by the district, at least twenty-five percent shall be used for to-and-from transportation-related services, excluding salaries and benefits, and up to twenty-five percent may be used for other transportation-related services, excluding salaries and benefits as defined by rule of the department.

D. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, the allocation to each school district shall be reduced in the proportion that the local school district allocation bears to the total statewide transportation distribution.

E. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-4 NMSA 1978 to meet established program needs.

F. Nothing in this section prohibits the use of school buses to transport the general public pursuant to the Emergency Transportation Act."

## Section 2. Section 22-17-2 NMSA 1978 (being Laws 1974, Chapter 38, Section 2) is amended to read:

"22-17-2. PUBLIC REGULATION COMMISSION PERMITS.--

A. Subject to the Emergency Transportation Act, the public regulation commission may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district for the operation of such buses for general public transportation if the commission determines that:

(1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;

(2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and

(3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.

B. Notice of approval or denial of the permit application shall be submitted to the state transportation director and to the applicant within ten days of final determination by the public regulation commission.

C. As used in the Emergency Transportation Act, "public transportation emergency" includes an event:

(1) that is open to the public;

(2) that, if in a class A county, is expected to attract over fifty thousand visitors and residents;

(3) that has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operation, maintenance or use of school buses or for loss of or damage to property of others; and

(4) for which school buses are needed to transport the public to the event because:

(a) existing public transportation systems cannot adequately and timely transport the public to the event;

(b) private transportation systems are unavailable or prohibitively expensive; or

(c) the event and the surrounding area are likely to suffer economic hardship if school buses are

not utilized pursuant to the Emergency Transportation Act."

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SENATE BILL 280, AS AMENDED

# CHAPTER 49

**CHAPTER 49, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; ALLOWING IN-PERSON ABSENTEE VOTING ON ELECTRONIC VOTING MACHINES UPTO 5:00 P.M. THE SATURDAY PRECEDING ELECTION DAY.

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

## Section 1. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) 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 at the county clerk's office or on an electronic voting machine at an alternate location established by the county clerk. 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 alternative location.

G. Absentee ballots shall be air mailed 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.

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 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.

J. 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."

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SENATE BILL 296

# CHAPTER 50

**CHAPTER 50, LAWS 2001**

AN ACT

RELATING TO HEALTH; PROVIDING EXPANDED PRESCRIPTIVE AUTHORITY FOR PHARMACISTS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals and includes the domestic animal biological products regulated under the federal

Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) articles other than food that affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug other than a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device or any likeness of a drug manufacturer, processor, packer or distributor other than the person who manufactured, processed, packed or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection Pof this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of

Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or other animals; or

(3) intended to affect the structure or a function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means any drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act; and

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that

bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "doctor of oriental medicine", "dentist", "veterinarian", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

## Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, in accordance with the Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled

substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction; and

Y. "drug-free school zone" means a public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school."

## Section 3. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to such other persons authorized by law to receive such information, regardless of whether such information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in any official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or any function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to any drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or device;

U. "person" means an individual, corporation, partnership, association or other legal entity;

V. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

W. "pharmacist" means a person who is licensed as a pharmacist in this state;

X. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

AA. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

BB. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or his agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

DD. "significant adverse drug event" means a drug-related incident that may result in harm, injury or death to the patient; and

EE. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

## Section 4. Section 61-11-6 NMSA 1978 (being Laws 1969, Chapter 29, Section 5, as amended) is amended to read:

"61-11-6. POWERS AND DUTIES OF BOARD.--

A. The board shall:

(1) adopt, amend or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act;

(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists;

(5) provide for the issuance and renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

(9) cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act;

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define his duties and responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the money of the board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state;

(18) adopt rules and regulations that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, drug regimen review and patient counseling in each practice setting; and

(19) adopt, after approval by the New Mexico board of medical examiners and the board of nursing, rules and protocols for the prescribing of dangerous drug therapy, including vaccines and immunizations, and the appropriate notification of the primary or appropriate physician of the person receiving the dangerous drug therapy.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section

61-11-14 NMSA 1978; and

(2) provide by regulation for the electronic transmission of prescriptions."

## Section 5. Section 61-11-7 NMSA 1978 (being Laws 1969, Chapter 29, Section 6, as amended) is amended to read:

"61-11-7. DRUG DISPENSATION--LIMITATIONS.--

A. The Pharmacy Act does not prohibit:

(1) any hospital or state or county institution or clinic without the services of a staff pharmacist from acquiring and having in its possession any dangerous drug for the purpose of dispensing if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a consulting pharmacist, and if the consulting pharmacist is not available, the withdrawal of any drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of his patient;

(2) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been prepared previously by a pharmaceutical manufacturer or pharmacist and obtained by a hospital, institution or clinic in a form suitable for the preparation of the solution;

(3) the sale of non-narcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(4) the sale of drugs intended for veterinary use; provided that if such drugs bear the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drug may be sold or distributed only as provided in Subsection A of

Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board pursuant to Subsection B of

Section 61-11-14 NMSA 1978;

(5) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of such agents;

(6) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of such agents;

(7) pharmacy technicians from providing assistance to pharmacists;

(8) a pharmacist from prescribing dangerous drug therapy, including vaccines and immunizations, under rules and protocols adopted by the board after approval by the New Mexico board of medical examiners and the board of nursing; or

(9) a pharmacist from exercising his professional judgment in refilling a prescription for a prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription requiring compounding shall be either compounded or dispensed only by a pharmacist."

## Section 6. Section 61-11-13 NMSA 1978 (being Laws 1969, Chapter 29, Section 12, as amended) is amended to read:

"61-11-13. RENEWAL--REVOCATION.--

A. The renewal date for each licensee shall be the last day of the licensee's birth month, as set by rule of the board. Any person who intends to continue practice shall file an application for renewal prior to that date and pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars ($150) per year; provided, however, the board shall prorate any renewal fee charged for any period of less than a full year. The license of a pharmacist failing to renew his license on or before the date set by the board shall automatically expire, and the license shall not be reinstated except upon reapplication and payment of a one hundred dollar ($100) reinstatement fee and all delinquent renewal fees.

B. A pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have his license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that he has taken some form of internship or continuing education relevant to the practice of pharmacy, or both,

immediately prior to his application for reinstatement. Pharmacists regularly engaged in teaching in an approved school or college of pharmacy, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of a pharmacist's license shall be made on forms prescribed and furnished by the board and shall indicate whether the renewal applied for will be an active or inactive license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. An application for renewal of a certificate of registration as a pharmacy technician or license as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars ($25.00) per year."

## Section 7. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the annual fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy;

(2) nonresident pharmacy;

(3) wholesale drug distributor;

(4) drug manufacturer;

(5) hospital pharmacy;

(6) industrial health clinic;

(7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities;

(13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

(14) returned drugs processors;

(15) drug research facilities; and

(16) drug warehouses.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, wholesale drug distributor, nonresident pharmacy, drug manufacturer, hospital pharmacy, drug research facility or drug warehouse shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300);

(2) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200); and

(3) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200).

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a facility or business listed in Subsection B of this section in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require.

G. After preliminary approval of the application for a license for any facility or business listed in Paragraphs (1) through (8) and (10) through (16) of Subsection B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license on or before December 31 of each year shall not have his license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall register with the board. The board may charge a registration fee not to exceed fifty dollars ($50.00) and a renewal fee of no more than fifty dollars ($50.00) per year.

Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act."

## Section 8. Section 61-11-18.1 NMSA 1978 (being Laws 1997, Chapter 131, Section 21) is amended to read:

"61-11-18.1. REPORTS TO BOARD.--Any person licensed under Article 61, Chapter 11 NMSA 1978 shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

A. permanent closing of a licensed premises;

B. change of ownership, management, location or pharmacist in charge;

C. theft or loss of drugs or devices;

D. conviction of an employee for violating any federal or state drug laws;

E. theft, destruction or loss of records required by federal or state law to be maintained;

F. occurrences of significant adverse drug events, as defined by regulations of the board;

G. dissemination of confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and

H. other matters or occurrences as the board may require by regulation."

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SENATE BILL 353, AS AMENDED

# CHAPTER 51

**CHAPTER 51, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; PROVIDING THAT THE JAILS IN EACH COUNTY SHALL BE USED OR BE AVAILABLE FOR THE DETENTION OF PERSONS CHARGED WITH CRIMES IN THAT COUNTY.

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

## Section 1. Section 33-3-3 NMSA 1978 (being Laws 1865-1866, Chapter 19, Section 2, as amended) is amended to read:

"33-3-3. CONFINEMENT OF PRISONERS IN COUNTY WHERE OFFENSE COMMITTED.--The jail or jails in each county shall be used or be available for the detention of every person who, within the same county, is charged with any crime or properly committed for trial or for the imprisonment of every person who in conformity with sentence, upon conviction of an offense, may have been sentenced, and for the safekeeping of every person who shall be committed by competent authority according to law."

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SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 847, AS AMENDED

# CHAPTER 52

**CHAPTER 52, LAWS 2001**

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 63-9A-8.2 NMSA 1978 (BEING LAWS 2000, CHAPTER 100, SECTION 4 AND ALSO LAWS 2000, CHAPTER 102, SECTION 4) TO CLARIFY THE APPLICABILITY OF THE PROVISIONS.

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

## Section 1. Section 63-9A-8.2 NMSA 1978 (being Laws 2000, Chapter 100, Section 4 and also Laws 2000, Chapter 102, Section 4) is amended to read:

"63-9A-8.2. IDENTIFYING SUBSIDIES--RULES--PRICE CAPS.--

A. No later than December 31, 2000, the commission shall review existing rates for public telecommunications services offered by incumbent local exchange carriers with more than fifty thousand access lines and identify all subsidies that are included in the rates. The commission shall issue rules requiring that the identified subsidies appear on customer bills and establish a schedule not later than April 1, 2001 whereby implicit subsidies be eliminated through implementation of the state rural

universal service fund or through revenue-neutral rate rebalancing or any other method consistent with the intent of the New Mexico Telecommunications Act.

B. No later than January 1, 2001, the commission shall adopt rules that:

(1) establish consumer protection and quality of service standards;

(2) ensure adequate investment in the telecommunications infrastructure in both urban and rural areas of the state;

(3) promote availability and deployment of high-speed data services in both urban and rural areas of the state;

(4) ensure the accessibility of interconnection by competitive local exchange carriers in both urban and rural areas of the state; and

(5) establish an expedited regulatory process for considering matters related to telecommunications services that are pending before the commission.

C. No later than April 1, 2001, but in no case prior to the adoption of the rules required in Subsection B of this section, the commission shall eliminate rate of return regulation of incumbent telecommunications carriers with more than fifty thousand access lines and implement an alternative form of regulation that includes reasonable price caps for basic residence and business local exchange services.

D. Rules adopted pursuant to this section shall not be applied to incumbent rural telecommunications carriers as that term is defined in Subsection I of Section 63-9H-3 NMSA 1978."

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HOUSE BILL 658

# CHAPTER 53

**CHAPTER 53, LAWS 2001**

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:**

A. to the city of Albuquerque for water projects;

B. to the city of Albuquerque for the acquisition of police equipment;

C. to the city of Belen for street improvements;

D. to the Canyon mutual domestic water consumers association for a water project;

E. to the Carlsbad soil and water conservation district for loan refinancing;

F. to the city of Carlsbad for a water project;

G. to the town of Carrizozo for the acquisition of fire equipment;

H. to the town of Carrizozo or village of Capitan or Capitan Carrizozo natural gas association or all or any of the above for a natural gas system expansion project;

I. to the Cerro East mutual domestic water consumers association for a water project;

J. to Chaves county for the Berrendo volunteer fire district for the acquisition of fire equipment;

K. to Cibola county for the acquisition of road equipment;

L. to Cibola county for the acquisition of a building;

M. to Colfax county for the Angel Fire fire district for the acquisition of fire equipment;

N. to the Cundiyo mutual domestic water association for a water project;

O. to the city of Deming for a water project;

P. to the town of Dexter for the acquisition of fire equipment;

Q. to the town of Elida for the acquisition of fire equipment;

R. to the El Prado water and sanitation district for a wastewater project;

S. to the village of Encino for a water project;

T. to the Entranosa water and wastewater cooperative for loan refinancing;

U. to the village of Floyd for the acquisition of fire equipment;

V. to the Fort Sumner irrigation district for loan refinancing;

W. to the village of Hatch for the acquisition of law enforcement equipment;

X. to the Hidden Valley mutual domestic water association for a water project;

Y. to the village of House for the acquisition of fire equipment;

Z. to the town of Hurley for the acquisition of law enforcement equipment;

AA. to the village of Jemez Springs for the acquisition of law enforcement equipment;

BB. to the city of Las Vegas for a solid waste project;

CC. to the city of Las Vegas for a recreation center project;

DD. to the city of Las Vegas for a building project;

EE. to the city of Las Vegas for a wastewater project;

FF. to the city of Las Vegas for the acquisition of water rights;

GG. to the Los Sisneros mutual domestic water consumers association for a water project;

HH. to Luna county for a building project;

II. to the Malaga mutual domestic water consumers and sewer works association for loan refinancing;

JJ. to the village of Melrose for the acquisition of fire equipment;

KK. to Mora county for the Cleveland Holman Encinal Tramperos volunteer fire district for a fire station project;

LL. to the city of Moriarty for a wastewater project;

MM. to the town of Mountainair for the acquisition of fire equipment;

NN. to the village of Pecos for a wastewater project;

OO. to the village of Pecos for a water project;

PP. to Pineywoods Estates water association for a water project;

QQ. to the city of Portales for the acquisition of fire equipment;

RR. to the Puerto de Luna mutual domestic water consumers and sewerage works association for a water project;

SS. to the city of Rio Rancho for a building project;

TT. to the village of San Jon for the acquisition of law enforcement equipment;

UU. to the village of San Jon for a water project;

VV. to San Miguel county for a courthouse renovation project;

WW. to San Miguel county for loan refinancing;

XX. to the San Rafael water and sanitation district for a water and wastewater project;

YY. to the city of Santa Fe for a water project;

ZZ. to the city of Santa Rosa for the acquisition of solid waste equipment;

AAA. to the city of Santa Rosa for the acquisition of fire equipment;

BBB. to the city of Santa Rosa for the acquisition of an ambulance;

CCC. to Sierra county for the acquisition of law enforcement equipment;

DDD. to Sierra county, the city of Truth or Consequences, the village of Williamsburg, the Sierra Vista hospital joint powers commission or all or any of the above for a hospital project;

EEE. to the Sierra Vista utilidades cooperative for a water project;

FFF. to the Sile water system for a water project;

GGG. to the town of Silver City for the acquisition of fire equipment and a building project;

HHH. to the town of Silver City for the acquisition of a fire training facility;

III. to the South Ojo Caliente mutual domestic water consumers association for a water project;

JJJ. to the city of Sunland Park for the acquisition of solid waste equipment;

KKK. to Tajique mutual domestic water consumers association for a water project;

LLL. to Taos county for the Rio Fernando fire district for the acquisition of fire equipment;

MMM. to the village of Taos Ski Valley for the acquisition of fire equipment;

NNN. to the village of Taos Ski Valley for a building project;

OOO. to the town of Tatum for the acquisition of law enforcement equipment;

PPP. to the village of Tijeras for a water project;

QQQ. to the Torrance county solid waste authority for loan refinancing;

RRR. to the Torrance county solid waste authority for the acquisition of a solid waste facility and solid waste equipment;

SSS. to the city of Truth or Consequences for the acquisition of municipal vehicles and equipment;

TTT. to the city of Tucumcari for a water project;

UUU. to the city of Tucumcari for a wastewater project;

VVV. to the village of Tularosa for the acquisition of law enforcement equipment;

WWW. to the village of Tularosa for the acquisition of road equipment;

XXX. to the West Hammond drinking water association for a water project;

YYY. to the pueblo of Zia for a preliminary engineering report;

ZZZ. to the pueblo of Acoma for a water project;

AAAA. to the Chamberino mutual domestic water and sewer association for a water project;

BBBB. to the El Rito mutual domestic water consumers and sewage works association for a water project;

CCCC. to the La Mesa mutual domestic water consumers association for the acquisition of water rights;

DDDD. to the pueblo of Nambe for a building project;

EEEE. to the Navajo Dam domestic water consumers and mutual sewage works association for a water project;

FFFF. to the Solacito mutual domestic water consumers association for a wastewater project;

GGGG. to the Winterhaven mutual domestic water consumers and mutual sewage works association for a water project;

HHHH. to the Abiquiu mutual domestic water consumers association for a water project;

IIII. to the Alcalde mutual domestic water consumers association for a water project;

JJJJ. to the town of Bernalillo for a building project;

KKKK. to the Blanco water users association for a water project;

LLLL. to the city of Bloomfield for a water project;

MMMM. to the city of Bloomfield for a wastewater project;

NNNN. to the Chamberino mutual domestic water consumers association for a water project;

OOOO. to the city of Deming and Luna county for a water and building project;

PPPP. to the Dixon mutual domestic water consumers association for a water project;

QQQQ. to the village of Floyd for a water project;

RRRR. to the village of Grady for a water project;

SSSS. to the city of Las Cruces for a convention center;

TTTT. to the city of Las Vegas for a water project;

UUUU. to the village of Logan for a wastewater project and land acquisition project;

VVVV. to the Los Ojos mutual domestic water consumers association for a water project;

WWWW. to the Miami mutual domestic water consumers association for a water project;

XXXX. to eastern New Mexico university for the acquisition of equipment;

YYYY. to the city of Santa Fe for a water project;

ZZZZ. to the pueblo of Santo Domingo for a water and wastewater project;

AAAAA. to the Truchas mutual domestic water consumers association for a water project;

BBBBB. to the city of Tucumcari for a building and water project;

CCCCC. to the La Luz mutual domestic water consumers association for a water project;

DDDDD. to the Barranco mutual domestic water consumers association for a water project;

EEEEE. to the town of Taos, Taos county and the Taos independent school district for school improvements and equipment projects;

FFFFF. to the La Union mutual domestic water consumers association for a building renovation and water project;

GGGGG. to the county of Bernalillo for the acquisition of equipment;

HHHHH. to the city of Bloomfield for the acquisition of water rights;

IIIII. to the county of Chaves for the acquisition of equipment;

JJJJJ. to the city of Deming for the acquisition of equipment;

KKKKK. to the county of Eddy for the acquisition of equipment;

LLLLL. to the Gadsden independent school district for the acquisition of equipment;

MMMMM. to the city of Grants for a water and wastewater project;

NNNNN. to the city of Lovington for a water project and the acquisition of equipment;

OOOOO. to the county of McKinley for the acquisition of equipment;

PPPPP. to the city of Portales for the acquisition of equipment;

QQQQQ. to the city of Raton for the acquisition of equipment;

RRRRR. to the city of Rio Rancho for the acquisition of equipment;

SSSSS. to the city of Rio Rancho for special assessment district five project;

TTTTT. to the county of Roosevelt for the acquisition of equipment;

UUUUU. to the city of Roswell for the acquisition of equipment;

VVVVV. to the city of Santa Fe for the acquisition of equipment;

WWWWW. to the town of Taos for the acquisition of equipment;

XXXXX. to the county of Torrance for the acquisition of equipment;

YYYYY. to the city of Tucumcari for the acquisition of equipment;

ZZZZZ. to the county of Valencia for the acquisition of equipment;

AAAAAA. to the county of Santa Fe for the acquisition of equipment;

BBBBBB. to the city of Gallup for the acquisition of equipment;

CCCCCC. to the city of Espanola for the acquisition of equipment;

DDDDDD. to the city of Dexter for a water project;

EEEEEE. to the Mescalero Apache tribe for a water and wastewater project;

FFFFFF. to the city of Artesia for a wastewater project;

GGGGGG. to the Cottonwood rural water cooperative for a water project;

HHHHHH. to the Hope community ditch association for a water project;

IIIIII. to the city of Hagerman for fire equipment and a water project;

JJJJJJ. to the Cumberland cooperative water users' association for a water project;

KKKKKK. to the Penasco volunteer fire department for a water project and fire equipment;

LLLLLL. to the East Grand Plains fire department for fire equipment;

MMMMMM. to the High Sierra mutual domestic water consumer association for a water project;

NNNNNN. to the county of Valencia for a hospital project;

OOOOOO. to the city of Raton or Raton public service company for an electric utility project;

PPPPPP. to the Riverside water system for a water project;

QQQQQQ. to eastern New Mexico university at Roswell for a facility project;

RRRRRR. to the San Jose community water system for a water project;

SSSSSS. to the Gonzales Ranch community water system for a water project;

TTTTTT. to the Sacatosa community water system for a water project;

UUUUUU. to the Aurora community water system for a water project;

VVVVVV. to the Tecolote community water system for a water project;

WWWWWW. to the Manzano community water system for a water project;

XXXXXX. to the Tajique community water system for a water project;

YYYYYY. to the San Ysidro community water system for a water project;

ZZZZZZ. to La Cienega community water system for a water project;

AAAAAAA. to La Bajada community water system for a water project;

BBBBBBB. to the Cerrillos community water system for a water project;

CCCCCCC. to the Willard community water system for a water project;

DDDDDDD. to the Mountainair community water system for a water project; and

EEEEEEE. to the Villanueva community water system for a water project.

**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 2004 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.**

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HOUSE BILL 158, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 15, 2001

# CHAPTER 54

**CHAPTER 54, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; LIMITING THE TYPE OF LOCAL PUBLIC BODY INTEREST RATE EXCHANGE AND OTHER CONTRACTS RELATED TO DEBT SERVICE ACCOUNTS THAT REQUIRE THE APPROVAL OF THE STATE BOARD OF FINANCE; AMENDING A SECTION OF THE PUBLIC SECURITIES SHORT-TERM INTEREST RATE ACT.

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

## Section 1. Section 6-18-8.1 NMSA 1978 (being Laws 1992, Chapter 96, Section 1, as amended) is amended to read:

"6-18-8.1. CONTRACTS TO EXCHANGE INTEREST RATES, CASH FLOWS OR LIMIT EXPOSURE.--

A. A public body that has issued or proposes to issue bonds may enter into contracts authorized in this section if the governing body of that public issuer finds that such a contract would be in the best interests of that public body and, for contracts of the type described in Subsections D and E of this section, if the state board of finance reviews and approves the contract and determines, in its discretion, that the contract results in a long-term financial benefit for the public body.

B. A public body may enter into any contract that the governing body determines to be necessary or appropriate regarding the debt service payable on the bond obligations of the governing body, in whole or in part on the interest rate, cash flow or other basis desired by the governing body, including, without limitation, contracts commonly known as interest rate swap contracts, forward payment conversion contracts, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts including, without limitation, options, puts or calls to hedge payment, rate, price spread or similar exposure. A public body may also enter into any contract that provides collateral for securities. Contracts shall be governed by the terms and conditions established by the governing body, subject to the provisions of Subsection C of this section.

C. A public body may enter into a contract pursuant to this section only if:

(1) the long-term obligations of the person with whom the public body enters the contract are rated in one of the two top rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(2) the obligations pursuant to the contract of the person with whom the public body enters the contract are either:

(a) guaranteed by a person whose long-term debt obligations are rated in either of the two highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(b) collateralized by obligations deposited with the public body or an agent of the public body that are rated in either of the two highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and that have a market value at the time the contract is made of not less than one hundred percent of the principal amount upon which the exchange of interest rates or other contract permitted by this section is based.

D. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a variable rate, to pay sums equal to interest at a fixed rate or rates or at a different variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a variable rate determined pursuant to a formula set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

E. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a fixed rate or rates, to pay sums equal to interest at a variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the outstanding principal amount of the bonds with respect to which the contract is made in exchange for a contract to pay sums equal to interest on the same principal amount at a fixed rate or rates set forth in the contract. Such contracts may provide for a minimum rate or a maximum rate or both.

F. The term of a contract shall not exceed the term of the bonds of the public body with respect to which the contract was made.

G. A contract entered into pursuant to this section is not an indebtedness of the public body, and in no case shall the principal amount of any outstanding indebtedness of the public body be increased as a result of the contract.

H. The terms of Section 6-18-14 NMSA 1978 regarding limitations of interest rates and net effective interest rates are applicable to interest rates and net effective interest rates required to be paid by a public body entering into a contract.

I. A public body that has entered into a contract may treat the amount or rate of interest on those bonds as the amount or rate of interest payable after giving effect to the contract for the purpose of calculating:

(1) rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay the bonds of the public body;

(2) statutory requirements concerning revenue coverage that are applicable to bonds of the public body;

(3) tax levies and collections to pay debt service on bonds of the public body; and

(4) any other amounts that are based upon the rate of interest of bonds of the public body.

J. Any payments required to be made by the public body under the contract may be made from money pledged to pay debt service on the bonds with respect to which the contract was made or from any other legally available source.

K. Any contract entered into by a public body pursuant to this section shall not impair the contract of that public body with, or impair adversely, the owners of bonds issued by that public body."

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HOUSE BILL 168

# CHAPTER 55

**CHAPTER 55, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING SECTION 6-10-30 NMSA 1978 (BEING LAWS 1975, CHAPTER 304, SECTION 1) TO PROVIDE FOR ANNUAL FIXING OF INTEREST RATES FOR DEPOSITS OF PUBLIC MONEY.

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

## Section 1. Section 6-10-30 NMSA 1978 (being Laws 1975, Chapter 304, Section 1) is amended to read:

"6-10-30. INTEREST RATES SET BY STATE BOARD OF FINANCE.--The state board of finance at any time, but at least once each fiscal year, shall fix the rate of interest to be paid upon all time deposits of public money made by all public officials authorized to make deposits of public money."

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HOUSE BILL 172

# CHAPTER 56

**CHAPTER 56, LAWS 2001**

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT.

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

## Section 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Venture Capital Investment Act;

(4) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

(5) Liquor Excise Tax Act;

(6) Local Liquor Excise Tax Act;

(7) any municipal local option gross receipts tax;

(8) any county local option gross receipts tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, Capital Equipment Tax Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act and Technology Jobs Tax Credit Act;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act; and

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production Incentive Act; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act;

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

## Section 2. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

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

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

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 the Gross Receipts and Compensating Tax Act and local option gross receipts taxes 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 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 3. 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;

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 penalties 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; and

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."

## Section 4. Section 7-1-11 NMSA 1978 (being Laws 1965, Chapter 248, Section 16, as amended) is amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--CREDENTIALS.--

A. The department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Those auditors and officials of the department so designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

C. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who properly identifies himself to the taxpayer.

D. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including but not limited to using information about similar persons, businesses or industries to estimate the taxpayer's liability.

E. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done, sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures. Nothing in this section shall be construed to require the department to provide information that is confidential pursuant to Section 7-1-8 NMSA 1978, nor shall the department be required to provide information concerning how taxpayers are selected for audit."

## Section 5. Section 7-1-41 NMSA 1978 (being Laws 1965, Chapter 248, Section 43, as amended) is amended to read:

"7-1-41. NOTICE OF SEIZURE.--As soon as practicable after the levy, the secretary or the secretary's delegate shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax."

## Section 6. Section 7-1-42 NMSA 1978 (being Laws 1965, Chapter 248, Section 44, as amended) is amended to read:

"7-1-42. NOTICE OF SALE.--As soon as practicable after the levy, the secretary or the secretary's delegate shall decide on a time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein and shall notify the owner and persons having an interest therein of the time and place for the sale. The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale."

## Section 7. Section 7-1-43 NMSA 1978 (being Laws 1965, Chapter 248, Section 45, as amended) is amended to read:

"7-1-43. SALE OF INDIVISIBLE PROPERTY.--If any property of the taxpayer subject to levy is not divisible so as to enable the secretary or the secretary's delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold but is always subject to redemption before sale according to the provisions of Section 7-1-47 NMSA 1978."

## Section 8. Section 7-1-45 NMSA 1978 (being Laws 1965, Chapter 248, Section 47, as amended) is amended to read:

"7-1-45. MANNER OF SALE OR CONVERSION TO MONEY.--All property levied upon, not consisting of money, shall be sold at public auction at one o'clock in the afternoon on the steps or in front of the courthouse of the county in which the property was located when levied upon or may be consigned to an auctioneer for sale. Payment may be accepted only in full and immediately after the acceptance of a bid for the property. Stocks, bonds, securities and similar property may be negotiated or surrendered for money in accordance with uniform regulations issued by the secretary, notwithstanding the above."

## Section 9. Section 7-1-46 NMSA 1978 (being Laws 1965, Chapter 248, Section 48, as amended) is amended to read:

"7-1-46. MINIMUM PRICES.--Before the sale, the secretary or the secretary's delegate shall determine a minimum price for which the property shall be sold, and if no

person offers for the property at the sale the amount of the minimum price, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the secretary or the secretary's delegate shall take into account and determine the expense of making the levy and sale."

## Section 10. Section 7-1-47 NMSA 1978 (being Laws 1965, Chapter 248, Section 49, as amended) is amended to read:

"7-1-47. REDEMPTION BEFORE SALE.--Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof according to the provisions of Section 7-1-54 NMSA 1978 to the department at any time prior to the sale thereof, and upon payment or furnishing of security, the secretary or the secretary's delegate shall restore the property to that person, and all further proceedings in connection with the levy on the property shall cease from the time of the payment. Any person who has a sufficient interest in property or rights to property levied upon to entitle the person to redeem it from sale, according to the provisions of this section, who does pay the amount due and accomplishes the redemption shall have a lien against the property in the amount paid and may file a notice thereof in the records of any county in the state in which the property is located and may foreclose the lien as provided by law."

## Section 11. Section 7-1-48 NMSA 1978 (being Laws 1965, Chapter 248, Section 50, as amended) is amended to read:

"7-1-48. DOCUMENTS OF TITLE.--In case property is sold as above provided, the department, after payment for the property is received, shall prepare and deliver to the purchaser thereof a certificate of sale, in the case of personalty, or, in the case of realty, a deed, in a form as the secretary shall by regulation prescribe. Such documents of title shall recite the authority for the transaction, the date of the sale, the interest in the property that is conveyed and the price paid therefor."

## Section 12. Section 7-1-49 NMSA 1978 (being Laws 1965, Chapter 248, Section 51, as amended) is amended to read:

"7-1-49. LEGAL EFFECT OF CERTIFICATE OF SALE.--In all cases of sale of property other than real property, the certificate of sale provided for in Section 7-1-48 NMSA 1978 shall:

A. be prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceedings in making the sale;

B. transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

C. if such property consists of stock certificates, be notice, when received, to any corporation, company or association of such transfer and be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stock certificates were transferred or assigned by the record owner;

D. if the subject of sale is securities or other evidences of debt, be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt; and

E. if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles of the transfer and be authority to that official to record the transfer on the official's books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record owner."

## Section 13. Section 7-1-52 NMSA 1978 (being Laws 1965, Chapter 248, Section 54, as amended) is amended to read:

"7-1-52. RELEASE OF LEVY.--It shall be lawful for the secretary or the secretary's delegate, under regulations prescribed by the secretary, to release the levy upon all or part of the property or rights to property levied upon if the secretary or the secretary's delegate determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy."

## Section 14. 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. In order 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 the issuance of 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 three days, and, upon a showing by the preponderance of the evidence that the taxpayer is delinquent and that the taxpayer 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 to be sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for the issuance of an injunction against a person other than a delinquent taxpayer, the court may issue an order temporarily restraining the person from engaging in business. The court shall hear the matter within three days and upon a showing that:

(1) the person has been given notice of the hearing as required by law;

(2) demand has been made upon the taxpayer for the furnishing of security;

(3) the taxpayer has not furnished security; and

(4) the secretary considers the collection from the person primarily responsible therefor of the total amount of tax due or reasonably expected to become due to be in jeopardy;

the court may forthwith issue an injunction to such taxpayer in terms commanding the person to refrain from engaging in business until the person complies in full with the demand of the department for the furnishing of security.

D. No temporary restraining order or injunction shall 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 the 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 15. Section 7-1-56 NMSA 1978 (being Laws 1965, Chapter 248, Section 57, as amended) is amended to read:

"7-1-56. SALE OF OR PROCEEDINGS AGAINST SECURITY.--If liability for any tax for the payment of which security has been furnished becomes conclusive, the department may:

A. redeem for cash or, as specified in the Tax Administration Act for sale of property levied upon, sell such security; or

B. compel the surety directly to discharge the liability for payment of the principal debtor by serving demand upon him therefor."

## Section 16. Section 7-1-57 NMSA 1978 (being Laws 1965, Chapter 248, Section 58, as amended) is amended to read:

"7-1-57. SURETY BONDS.--Surety bonds accepted by the secretary as security in compliance with the provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be payable to the state of New Mexico upon demand by the secretary or the secretary's delegate and a showing to the surety that the principal debtor is a delinquent taxpayer."

## Section 17. Section 7-1-71.1 NMSA 1978 (being Laws 1985, Chapter 65, Section 19) is amended to read:

"7-1-71.1. TAX RETURN PREPARERS--REQUIREMENTS--PENALTIES.--

A. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to sign such return or claim for refund.

B. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to furnish the tax return preparer's identification number on such return or claim for refund.

C. Any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax who is required by regulations promulgated by the secretary to sign a return or claim for refund or to furnish an identification number on such return or claim for refund and who fails to sign such return or claim for refund or to furnish an identification number on such return or claim for refund shall pay a penalty of twenty-five dollars ($25.00) for such failure unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

D. Any tax return preparer who endorses or otherwise negotiates, either directly or through an agent, any warrant in respect of the Income Tax Act issued to a taxpayer, other than the tax return preparer, shall pay a penalty of five hundred dollars ($500) with respect to each such warrant; provided that the provisions of this subsection shall not apply with respect to the deposit by a bank, savings and loan association, credit union or other financial corporation of the full amount of the warrant in the taxpayer's account for the benefit of the taxpayer.

E. For the purposes of this section, any penalty determined to be due shall be considered to be tax due."

## Section 18. Section 7-1-78 NMSA 1978 (being Laws 1965, Chapter 248, Section 81, as amended) is amended to read:

"7-1-78. BURDEN OF PROOF IN FRAUD CASES.--In any proceeding involving the issue of whether any person has been guilty of fraud or corruption, the burden of proof in respect of such issue shall be upon the secretary or the state."

**Section 19. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 252, AS AMENDED

# CHAPTER 57

**CHAPTER 57, LAWS 2001**

AN ACT

RELATING TO TAXATION; EXTENDING THE LIFE OF CERTAIN INVESTMENT CREDIT PROVISIONS AND REQUIRING LEGISLATIVE REVIEW OF THE USE AND EFFECTIVENESS OF THE CREDIT; EXTENDING THE PERIOD FOR APPLICATION OF CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS MANUFACTURING; AMENDING, REPEALING AND ENACTING SECTIONS OF LAW AND OF THE NMSA 1978.

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

**Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is amended to read:**

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2011, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year

thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation; or

(4) processing natural resources, including hydrocarbons."

## Section 2. A new section of the Investment Credit Act is enacted to read:

"LEGISLATIVE OVERSIGHT.--The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature."

## Section 3. Section 7-9A-7 NMSA 1978 (being Laws 1979, Chapter 347, Section 7, as amended by Laws 1991, Chapter 159, Section 5 and also by Laws 1991, Chapter 162, Section 5) is amended to read:

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--

A. Prior to July 1, 2011, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2011, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000)."

## Section 4. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended by Laws 1991, Chapter 159, Section 6 and also by Laws 1991, Chapter 162, Section 6) 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) two hundred fifty thousand dollars ($250,000), 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 two million dollars ($2,000,000);

(2) five hundred thousand dollars ($500,000), or portion of that amount, in value of qualified equipment over two million dollars ($2,000,000) claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(3) 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."

## Section 5. Laws 1999, Chapter 36, Section 1 is amended to read:

"Section 1. Laws 1997, Chapter 62, Section 3 is amended to read:

"Section 3. Laws 1990, Chapter 3, Section 10, as amended by Laws 1992, Chapter 17, Section 1 and also by Laws 1992, Chapter 104, Section 1, is amended to read:

"Section 10. EFFECTIVE DATE.--

The effective date of the provisions of Sections 1, 2, 4, 5, 7 and 9 of Laws 1990, Chapter 3 is January 1, 1991.

## Section 6. Laws 1999, Chapter 35, Section 4 is amended to read:

"Section 4. EFFECTIVE DATE.--

The effective date of the provisions of Section 2 of this act is July 1, 1999."

## Section 7. REPEAL.--

A. Laws 1990, Chapter 3, Sections 6 and 8 are repealed.

B. Laws 1999, Chapter 35, Sections 1 and 3 are

repealed.

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HOUSE BILL 342

# CHAPTER 58

**CHAPTER 58, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; ALLOWING IN-PERSON ABSENTEE VOTING ON ELECTRONIC VOTING MACHINES UPTO 5:00 P.M. THE SATURDAY PRECEDING ELECTION DAY AND ALLOWING ELECTRONIC VOTING MACHINES TO BE USED FOR IN-PERSON ABSENTEE VOTING UPTO FORTY DAYS BEFORE AN ELECTION.

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

## Section 1. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) 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 alternative location.

G. Absentee ballots shall be air mailed 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.

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 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.

J. 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."

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HOUSE BILL 484, AS AMENDED

# CHAPTER 59

**CHAPTER 59, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING THE DRIVER OF A VEHICLE TO YIELD TO AN APPROACHING EMERGENCY VEHICLE.

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

## Section 1. Section 66-7-332 NMSA 1978 (being Laws 1978, Chapter 35, Section 436) is amended to read:

"66-7-332. OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES.--

A. Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle when operated as an authorized emergency vehicle and when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed except when otherwise directed by a police officer.

B. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway."

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HOUSE BILL 550

# CHAPTER 60

**CHAPTER 60, LAWS 2001**

AN ACT

MAKING AN APPROPRIATION FROM THE INSURANCE FRAUD FUND TO FUND AN INCREASE IN THE NUMBER OF INSURANCE FRAUD INVESTIGATORS PLUS ASSOCIATED COSTS.

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

## Section 1. APPROPRIATION.--One hundred sixty thousand three hundred dollars ($160,300) is appropriated from the insurance fraud

**fund to the public regulation commission for expenditure in fiscal year 2002 for the insurance division to fund an increase in the number of insurance fraud investigators by two full-time-equivalent positions plus benefits and ancillary costs associated with the investigator positions. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the insurance fraud fund.**

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HOUSE BILL 604

# CHAPTER 61

**CHAPTER 61, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 RELATING TO SCHOOL BOND ELECTIONS.

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

## Section 1. Section 22-18-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 229) is amended to read:

"22-18-2. BOND ELECTIONS--QUALIFICATION OF VOTERS--CALLING FOR BOND ELECTIONS.--

A. Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district owning real estate in the school district the question of creating a debt by issuing the bonds, and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

B. The election on the question of creating a debt by issuing general obligation bonds shall be held at the same time as a regular school district election or at any special school district election which is not within ninety days after a regular school district election. The question shall be submitted to a vote at a general or special school district election upon the initiative of a local school board or upon a petition being filed with a local school board signed by qualified electors of the school district having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls. The number of signatures required on the petition shall be at least ten percent of the number of votes cast for governor in the school district in the

last preceding general election. For the purpose of determining the number of votes cast for governor in the school district at the last preceding general election, any portion of a voting division within the school district shall be construed to be wholly within the school district. A local school board shall call for a bond election at a regular or special school district election within ninety days from the date a properly signed petition is filed with it."

## Section 2. Section 22-18-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 231, as amended) is amended to read:

"22-18-4. BOND ELECTIONS--CONDUCT.--

A. A person is required to be a registered voter to vote in a bond election in a school district.

B. Bond elections in a school district shall be conducted pursuant to the Election Code, except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, the School Election Law and the Bond Election Act."

## Section 3. REPEAL.--Sections 22-18-3 and 22-18-6 NMSA 1978 (being Laws 1967, Chapter 16, Sections 230 and 233) are repealed.

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HOUSE BILL 824, AS AMENDED

# CHAPTER 62

**CHAPTER 62, LAWS 2001**

AN ACT

RELATING TO EDUCATION; CHANGING HOME SCHOOL REQUIREMENTS.

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

## Section 1. Section 22-1-2.1 NMSA 1978 (being Laws 1985, Chapter 21, Section 2, as amended by Laws 1993, Chapter 62, Section 2 and also by Laws 1993, Chapter 226, Section 1) is amended to read:

"22-1-2.1. HOME SCHOOL--REQUIREMENTS.--Any person operating or intending to operate a home school shall:

A. within thirty days of its establishment, notify the state superintendent of the establishment of a home school within thirty days of its establishment and notify the state superintendent in writing on or before April 1 of each subsequent year of operation of the school district from which the home school is drawing students;

B. maintain records of student disease immunization or a waiver of that requirement; and

C. provide instruction by a person possessing at least a high school diploma or its equivalent."

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SENATE BILL 374, AS AMENDED

# CHAPTER 63

**CHAPTER 63, LAWS 2001**

AN ACT

RELATING TO GAME AND FISH; PROVIDING CLARIFICATION ON REGISTRATION REQUIREMENTS AND SERVICE FEES; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 17-2A-3 NMSA 1978 (being Laws 1996, Chapter 89, Section 5, as amended) is amended to read:

"17-2A-3. HUNTING GUIDES AND OUTFITTERS.--

A. Effective April 1, 1997, it is unlawful to be a hunting guide or outfitter in New Mexico without being registered, except for a private landowner or his authorized agent who outfits or guides pursuant to a landowner permit issued by the department of game and fish for the landowner's property or for the landowner's shared private and public unit.

B. The state game commission shall adopt regulations by September 1, 1997 to govern the granting of non-interim registration, permits and certificates to hunting guides and outfitters and to regulate the operations and professional conduct of registered hunting guides and outfitters. Regulations shall be adopted in accordance with the following procedures and standards:

(1) the commission shall establish dates and locations for a public hearing and provide reasonable prior public notice of a hearing. A public hearing shall be held at a place within any quadrant of the state affected by the proposed regulation when the commission determines there is substantial public interest in holding a hearing in that quadrant;

(2) a hearing shall be held within six months of the date a proposed regulation is issued;

(3) notice of a hearing shall:

(a) include the date, time and location of the hearing;

(b) include a statement of the recommended action;

(c) include an indication of the location and availability of the public file on the regulation;

(d) indicate where and by what date written and oral comments and testimony may be received; and

(e) specify that the public record shall remain open for comments for thirty days after the date of the final hearing; and

(4) the commission shall make its decision and take action based upon relevant and reliable evidence.

C. No person shall be allowed to work as a registered hunting guide or outfitter in New Mexico:

(1) without being registered by the state game commission;

(2) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;

(3) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated; or

(4) if the person has been convicted of a felony.

D. The state game commission shall develop a point system for the suspension or revocation of a guide or outfitter registration. The point system shall be similar to the point system that governs individual hunting and fishing license privileges.

E. To be granted a registration to be a guide, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least eighteen years of age; and

(2) pass a written or oral examination approved by the department of game and fish at a date and time approved by the department.

F. A registered or interim registered guide shall work only under the supervision of a New Mexico registered or interim registered outfitter and in an area designated by the registered or interim registered outfitter.

G. The department of game and fish may provide a registration for a temporary emergency guide, provided the registration is limited to a maximum seven-day period and is granted only in emergency circumstances as determined by the department. The fee for a temporary emergency guide registration is ten dollars ($10.00).

H. To be granted a registration to be an outfitter, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least twenty-one years of age;

(2) have operated as a New Mexico registered guide for at least three years or have been granted an interim outfitter's registration;

(3) not be a convicted felon or have a history of violation of federal or state game and fish laws or regulations or federal or state guide or outfitter licensing or registration laws or regulations; and

(4) pass a written or oral examination approved by the department of game and fish at a date and time determined by the department.

I. A registered outfitter shall:

(1) provide proof of commercial liability insurance of at least five hundred thousand dollars ($500,000);

(2) responsibly supervise each registered guide working under his direction;

(3) provide a written contract for outfitting services, signed by the registered outfitter and identifying the outfitter's registration number, to each resident and nonresident who seeks to use the services of a registered outfitter;

(4) register with the taxation and revenue department and provide proof of that registration to the department of game and fish; and

(5) provide at least one registered guide or outfitter for every four or fewer resident or nonresident hunters who have contracted for an outfitter's guided services.

J. The department of game and fish shall provide to the taxation and revenue department a copy of each outfitter registration that is granted.

K. Except as provided in this subsection, no person shall be allowed to charge a processing or other fee to obtain for a resident or nonresident a license that is granted from a special drawing for a hunt on public lands pursuant to the provisions of Section 17-3-16 NMSA 1978, except that nothing in this subsection shall prohibit the department of game and fish from collecting an application fee. Persons involved in licensing services, booking agencies or license brokering that do not provide direct guide and outfitter services shall not be required to register with the department of game and fish and may charge a fee, other than the application fee for a license, for their services.

L. A New Mexico resident registered outfitter shall be a registered outfitter who is a resident as defined in Section 17-3-4 NMSA 1978. The state game commission shall adopt regulations that set forth additional requirements and that shall include at a minimum that a resident registered outfitter shall maintain a business address in New Mexico and, except as provided in Subsection Q of this section, derive at least fifty percent of his guiding or outfitting income from guiding or outfitting in New Mexico, as determined by gross receipts or corporate or individual income tax returns for the immediately preceding three years. M. The department of game and fish shall maintain for public distribution a list of New Mexico registered outfitters.

N. The annual registration fee for a registered guide in New Mexico is fifty dollars ($50.00) for a resident and one hundred dollars ($100) for a nonresident.

O. The annual registration fee to be a registered outfitter in New Mexico is five hundred dollars ($500) for either a resident or a nonresident.

P. Annual registration fees for guides and outfitters shall be deposited in the game protection fund.

Q. A resident interim registered or registered outfitter may apply for inactive status of his registration for any period in which he does not operate as an outfitter. The state game commission shall reactivate an outfitter registration at the request of the outfitter and upon proof that the outfitter complies with the provisions of this section and upon payment of the annual registration fee for the year the registration is being reinstated and payment of a reinstatement fee of not to exceed fifty dollars ($50.00).

R. The state game commission shall adopt by September 1, 1996 interim regulations, consistent to the greatest extent practicable with the provisions of this section, to provide for the granting of interim registrations to guides and outfitters. The commission shall issue interim registrations prior to mailing applications for 1997 licensed hunts to persons who qualify for interim registration and submit applications to the department of game and fish.

S. A person adversely affected by an action, other than a regulation, taken pursuant to the provisions of this section, including the denial, suspension or revocation of a registration, license, permit or certificate, may seek review of the action pursuant to the provisions of the Uniform Licensing Act.

T. A person adversely affected by a regulation adopted by the state game commission pursuant to this section may appeal to the court of appeals. All appeals shall be made upon the record at the hearing and shall be taken to the court of appeals within thirty days following the date of the action. The date of the action shall be the date of the filing of the regulation by the commission, pursuant to the provisions of the State Rules Act.

U. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

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

(3) otherwise not in accordance with law.

V. After a hearing and a showing of good cause by the appellant, a stay of a regulation being appealed may be granted:

(1) by the state game commission; or

(2) by the court of appeals if the state game commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

W. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."

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SENATE BILL 453

# CHAPTER 64

[DOUBLE CLICK HERE TO VIEW A PDF FILE OF CHAPTER 64]

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 2001".

## Section 2. DEFINITIONS.--As used in the General Appropriation Act of 2001:

[~~A. "activity" is a strategy or work process designed to achieve a common purpose with a given set of inputs, one or more of which constitute a program;~~]

B. "agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

[~~C. "efficiency measure" is a indicator of the cost of an activity in dollars or employee hours per unit of output or outcome;~~]

D. "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;

[~~E. "explanatory data" 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;~~]

F. "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;

[~~G. "full-time equivalent" or "FTE" means one or more authorized positions that together receive compensation for not more than two thousand eighty hours worked~~

~~in fiscal year 2002. 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;~~]

H. "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;

I. "interagency transfers" means revenue, other than internal service funds, legally transferred from one agency to another;

J. "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 2001;

K. "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 2001;

(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;

[~~L. "outcome measure" is an indicator of the accomplishments or results that occur because of services provided by a program and is a measure of the actual impact or public benefit of a program;~~

~~M. "output measure" is an indicator of the physical quantity of a service or product delivered by an activity or program;~~

~~N. "performance measure" means a quantitative or qualitative indicator used to assess a state agency's performance;~~

~~O. "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;~~

~~P. "quality measure" is an indicator 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;~~]

Q. "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;

[~~R. "target" means the expected level of performance of a program's performance measures;~~] and

S. "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-fifth 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" indicate an intergovernmental transfer and do not represent a portion of total state government appropriations. All information designated as "Totals" or "Subtotals" are provided for information and are not appropriations.

C. Amounts set out in Section 4 and Section 5 of the General Appropriation Act of 2001, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2002 for the objects expressed.

D. Unencumbered balances in agency accounts remaining at the end of fiscal year 2001 shall revert to the general fund by October 1, 2001, unless otherwise indicated in the General Appropriation Act of 2001 or otherwise provided by law.

E. Unencumbered balances in agency accounts remaining at the end of fiscal year 2002 shall revert to the general fund by October 1, 2002, unless otherwise indicated in the General Appropriation Act of 2001 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 2001, appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2002. If any other act of the first session of the forty-fifth 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 2001 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 2002, 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 2002, are not expected to meet appropriations from the general fund, then the department shall present a plan to the legislative finance committee that outlines the methods by which the administration proposes to address the deficit.~~]

I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, agencies whose revenue from unforeseen federal funds, from state board of finance loans, from revenue appropriated by other acts of the legislature, or from gifts, grants, donations, bequests, insurance settlements, refunds, or payments into revolving funds which exceed specifically appropriated amounts, may request budget increases from the state budget division. If approved by the state budget division, such money is appropriated. In approving a budget increase from unforeseen federal funds, the director of the state budget division shall advise the legislative finance committee as to the source of the federal funds and the source and amount of any matching funds required.

[~~J. For fiscal year 2002, 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 2001 or another act of the first session of the forty-fifth legislature provides for additional employees.~~

~~K. Except for gasoline credit cards used solely for operation of official vehicles and telephone credit cards used solely for official business, none of the appropriations contained in the General Appropriation Act of 2001 may be expended for payment of credit card invoices.~~]

L. To prevent unnecessary spending, expenditures from the General Appropriation Act of 2001 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 2001, the state budget division is specifically authorized to approve only those budgets that are in accordance with generally accepted accounting principles for the purpose of properly classifying other financing sources and uses, including interfund, intrafund and interagency transfers.

[~~N. No money appropriated in the General Appropriation Act of 2001 shall be used to promote the legalization or decriminalization of controlled substances.~~]

## Section 4. FISCAL YEAR 2002 APPROPRIATIONS.--

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| **A. LEGISLATIVE** | | | | | |
| LEGISLATIVE COUNCIL SERVICE: | | | | | |
| (1) Legislative maintenance department: | | | | | |
| (a) Personal services and employee benefits | 1,749.5 | | | | 1,749.5 |
| (b) Contractual services | 100.2 | | | | 100.2 |
| (c) Other | 932.1 | | | | 932.1 |
| Authorized FTE: 39.00 Permanent; 4.00 Temporary | | | | | |
| (2) Energy council dues: | 32.0 | | | | 32.0 |
| (3) Legislative retirement: | 167.0 | | | | 167.0 |
| Subtotal | 2,980.8 | | | | |
| TOTAL LEGISLATIVE | 2,980.8 | | | | 2,980.8 |

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| **B. JUDICIAL** | | | | | |

SUPREME COURT LAW LIBRARY:

(a) Personal services and

employee benefits 480.1 480.1

(b) Contractual services 312.6 312.6

(c) Other financing uses .2 .2

(d) Other 468.3 468.3

Authorized FTE: 8.00 Permanent

Subtotal 1,261.2

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

NEW MEXICO COMPILATION COMMISSION:

(a) Personal services and

employee benefits 157.1 157.1

(b) Contractual services 834.9 40.0 874.9

(c) Other financing uses .1 .1

(d) Other 140.9 30.0 170.9

Authorized FTE: 3.00 Permanent

Subtotal 1,203.0

| | | Other | Intrnl Svc |
|---|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| JUDICIAL STANDARDS COMMISSION: | | | | | |
| (a) Personal services and employee benefits | 241.0 | | | | 241.0 |
| (b) Contractual services | 21.9 | | | | 21.9 |
| (c) Other financing uses | 1.0 | | | | 1.0 |
| (d) Other | 90.2 | | | | 90.2 |
| Authorized FTE: 4.00 Permanent | | | | | |
| Subtotal | 354.1 | | | | |

| Item | General Fund | State Funds | Other Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| COURT OF APPEALS: | | | | | |
| (a) Personal services and employee benefits | 3,657.1 | | | | 3,657.1 |
| (b) Contractual services | 100.0 | | | | 100.0 |
| (c) Other financing uses | 1.1 | | | | 1.1 |
| (d) Other | 343.0 | | | | 343.0 |

Authorized FTE: 58.00 Permanent

Subtotal 4,101.2

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| SUPREME COURT: | | | | | |
| (a) Personal services and employee benefits | 1,774.6 | | | | 1,774.6 |
| (b) Contractual services | 96.4 | | | | 96.4 |
| (c) Other financing uses | .6 | | | | .6 |
| (d) Other | 182.0 | | | | 182.0 |

Authorized FTE: 29.00 Permanent

Subtotal 2,053.6

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| SUPREME COURT BUILDING COMMISSION: | | | | | |
| (a) Personal services and employee benefits | 374.8 | | | | 374.8 |

(b) Contractual services 62.8 62.8

(c) Other financing uses .3 .3

(d) Other 163.6 163.6

Authorized FTE: 12.00 Permanent

Subtotal 601.5

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

DISTRICT COURTS:

(1) First judicial district:

(a) Personal services and

employee benefits 3,424.2 179.4 148.6 3,752.2

(b) Contractual services 370.1 48.0 .3 418.4

(c) Other financing uses 2.0 .8 2.8

(d) Other 336.3 58.8 9.1 404.2

Authorized FTE: 65.50 Permanent; 5.50 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(2) Second judicial district:

(a) Personal services and

employee benefits 13,045.1 544.3 428.7 14,018.1

(b) Contractual services 295.5 65.5 2.9 363.9

(c) Other financing uses 5.3 .2 .2 5.7

(d) Other 1,454.3 167.3 51.6 1,673.2

Authorized FTE: 269.50 Permanent; 16.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(3) Third judicial district:

(a) Personal services and

employee benefits 2,575.2 33.6 122.2 2,731.0

(b) Contractual services 660.2 28.5 8.1 696.8

(c) Other 189.6 18.4 14.0 222.0

Authorized FTE: 51.00 Permanent; 4.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(4) Fourth judicial district:

(a) Personal services and

employee benefits 880.5 880.5

(b) Contractual services 3.0 3.0

(c) Other financing uses 22.0 22.0

(d) Other 104.2 104.2

Authorized FTE: 19.00 Permanent

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(5) Fifth judicial district:

(a) Personal services and

employee benefits 3,085.5 3,085.5

(b) Contractual services 183.0 57.0 240.0

(c) Other financing uses 1.3 1.3

(d) Other 400.6 3.0 403.6

Authorized FTE: 63.50 Permanent

| | General | Other State | Intrnl Svc Funds/Inter- | Federal |
|---|---|---|---|---|

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| (6) Sixth judicial district: | | | | | | |
| (a) Personal services and employee benefits | 924.6 | | | | | 924.6 |
| (b) Contractual services | 246.9 | | | | | 246.9 |
| (c) Other financing uses | .4 | | | | | .4 |
| (d) Other | 138.8 | | | | | 138.8 |
| Authorized FTE: 19.00 Permanent | | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| (7) Seventh judicial district: | | | | | | |
| (a) Personal services and employee benefits | 1,136.3 | | | | | 1,136.3 |
| (b) Contractual services | 68.1 | 8.0 | | | | 76.1 |
| (c) Other financing uses | .4 | | | | | .4 |
| (d) Other | 157.1 | | | | | 157.1 |
| Authorized FTE: 23.50 Permanent | | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (8) Eighth judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,084.7 | | | | 1,084.7 |
| (b) Contractual services | 381.7 | | 30.0 | | 411.7 |
| (c) Other financing uses | .4 | | | | .4 |
| (d) Other | 141.9 | | | | 141.9 |

Authorized FTE: 20.50 Permanent

The general fund appropriation to the eighth judicial district court in the contractual services category includes fifty-five thousand dollars ($55,000) for the Taos county teen court program.

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| (9) Ninth judicial district: | | | | | | |
| (a) Personal services and employee benefits | 1,302.2 | | 118.5 | | | 1,420.7 |
| (b) Contractual services | 137.0 | | 23.5 | | 34.9 | 195.4 |
| (c) Other financing uses | .5 | | | | | .5 |

(d) Other 251.6 1.5 13.6 266.7

Authorized FTE: 23.50 Permanent; 2.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(10) Tenth judicial district:

(a) Personal services and

employee benefits 446.5 446.5

(b) Contractual services 6.8 6.8

(c) Other financing uses 15.2 15.2

(d) Other 71.4 71.4

Authorized FTE: 9.10 Permanent

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(11) Eleventh judicial district:

(a) Personal services and

employee benefits 2,330.9 2,330.9

(b) Contractual services 255.0 81.4 336.4

(c) Other financing uses .8 .8

(d) Other 352.8 1.1 353.9

Authorized FTE: 46.50 Permanent

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(12) Twelfth judicial district:

(a) Personal services and

employee benefits 1,447.8 80.2 1,528.0

(b) Contractual services 55.9 26.5 132.5 214.9

(c) Other financing uses .5 .5

(d) Other 181.0 13.0 36.6 230.6

Authorized FTE: 28.50 Permanent; 1.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(13) Thirteenth judicial district:

(a) Personal services and

employee benefits 2,056.6 2,056.6

(b) Contractual services 57.3 51.0 59.3 167.6

(c) Other financing uses .8 .8

(d) Other 284.6 4.0 288.6

Authorized FTE: 43.00 Permanent

Subtotal 43,280.5

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

BERNALILLO COUNTY METROPOLITAN COURT:

(a) Personal services and

employee benefits 10,634.3 1,380.7 12,015.0

(b) Contractual services 1,093.4 422.0 1,515.4

(c) Other financing uses 4.5 4.5

(d) Other 1,909.1 201.1 2,110.2

Authorized FTE: 238.00 Permanent; 41.00 Term; 1.50 Temporary

Subtotal 15,645.1

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

DISTRICT ATTORNEYS:

(1) First judicial district:

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (a) Personal services and employee benefits | 2,620.4 | 106.0 | 440.3 | | 3,166.7 |
| (b) Contractual services | 19.2 | 14.6 | 57.0 | | 90.8 |
| (c) Other financing uses | | 1.0 | | | 1.0 |
| (d) Other | 185.7 | 2.4 | 93.3 | | 281.4 |

Authorized FTE: 51.50 Permanent; 9.50 Term

(2) Second judicial district:

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (a) Personal services and employee benefits | 10,785.7 | 448.6 | 158.6 | | 11,392.9 |
| (b) Contractual services | | 110.0 | | | 110.0 |
| (c) Other financing uses | | 4.3 | | | 4.3 |
| (d) Other | 1,060.7 | | | | 1,060.7 |

Authorized FTE: 228.00 Permanent; 19.50 Term

| | General | Other State | Intrnl Svc Funds/Inter- | Federal |
|---|---|---|---|---|

| Item | General Fund | Federal Funds | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Total |
|---|---|---|---|---|---|
| (3) Third judicial district: | | | | | |
| (a) Personal services and employee benefits | 2,314.5 | 12.3 | 33.8 | 511.0 | 2,871.6 |
| (b) Contractual services | 30.5 | 6.1 | 81.6 | | 118.2 |
| (c) Other financing uses | 1.0 | | | | 1.0 |
| (d) Other | 180.6 | 2.8 | .2 | 51.5 | 235.1 |

Authorized FTE: 43.50 Permanent; 10.00 Term

| Item | General Fund | Federal Funds | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Total |
|---|---|---|---|---|---|
| (4) Fourth judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,633.1 | 179.6 | | | 1,812.7 |
| (b) Contractual services | 52.0 | | | | 52.0 |
| (c) Other financing uses | 4.4 | | | | 4.4 |
| (d) Other | 189.7 | 2.7 | | | 192.4 |

Authorized FTE: 30.50 Permanent; .50 Term

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (5) Fifth judicial district: | | | | | |
| (a) Personal services and employee benefits | 2,262.8 | 32.1 | 93.6 | | 2,388.5 |
| (b) Contractual services | 60.5 | | | | 60.5 |
| (c) Other financing uses | .9 | | | | .9 |
| (d) Other | 298.9 | | | | 298.9 |
| Authorized FTE: 47.00 Permanent; 2.00 Term | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Federal Funds | Total |
|---|---|---|---|---|---|
| (6) Sixth judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,175.4 | 263.3 | 119.9 | | 1,558.6 |
| (b) Contractual services | 55.3 | | | | 55.3 |
| (c) Other | 127.3 | 5.5 | 11.2 | | 144.0 |
| Authorized FTE: 23.00 Permanent; 5.00 Term | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Federal Funds | Total |
|---|---|---|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (7) Seventh judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,401.2 | | | | 1,401.2 |
| (b) Contractual services | 48.0 | | | | 48.0 |
| (c) Other financing uses | .6 | | | | .6 |
| (d) Other | 143.1 | | | | 143.1 |
| Authorized FTE: 30.00 Permanent | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Federal Funds | Total |
|---|---|---|---|---|---|
| (8) Eighth judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,559.8 | | | | 1,559.8 |
| (b) Contractual services | 11.7 | | | | 11.7 |
| (c) Other financing uses | .9 | | | | .9 |
| (d) Other | 219.3 | | | | 219.3 |
| Authorized FTE: 29.00 Permanent | | | | | |

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (9) Ninth judicial district: | | | | | |
| (a) Personal services and employee benefits | 1,468.2 | | | | 1,468.2 |
| (b) Contractual services | 3.2 | 4.0 | | | 7.2 |
| (c) Other financing uses | .7 | | | | .7 |
| (d) Other | 195.8 | 12.3 | | | 208.1 |
| Authorized FTE: 30.00 Permanent; 1.00 Term | | | | | |

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (10) Tenth judicial district: | | | | | |
| (a) Personal services and employee benefits | 604.9 | | | | 604.9 |
| (b) Contractual services | 3.2 | | | | 3.2 |
| (c) Other financing uses | .2 | | | | .2 |
| (d) Other | 59.9 | | | | 59.9 |

Authorized FTE: 10.00 Permanent

[~~The general fund appropriations to the tenth judicial district attorney include sixty-eight thousand five hundred dollars ($68,500) for litigation liabilities.~~]

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (11) Eleventh judicial district--Farmington: | | | | | |
| (a) Personal services and employee benefits | 1,792.8 | 208.2 | 48.1 | | 2,049.1 |
| (b) Contractual services | | 4.2 | | | 4.2 |
| (c) Other financing uses | .9 | | | | .9 |
| (d) Other | 140.1 | 1.3 | 13.5 | | 154.9 |

Authorized FTE: 40.50 Permanent; 6.80 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (12) Eleventh judicial district--Gallup: | | | | | |
| (a) Personal services and employee benefits | 1,283.3 | 82.0 | | | 1,365.3 |
| (b) Contractual services | 14.0 | | | | 14.0 |

(c) Other financing uses .4 .4

(d) Other 102.8 102.8

Authorized FTE: 27.00 Permanent; 1.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(13) Twelfth judicial district:

(a) Personal services and

employee benefits 1,659.1 16.3 86.6 287.4 2,049.4

(b) Contractual services 4.5 7.3 5.1 17.9 34.8

(c) Other financing uses .8 .8

(d) Other 184.2 1.1 3.8 6.9 196.0

Authorized FTE: 34.00 Permanent; 9.00 Term

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

(14) Thirteenth judicial district:

(a) Personal services and

employee benefits 2,041.7 2,041.7

(b) Contractual services 29.5 29.5

(c) Other financing uses .9 .9

(d) Other 211.8 211.8

Authorized FTE: 47.00 Permanent

Subtotal 39,895.4

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

ADMINISTRATIVE OFFICE OF THE DISTRICT

ATTORNEYS:

(a) Personal services and

employee benefits 476.2 476.2

(b) Contractual services 3.5 3.5

(c) Other financing uses .2 .2

(d) Other 514.5 220.0 734.5

Authorized FTE: 8.00 Permanent

[~~The general fund appropriation to the administrative office of the district attorneys includes one hundred forty thousand dollars ($140,000) to expand the children's safe house network statewide.~~]

Subtotal 1,214.4

TOTAL JUDICIAL 99,947.3 4,944.1 2,667.5 2,051.1 109,610.0

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| **C. GENERAL CONTROL** | | | | | |
| ATTORNEY GENERAL: | | | | | |
| (1) Regular operations: | | | | | |
| (a) Personal services and | | | | | |
| employee benefits | 8,598.7 | 48.0 | | | 8,646.7 |
| (b) Contractual services | 658.8 | | | | 658.8 |
| (c) Other | 939.1 | 500.3 | | | 1,439.4 |

Authorized FTE: 141.00 Permanent; 1.00 Term

The internal service funds/interagency transfers appropriations to the regular operations of the attorney general include forty-eight thousand dollars ($48,000) from the medicaid fraud division.

All revenue generated from antitrust cases through the attorney general on behalf of the state, political subdivisions or private citizens shall revert to the general fund.

The other state funds appropriation to the regular operations of the attorney general includes five hundred thousand three hundred dollars ($500,300) from the consumer settlement fund.

| | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| (2) Medicaid fraud: | | | | | |
| (a) Personal services and employee benefits | 210.5 | 581.8 | | | 792.3 |
| (b) Contractual services | 5.5 | 16.5 | | | 22.0 |
| (c) Other financing uses | | 48.0 | | | 48.0 |
| (d) Other | 44.8 | 134.3 | | | 179.1 |
| Authorized FTE: 13.00 Term | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| (3) Guardianship services: | | | | | | |
| (a) Personal services and employee benefits | 98.4 | | | | | 98.4 |
| (b) Contractual services | 1,341.7 | | | | | 1,341.7 |
| (c) Other | 12.9 | | | | | 12.9 |
| Authorized FTE: 1.50 Permanent | | | | | | |
| Subtotal | 13,239.3 | | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| STATE AUDITOR: | | | | | |
| (a) Personal services and employee benefits | 1,565.4 | 280.0 | | | 1,845.4 |
| (b) Contractual services | 110.3 | | | | 110.3 |
| (c) Other financing uses | .6 | | | | .6 |
| (d) Other | 248.5 | 172.8 | | | 421.3 |
| Authorized FTE: 30.00 Permanent; 1.00 Term | | | | | |
| Subtotal | 2,377.6 | | | | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| STATE INVESTMENT COUNCIL: | | | | | | |
| (a) Personal services and employee benefits | 1,669.2 | | | | | 1,669.2 |
| (b) Contractual services | 14,318.4 | | | | | 14,318.4 |
| (c) Other financing uses | 1,120.4 | | | | | 1,120.4 |
| (d) Other | 470.6 | | | | | 470.6 |

Authorized FTE: 23.00 Permanent

The other state funds appropriation to the state investment council in the contractual services category includes twelve million five hundred sixteen thousand seven hundred dollars ($12,516,700) to be used only for investment manager fees.

The other state funds appropriation to the state investment council in the other financing uses category includes one million one hundred twenty thousand dollars ($1,120,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments. Unexpended or unencumbered balances in the state board of finance remaining at the end of fiscal year 2002 from this appropriation shall revert to the state investment council.

Subtotal 17,578.6

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| DEPARTMENT OF FINANCE AND ADMINISTRATION: | | | | | |
| (1) Dues and membership fees/special appropriations: | | | | | |
| (a) National association of state budget officers | 9.3 | | | | 9.3 |
| (b) Council of state governments | 74.8 | | | | 74.8 |
| (c) Western interstate commission for higher education | 99.0 | | | | 99.0 |
| (d) Education commission of the | | | | | |

states 43.7 43.7

(e) Rocky Mountain corporation

for public broadcasting 13.1 13.1

(f) National conference of state

legislatures 93.1 93.1

(g) Western governors' association 36.0 36.0

(h) Cumbres and Toltec scenic

railroad commission 10.0 10.0

(i) Commission on

intergovernmental relations 6.2 6.2

(j) Governmental accounting

standards board 15.6 15.6

(k) National center for state

courts 75.8 75.8

(l) National governors'

association 54.0 54.0

(m) Citizens review board 310.0 108.6 418.6

(n) Emergency water fund 45.0 45.0

(o) Fiscal agent contract 750.0 2,520.0 3,270.0

(p) New Mexico water resources

association 6.6 6.6

(q) Big brothers and big sisters

programs 945.0 945.0

(r) Enhanced emergency 911 fund 400.0 2,900.0 3,300.0

(s) Community development block

grant revolving loan fund 391.5 160.0 551.5

(t) Emergency 911 income 100.0 3,900.0 4,000.0

(u) Emergency 911 reserve 500.0 500.0

(v) Governor's career development

conference 87.0 87.0

(w) Community development block

grant programs 20,000.0 20,000.0

(x) New Mexico community

assistance program 251.1 251.1

(y) Emergency 911 database

network surcharge 2,506.0 2,983.0 5,489.0

(z) State planning districts 375.0 375.0

(aa) Emergency 911 principal

and interest 776.0 776.0

(bb) DWI grants 11,862.0 11,862.0

(cc) Leasehold community assistance 138.0 138.0

(dd) Acequia and community ditch

program 30.0 30.0

(ee) Board of Finance audit of

state treasurer 52.0 52.0

[~~(ff) Intertribal ceremonial~~

~~marketing and promotion 125.0 125.0~~

~~(gg) Individual development~~

~~accounts program 150.0 150.0~~

~~(hh) Alamo Indian arts and crafts~~

~~center 50.0 50.0~~

~~(ii) Home-based disability and~~

~~medical services for Indian~~

~~children 100.0 100.0~~]

(jj) School to work 3,000.0 3,000.0

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 2002. 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 2002 exceed two hundred fifty thousand dollars ($250,000), any additional repayments shall be transferred to the general fund.

[~~The general fund appropriation to the big brothers and big sisters programs includes fifty thousand dollars ($50,000) to support the big brothers and big sisters programs in Chaves and Eddy counties.~~]

Unexpended or unencumbered balances remaining in the governor's career development conference fund at the end of fiscal year 2002 shall not revert to the general fund.

Subtotal 56,052.4

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| PUBLIC SCHOOL INSURANCE AUTHORITY: | | | | | |
| (1) Operations division: | | | | | |
| (a) Personal services and employee benefits | 595.5 | | | | 595.5 |
| (b) Contractual services | 159.7 | | | | 159.7 |
| (c) Other financing uses | .3 | | | | .3 |
| (d) Other | 202.3 | | | | 202.3 |
| Authorized FTE: 10.00 Permanent | | | | | |
| (2) Benefits division: | | | | | |

(a) Contractual services 149,773.5 149,773.5

(b) Other financing uses 478.9 478.9

(3) Risk division:

(a) Contractual services 23,928.3 23,928.3

(b) Other financing uses 478.9 478.9

Subtotal 175,617.4

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

RETIREE HEALTH CARE AUTHORITY:

(1) Administration division:

(a) Personal services and

employee benefits 902.9 902.9

(b) Contractual services 396.3 396.3

(c) Other financing uses .4 .4

(d) Other 712.4 712.4

Authorized FTE: 18.00 Permanent

(2) Benefits division:

(a) Contractual services 106,306.0 106,306.0

(b) Other financing uses 2,012.0 2,012.0

Subtotal 110,330.0

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| EDUCATIONAL RETIREMENT BOARD: | | | | | |
| (a) Personal services and employee benefits | 2,055.1 | | | | 2,055.1 |
| (b) Contractual services | 6,309.4 | | | | 6,309.4 |
| (c) Other financing uses | 1.0 | | | | 1.0 |
| (d) Other | 1,112.1 | | | | 1,112.1 |

Authorized FTE: 48.00 Permanent

The other state funds appropriation to the educational retirement board in the contractual services category includes six million one hundred seventy-nine thousand two hundred dollars ($6,179,200) to be used only for investment manager fees.

The other state funds appropriation to the educational retirement board in the other category includes two hundred fifty thousand dollars ($250,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments. Unexpended or unencumbered balances in the state board of finance remaining at the end of fiscal year 2002 from this appropriation shall revert to the educational retirement board fund.

The educational retirement board is authorized an additional three permanent FTE for a total of forty-eight, contingent on House Bill 152, Senate Bill 716 or similar legislation of the first session of the forty-fifth legislature, becoming law.

Subtotal 9,477.6

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| CRIMINAL AND JUVENILE JUSTICE | | | | | |
| COORDINATING COUNCIL: | 275.0 | | | | 275.0 |
| PUBLIC DEFENDER: | | | | | |
| (a) Personal services and | | | | | |
| employee benefits | 14,761.1 | | | | 14,761.1 |
| (b) Contractual services | 8,421.5 | | 150.0 | | 8,571.5 |
| (c) Other financing uses | 5.7 | | | | 5.7 |
| (d) Other | 4,373.3 | | 106.1 | | 4,479.4 |

Authorized FTE: 310.00 Permanent

Unexpended or unencumbered balances in the public defender department remaining at the end of fiscal year 2002 from appropriations made from the general fund shall not revert.

Subtotal 27,817.7

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| GOVERNOR: | | | | | |

(a) Personal services and

employee benefits 1,580.8 1,580.8

(b) Contractual services 55.0 55.0

(c) Other financing uses .6 .6

(d) Other 389.3 389.3

Authorized FTE: 27.00 Permanent

Subtotal 2,025.7

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| LIEUTENANT GOVERNOR: | | | | | |
| (a) Personal services and employee benefits | 374.5 | | | | 374.5 |
| (b) Contractual services | 8.2 | | | | 8.2 |
| (c) Other financing uses | .2 | | | | .2 |
| (d) Other | 57.2 | | | | 57.2 |
| Authorized FTE: 6.00 Permanent | | | | | |
| Subtotal | 440.1 | | | | |

| | General | Other State | Intrnl Svc Funds/Inter- | Federal |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Total |
|---|---|---|---|---|
| INFORMATION TECHNOLOGY MANAGEMENT | | | | |
| OFFICE: | | | | |
| (a) Personal services and | | | | |
| employee benefits 590.8 | | | | 590.8 |
| (b) Contractual services 25.9 | | | | 25.9 |
| (c) Other financing uses .3 | | | | .3 |
| (d) Other 101.6 | | | | 101.6 |
| Authorized FTE: 8.00 Permanent | | | | |
| Subtotal 718.6 | | | | |

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| PUBLIC EMPLOYEES RETIREMENT ASSOCIATION: | | | | | |
| (1) Administrative division: | | | | | |
| (a) Personal services and | | | | | |
| employee benefits 2,905.4 | | | | | 2,905.4 |
| (b) Contractual services 14,130.9 | | | | | 14,130.9 |
| (c) Other financing uses 1,151.2 | | | | | 1,151.2 |

(d) Other 1,133.7 1,133.7

Authorized FTE: 59.00 Permanent

The other state funds appropriation to the administrative division of the public employees retirement association in the contractual services category includes thirteen million five hundred fourteen thousand dollars ($13,514,000) to be used only for investment manager fees.

The other state funds appropriation to the administrative division of the public employees retirement association in the other financing uses category includes one million one hundred fifty thousand dollars ($1,150,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon monthly assessments. Unexpended or unencumbered balances in the state board of finance remaining at the end of fiscal year 2002 from this appropriation shall revert to the public employees retirement association income fund.

(2) Property management:

(a) Personal services and

employee benefits 580.1 580.1

(b) Contractual services 20.0 20.0

(c) Other financing uses .4 .4

(d) Other 816.8 816.8

Authorized FTE: 21.00 Permanent

(3) Deferred compensation:

(a) Personal services and

employee benefits 52.2 52.2

(b) Contractual services 10.0 10.0

(c) Other 17.6 17.6

Authorized FTE: 1.00 Permanent

Subtotal 20,818.3

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| STATE COMMISSION OF PUBLIC RECORDS: | | | | | |
| (a) Personal services and employee benefits | 1,536.4 | | | | 1,536.4 |
| (b) Contractual services | 36.5 | 6.5 | | | 43.0 |
| (c) Other financing uses | .7 | | | | .7 |
| (d) Other | 299.9 | 115.9 | | | 415.8 |
| Authorized FTE: 33.50 Permanent; 1.50 Term | | | | | |
| Subtotal | 1,995.9 | | | | |

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| SECRETARY OF STATE: | | | | | |
| (a) Personal services and | | | | | |

employee benefits 1,638.8 1,638.8

(b) Contractual services 106.3 106.3

(c) Other 943.2 943.2

Authorized FTE: 37.00 Permanent; 1.00 Temporary

[~~The general fund appropriation to the secretary of state in the other category includes fifty thousand dollars ($50,000) for the Native American voter education program.~~]

Subtotal 2,688.3

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| PERSONNEL BOARD: | | | | | |
| (a) Personal services and employee benefits | 3,198.3 | | | | 3,198.3 |
| (b) Contractual services | 68.7 | | | | 68.7 |
| (c) Other financing uses | 1.3 | | | | 1.3 |
| (d) Other | 375.2 | | | | 375.2 |

Authorized FTE: 66.50 Permanent

Subtotal 3,643.5

| | General Fund | Other State Funds | Intrnl Svc Funds/Inter- | Federal Funds |
|---|---|---|---|---|

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| STATE TREASURER: | | | | | | |
| (a) Personal services and employee benefits | 2,717.5 | | 35.0 | | | 2,752.5 |
| (b) Contractual services | 74.0 | | | | | 74.0 |
| (c) Other financing uses | .7 | | | | | .7 |
| (d) Other | 585.4 | | | | | 585.4 |
| Authorized FTE: 48.50 Permanent | | | | | | |
| Subtotal | 3,412.6 | | | | | |
| TOTAL GENERAL CONTROL | 60,046.3 | 160,684.5 | 203,802.2 | 23,975.6 | 448,508.6 | |

| Item | General Fund | State Funds | Other Funds/Inter-Agency Trnsf | Intrnl Svc Funds | Federal Funds | Total |
|---|---|---|---|---|---|---|
| **D. COMMERCE AND INDUSTRY** | | | | | | |
| BOARD OF EXAMINERS FOR ARCHITECTS: | 302.5 | | | | | 302.5 |
| Authorized FTE: 4.00 Permanent | | | | | | |
| BORDER AUTHORITY: | | | | | | |
| (a) Personal services and employee benefits | 141.1 | | 32.5 | | | 173.6 |

(b) Contractual services 7.4 7.4

(c) Other financing uses .1 .1

(d) Other 55.7 55.7

Authorized FTE: 3.00 Permanent

Subtotal 236.8

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

REGULATION AND LICENSING DEPARTMENT:

(1) New Mexico state board of public

accountancy: 438.4 438.4

Authorized FTE: 5.00 Permanent

(2) Board of acupuncture and oriental medicine: 167.4 167.4

Authorized FTE: 1.00 Permanent

(3) New Mexico athletic commission: 143.4 143.4

Authorized FTE: 1.80 Permanent

(4) Athletic trainer practice board: 24.2 24.2

Authorized FTE: .20 Permanent

(5) Counseling and therapy practice board: 400.6 400.6

Authorized FTE: 5.00 Permanent

(6) Chiropractic board: 130.0 130.0

Authorized FTE: 1.40 Permanent

(7) Board of barbers and cosmetologists: 540.6 540.6

Authorized FTE: 7.00 Permanent

(8) New Mexico board of dental health: 299.9 299.9

Authorized FTE: 3.00 Permanent

(9) Nutrition and dietetics practice board: 23.9 23.9

Authorized FTE: .20 Permanent

(10) Board of landscape architects: 33.1 33.1

Authorized FTE: .30 Permanent

(11) Interior design board: 36.1 36.1

Authorized FTE: .30 Permanent

(12) Board of massage therapy: 184.7 184.7

Authorized FTE: 2.15 Permanent

(13) Board of nursing home administrators: 40.5 40.5

Authorized FTE: .55 Permanent

(14) Board of examiners for occupational therapy: 59.9 59.9

Authorized FTE: .60 Permanent

(15) Board of osteopathic medical examiners: 58.4 58.4

Authorized FTE: .45 Permanent

(16) Board of pharmacy: 1,213.8 1,213.8

Authorized FTE: 13.00 Permanent

(17) Physical therapists' licensing board: 127.3 127.3

Authorized FTE: 1.40 Permanent

(18) Board of podiatry: 23.8 23.8

Authorized FTE: .25 Permanent

(19) Advisory board of private investigators and

polygraphers: 169.6 169.6

Authorized FTE: 1.50 Permanent

(20) New Mexico state board of psychologist

examiners: 156.4 156.4

Authorized FTE: 1.45 Permanent

(21) New Mexico real estate commission: 868.2 868.2

Authorized FTE: 9.80 Permanent

(22) Advisory board of respiratory care

practioners: 59.1 59.1

Authorized FTE: .75 Permanent

(23) Speech language pathology, audiology and

hearing aid dispensing practices board: 120.1 120.1

Authorized FTE: 1.80 Permanent

(24) Board of thanatopractice: 103.0 103.0

Authorized FTE: .85 Permanent

(25) Board of social work examiners: 301.6 301.6

Authorized FTE: 3.00 Permanent

(26) Real estate recovery fund: 50.0 50.0

(27) Real estate appraisers board: 129.4 129.4

Authorized FTE: 1.50 Permanent

(28) Board of optometry: 77.3 77.3

Authorized FTE: .70 Permanent

Subtotal 5,980.7

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| PUBLIC REGULATION COMMISSION: | | | | | |
| (1) Administrative services division: | | | | | |
| (a) Personal services and employee benefits | 3,985.6 | 50.0 | 135.0 | | 4,170.6 |
| (b) Contractual services | 42.0 | | | | 42.0 |
| (c) Other | 390.3 | 380.0 | | | 770.3 |

Authorized FTE: 81.00 Permanent

The internal service funds/interagency transfers appropriations to the administrative services division of the public regulation commission include one hundred thirty-five thousand dollars ($135,000) from the patient's compensation fund, two hundred fifty thousand dollars ($250,000) from the fire protection fund, forty thousand dollars ($40,000) from the title insurance maintenance fund, forty thousand dollars ($40,000) from the reproduction funds and fifty thousand dollars ($50,000) from the insurance fraud fund.

The other state funds appropriations to the administrative services division of the public regulation commission include fifty thousand dollars ($50,000) from the insurance licensee continuing education

fund.

(2) Consumer relations division:

(a) Personal services and

employee benefits 512.7 512.7

(b) Contractual services 2.4 2.4

(c) Other 70.9 70.9

Authorized FTE: 12.00 Permanent

(3) Insurance division:

(a) Personal services and

employee benefits 2,625.2 2,231.6 4,856.8

(b) Contractual services 98.5 455.9 5.0 559.4

(c) Other 467.6 11,649.5 24.5 12,141.6

Authorized FTE: 113.00 Permanent

The other state funds appropriations to the insurance division of the public regulation commission for the office of the state fire marshal include one million one hundred eighty thousand seven hundred dollars ($1,180,700) from the fire protection fund; and fifty thousand dollars ($50,000) from the firefighter training academy use fee fund to defray the operating and capital costs.

The other state funds appropriations to the insurance division of the public regulation commission for the firefighter training academy include eight hundred ninety-eight thousand dollars ($898,000) from the fire protection fund.

The other state funds appropriations to the insurance division for the insurance fraud bureau of the public regulation commission include eight hundred eighty-nine thousand dollars ($889,000) from the insurance fraud fund.

The other state funds appropriations to the insurance division of the public regulation commission include ten million three hundred thirty-nine thousand dollars ($10,339,000) from the patient's compensation fund.

The other state funds appropriations to the insurance division of the public regulation commission for the title insurance bureau include two hundred fifty-five thousand three hundred dollars ($255,300) from the title insurance maintenance fund.

(4) Legal division:

(a) Personal services and

employee benefits 1,137.4 1,137.4

(b) Contractual services 3.4 3.4

(c) Other 79.0 79.0

Authorized FTE: 16.00 Permanent

(5) Transportation division:

(a) Personal services and

employee benefits 886.5 120.0 1,006.5

(b) Contractual services 4.1 4.1

(c) Other 159.6 159.6

Authorized FTE: 21.00 Permanent

(6) Utility division:

(a) Personal services and

employee benefits 1,575.2 1,575.2

(b) Contractual services 499.2 499.2

(c) Other 149.0 149.0

Authorized FTE: 26.00 Permanent

Subtotal 27,740.1

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| NEW MEXICO BOARD OF MEDICAL EXAMINERS: | 900.6 | | | | 900.6 |

Authorized FTE: 11.00 Permanent

BOARD OF NURSING: 951.9 951.9

Authorized FTE: 10.00 Permanent

[~~The other state funds appropriation to the board of nursing includes fifty thousand dollars ($50,000) to contract with the New Mexico health policy commission to design~~

~~and implement a program to address the crisis in availability of nursing services due to a critical shortage of qualified nurses.~~]

Subtotal 951.9

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| NEW MEXICO STATE FAIR: | | | | | |
| (a) Personal services and employee benefits | 5,503.8 | | | | 5,503.8 |
| (b) Contractual services | 2,969.5 | | | | 2,969.5 |
| (c) Other financing uses | 1.2 | | | | 1.2 |
| (d) Other | 5,483.9 | | | | 5,483.9 |
| Authorized FTE: 43.00 Permanent; 20.00 Term | | | | | |

Subtotal 13,958.4

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS: | 491.9 | | | | 491.9 |

Authorized FTE: 6.00 Permanent

GAMING CONTROL BOARD: 4,394.1 4,394.1

Authorized FTE: 57.00 Permanent

STATE RACING COMMISSION:

(a) Personal services and

employee benefits 870.8 870.8

(b) Contractual services 469.2 469.2

(c) Other financing uses .4 .4

(d) Other 204.6 204.6

Authorized FTE: 15.50 Permanent; 1.70 Temporary

Subtotal 1,545.0

NEW MEXICO APPLE
COMMISSION: 22.5 22.5

BOARD OF VETERINARY MEDICINE: 223.8 223.8

Authorized FTE: 2.00 Permanent

BICYCLE RACING
COMMISSION: 50.0 50.0

Authorized FTE: 1.00 Term

TOTAL COMMERCE AND
INDUSTRY 18,904.5 37,229.3 515.0 149.5 56,798.3

| | **Other** | **Intrnl Svc** |
|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| **E. AGRICULTURE, ENERGY AND NATURAL RESOURCES** | | | | | |
| NEW MEXICO LIVESTOCK BOARD: | | | | | |
| (a) Personal services and employee benefits | 363.3 | 2,554.9 | 349.0 | | 3,267.2 |
| (b) Contractual services | 18.2 | 267.6 | 10.2 | | 296.0 |
| (c) Other | 218.2 | 793.9 | 151.3 | | 1,163.4 |

Authorized FTE: 82.00 Permanent

The general fund appropriation to the New Mexico livestock board for its meat inspection program, including administrative costs, is contingent on a dollar-for-dollar match of federal funds for that program.

Subtotal 4,726.6

| Item | General Fund | State Funds | Other Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| DEPARTMENT OF GAME AND FISH: | | | | | |
| (1) Game protection fund: | | | | | |
| (a) Personal services and employee benefits | 60.4 | 10,466.3 | 4,336.3 | | 14,863.0 |

(b) Contractual services 11.7 1,727.0 505.8 2,244.5

(c) Other financing uses 350.0 350.0

(d) Other 31.7 6,005.6 2,349.3 8,386.6

Authorized FTE: 256.00 Permanent; 11.00 Term; 9.50 Temporary

[~~The appropriations to the game protection fund of the department of game and fish include three thousand eight hundred dollars ($3,800) from the general fund, six hundred fifty-seven thousand two hundred dollars ($657,200) from internal service funds/interagency transfers and two hundred seventy-two thousand three hundred dollars ($272,300) from federal funds for a ten percent salary increase for employees who are classified under the wildlife series designation.~~]

(2) Sikes Act fund:

(a) Personal services and

employee benefits 70.4 70.4

(b) Contractual services 25.0 25.0

(c) Other 1,327.9 1,327.9

Authorized FTE: 1.00 Term

[~~The internal service funds/interagency transfers appropriations to the Sikes Act fund of the department of game and fish include six thousand four hundred dollars ($6,400) for a ten percent salary increases for employees who are classified under the wildlife series designation.~~]

(3) Big game enhancement license fund:

(a) Personal services and

employee benefits 5.6 6.4 12.0

(b) Contractual services 236.0 118.0 354.0

(c) Other 130.4 66.0 196.4

(4) Share with wildlife program: 72.2 72.2

(5) Endangered species program:

(a) Personal services and

employee benefits 85.4 180.8 266.2

(b) Contractual services 83.5 20.0 93.2 196.7

(c) Other 39.2 82.9 122.1

Authorized FTE: 5.00 Permanent

The general fund appropriations to the endangered species program of the department of game and fish include one hundred nineteen thousand dollars ($119,000) that require a one-for-three dollar match of federal funds for that program.

Subtotal 28,487.0

COMMISSIONER OF PUBLIC LANDS:

(a) Personal services and

employee benefits 7,580.3 7,580.3

(b) Contractual services 692.8 692.8

(c) Other financing uses 675.5 675.5

(d) Other 2,057.9 2,057.9

Authorized FTE: 152.00 Permanent; 4.00 Temporary

Subtotal 11,006.5

ORGANIC COMMODITY COMMISSION:

(a) Personal services and

employee benefits 111.9 42.6 154.5

(b) Contractual services 27.5 27.5

(c) Other 41.7 10.3 52.0

Authorized FTE: 3.50 Permanent

Subtotal 234.0

TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES 1,092.7 14,675.8 20,086.4 8,599.2 44,454.1

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| **F. HEALTH, HOSPITALS AND HUMAN SERVICES** | | | | | |
| COMMISSION ON THE STATUS OF WOMEN: | | | | | |
| (a) Personal services and employee benefits | 304.0 | 99.4 | | | 403.4 |
| (b) Contractual services | 16.9 | 812.1 | | | 829.0 |
| (c) Other financing uses | .2 | .2 | | | |
| (d) Other | 115.4 | 288.5 | | | 403.9 |

Authorized FTE: 7.00 Permanent; 2.00 Term

The internal services funds/interagency transfers appropriations to the commission on the status of women include one million two hundred thousand dollars ($1,200,000) for a program directed at workforce development for adult women in accordance with the maintenance-of-effort requirements from the temporary assistance for needy families block grant program for the state of New Mexico.

Subtotal 1,636.5

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| OFFICE OF AFRICAN AMERICAN AFFAIRS: | | | | | |
| (a) Contractual services | 68.0 | | | | 68.0 |
| (b) Other | 32.0 | | | | 32.0 |
| Subtotal | 100.0 | | | | |
| COMMISSION FOR DEAF AND HARD-OF-HEARING | | | | | |
| PERSONS: | | | | | |
| (a) Personal services and | | | | | |
| employee benefits | 319.8 | 43.2 | 47.5 | 410.5 | |
| (b) Contractual services | 48.2 | 2.0 | 2.0 | 52.2 | |
| (c) Other financing uses | .3 | .1 | .4 | | |
| (d) Other | 107.5 | 19.7 | 27.5 | 154.7 | |

Authorized FTE: 7.00 Permanent; 2.00 Term

Subtotal 617.8

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| MARTIN LUTHER KING, JR. COMMISSION: | | | | | |
| (a) Personal services and employee benefits | 93.8 | | | | 93.8 |
| (b) Contractual services | 13.3 | | | | 13.3 |
| (c) Other financing uses | .1 | | | | .1 |
| (d) Other | 70.4 | | | | 70.4 |
| Authorized FTE: 2.00 Permanent | | | | | |
| Subtotal | 177.6 | | | | |
| COMMISSION FOR THE BLIND: | | | | | |
| (a) Personal services and employee benefits | 759.9 | 428.0 | 15.1 | 2,188.6 | 3,391.6 |
| (b) Contractual services | 43.2 | 24.3 | .9 | 124.4 | 192.8 |
| (c) Other financing uses | 16.2 | 9.1 | .3 | 46.9 | 72.5 |
| (d) Other | 690.9 | 389.1 | 13.7 | 1,989.8 | 3,083.5 |
| Authorized FTE: 102.00 Permanent; 9.00 Term; 1.70 Temporary | | | | | |
| Subtotal | 6,740.4 | | | | |

NEW MEXICO OFFICE OF INDIAN AFFAIRS:

(a) Personal services and

employee benefits 432.0 121.6 553.6

(b) Contractual services 21.2 2.0 23.2

(c) Other 1,462.9 1,199.1 2,662.0

Authorized FTE: 10.00 Permanent; 3.00 Term

[~~The general fund appropriation to the New Mexico office of Indian affairs in the other category includes two hundred thousand dollars ($200,000) for emergency management services in San Juan and McKinley counties; one hundred thousand dollars ($100,000) for domestic violence counseling in the communities of Crownpoint and Shiprock; twenty-eight thousand dollars ($28,000) for substance abuse counseling, including counseling provided by traditional practioners and counselors, for the Cudeii chapter house; and fifty thousand dollars ($50,000) for public education and outreach to individuals and families who may be victims of radiation exposure from uranium mining.~~]

Subtotal 3,238.8

| **Item** | **General Fund** | **Other State Funds** | **Intrnl Svc Funds/Inter-Agency Trnsf** | **Federal Funds** | **Total** |
|---|---|---|---|---|---|

WORKERS' COMPENSATION ADMINISTRATION:

(1) Operations division:

(a) Personal services and

employee benefits 3,670.1 3,670.1

(b) Contractual services 590.7 590.7

(c) Other financing uses 7.9 7.9

(d) Other 933.1 933.1

Authorized FTE: 73.00 Permanent

(2) Safety and fraud division:

(a) Personal services and

employee benefits 2,658.4 2,658.4

(b) Contractual services 9.3 9.3

(c) Other financing uses 6.6 6.6

(d) Other 412.9 412.9

Authorized FTE: 60.00 Permanent

Subtotal 8,289.0

GOVERNOR'S COMMITTEE ON CONCERNS OF THE

HANDICAPPED:

(a) Personal services and

employee benefits 361.5 77.3 438.8

(b) Contractual services 36.2 5.0 41.2

(c) Other financing uses .2 .1 .3

(d) Other 135.0 22.2 157.2

Authorized FTE: 7.00 Permanent; 2.00 Term

[~~The general fund appropriation to the governor's committee on concerns of the handicapped in the other category includes fifteen thousand dollars ($15,000) for per~~

~~diem and mileage expenses for members of the Native American advisory committee to the governor's committee on concerns of the handicapped.~~]

Subtotal 637.5

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| DEVELOPMENTAL DISABILITIES PLANNING COUNCIL: | | | | | |
| (a) Personal services and employee benefits | 216.0 | 9.8 | 119.2 | | 345.0 |
| (b) Contractual services | 21.1 | 6.2 | | | 27.3 |
| (c) Other financing uses | .1 | | | | .1 |
| (d) Other | 80.6 | 2.2 | 319.6 | | 402.4 |
| Authorized FTE: 6.50 Permanent; 1.00 Term | | | | | |
| Subtotal | 774.8 | | | | |
| MINERS' HOSPITAL: | | | | | |
| (a) Personal services and employee benefits | 7,198.3 | 80.8 | | | 7,279.1 |
| (b) Contractual services | 1,968.1 | 75.0 | | | 2,043.1 |
| (c) Other financing uses | 4,106.0 | | | | 4,106.0 |

(d) Other 3,254.6 5.7 3,260.3

Authorized FTE: 202.50 Permanent; 13.50 Term

Subtotal 16,688.5

OFFICE OF THE NATURAL RESOURCES TRUSTEE:

(a) Personal services and

employee benefits 58.5 58.5

(b) Contractual services 13.1 13.1

(c) Other financing uses .2 .2

(d) Other 24.4 24.4

Authorized FTE: 2.00 Permanent

Subtotal 96.2

NEW MEXICO HEALTH POLICY COMMISSION:

(a) Personal services and

employee benefits 901.2 901.2

(b) Contractual services 547.5 1.0 548.5

(c) Other financing uses .4 .4

(d) Other 362.5 362.5

Authorized FTE: 18.00 Permanent

Subtotal 1,812.6

NEW MEXICO VETERANS' SERVICE

COMMISSION:

(a) Personal services and

employee benefits 1,126.4 104.6 1,231.0

(b) Contractual services 600.3 600.0 1,200.3

(c) Other financing uses .6 .6

(d) Other 209.4 23.2 34.8 267.4

Authorized FTE: 31.00 Permanent

The general fund appropriations to the veterans' service commission include ten thousand dollars ($10,000) for the Fort Stanton veterans' cemetery. These funds may only be expended following the formal submission of a grant request for improving the cemetery to the United States department of veterans' affairs.

[~~The general fund appropriation to the veterans' service commission in the contractual services category includes two hundred fifty thousand dollars ($250,000) for stand down and awareness programs for homeless, near-homeless and elderly veterans in rural areas.~~

~~The other state funds appropriation to the veterans' service commission in the contractual services category includes six hundred thousand dollars ($600,000) from the tobacco settlement program fund for assistance to veterans with lung disease in a transitional living center for homeless veterans.~~]

Subtotal 2,699.3

TOTAL HEALTH, HOSPITALS AND

HUMAN SERVICES 9,311.4 27,678.4 1,423.6 5,095.6 43,509.0

| | **General** | **Other State** | **Intrnl Svc Funds/Inter-** | **Federal** |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Funds | Total |
|---|---|---|---|---|---|
| **G. PUBLIC SAFETY** | | | | | |
| DEPARTMENT OF MILITARY AFFAIRS: | | | | | |
| (a) Personal services and employee benefits | 1,669.8 | 1,356.2 | | | 3,026.0 |
| (b) Contractual services | 216.0 | 750.0 | | | 966.0 |
| (c) Other financing uses | 1.1 | .8 | | | 1.9 |
| (d) Other | 2,389.6 | 31.2 | 900.0 | 2,939.1 | 6,259.9 |

Authorized FTE: 32.00 Permanent; 40.00 Term

The general fund appropriation to 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 and funding for the deputy adjutant general position not to exceed range thirty-two in the governor's exempt plan.

The general fund appropriation to the department of military affairs in the other category includes two hundred thousand dollars ($200,000) and in the contractual services category includes two hundred thousand dollars ($200,000) to establish the youth challenge program in Roswell.

The internal service funds/interagency transfers appropriation to the department of military affairs in the other category includes six hundred thousand dollars ($600,000) to be transferred from the youth conservation corps fund and three hundred thousand dollars ($300,000) to be transferred from the children, youth and families department to establish the youth challenge program in Roswell.

Subtotal 10,253.8

PAROLE BOARD:

(a) Personal services and

employee benefits 225.9 225.9

(b) Contractual services 7.1 7.1

(c) Other 139.0 139.0

Authorized FTE: 5.00 Permanent

[~~The general fund appropriation to the parole board in the other category includes thirty thousand dollars ($30,000) for compensation to parole board members based on the number of files required to be prepared for hearings of the board and for per diem and mileage expenses for all official duties performed for the parole board, including one day of per diem for the review of case files.~~]

Subtotal 372.0

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| JUVENILE PAROLE BOARD: | | | | | |
| (a) Personal services and employee benefits | 276.5 | | | | 276.5 |
| (b) Contractual services | 4.3 | | | | 4.3 |
| (c) Other financing uses | .2 | | | | .2 |
| (d) Other | 46.5 | | | | 46.5 |

Authorized FTE: 6.00 Permanent

Subtotal 327.5

CRIME VICTIMS REPARATION COMMISSION:

(a) Personal services and

employee benefits 616.1 121.5 737.6

(b) Contractual services 196.2 13.0 209.2

(c) Other financing uses 741.5 741.5

(d) Other 681.9 228.5 350.0 2,059.5 3,319.9

Authorized FTE: 15.00 Permanent; 3.00 Term

Subtotal 5,008.2

TOTAL PUBLIC SAFETY 6,470.2 259.7 1,250.0 7,981.6 15,961.5

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| **H. OTHER EDUCATION** | | | | | |

APPRENTICESHIPASSISTANCE: 650.0 650.0

REGIONAL EDUCATION COOPERATIVES:

(a) Central: 1,910.8 2,060.2 3,971.0

(b) High plains: 1,327.7 3,006.7 4,334.4

(c) Region IX: 235.0 4,477.2 4,712.2

Subtotal 13,017.6

STATE DEPARTMENT OF PUBLIC EDUCATION

SPECIAL APPROPRIATIONS:

[~~(a) Youth leadership opportunity~~

~~program 30.0 30.0~~

~~(b) Improve student performance 750.0 750.0~~]

(c) Charter schools stimulus

fund 1,075.0 1,075.0

(d) Early screening for school

safety 300.0 300.0

[~~(e) Tutoring programs: Grades~~

~~six, seven and eight 1,500.0 1,500.0~~]

(f) Virtual high school 800.0 800.0

[~~(g) National board for professional~~

~~teaching standards 300.0 300.0~~

~~(h) Dropout prevention programs 750.0 750.0~~]

(i) Re: Learning 1,300.0 1,300.0

(j) Performance-based budgeting

--support for districts 1,100.0 1,100.0

(k) Graduation, reality and dual

skills program 625.0 625.0

[~~(l) New Mexico media literacy~~

~~project 275.0 275.0~~

~~(m) Summer school literacy~~

~~program 2,500.0 2,500.0~~

~~(n) Teacher recruitment program 250.0 250.0~~

~~(o) Counseling services to high-~~

~~need students 1,500.0 1,500.0~~]

(p) Beginning teacher induction 1,000.0 1,000.0

[~~(q) Business and professional~~

~~teachers 50.0 50.0~~

~~(r) Rapid response intervention~~

~~program 2,755.0 2,755.0~~

~~(s) Library acquisition in~~

~~Chaves county 40.0 40.0~~

~~The general fund appropriation to the state department of public education for the summer school literacy program includes one hundred thousand dollars ($100,000) for Los Amigos camp.~~

~~The other state funds appropriation to the state department of public education includes two hundred seventy-five thousand dollars ($275,000) from the tobacco settlement program fund for the New Mexico media literacy project.~~

~~The general fund appropriation to the state department of public education for business and professional teachers is to provide economic education instruction.~~

~~The general fund appropriation to the state department of public education for the rapid response intervention program is to begin a pilot project. The appropriation may be expended to conduct reading and writing assessments, to provide graduated grants for the identified pilot schools and to employ or contract for rapid response intervention team members. The appropriation is contingent on the House Appropriations and Finance Committee Substitute for House Bill 949 or similar legislation of the first session of the forty-fifth legislature, becoming law.~~]

Subtotal 16,900.0

ADULT BASIC EDUCATION: 5,000.0 4,003.9 9,003.9

NEW MEXICO SCHOOL FOR THE VISUALLY

HANDICAPPED: 9,064.2 9,064.2

NEW MEXICO SCHOOL FOR THE
DEAF: 2,718.8 7,607.1 624.2 10,950.1

TOTAL OTHER EDUCATION 24,368.8 20,419.8 625.0 14,172.2 59,585.8

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

**I. HIGHER EDUCATION**

On approval of the commission on higher education, the state budget division of the department of finance and administration may approve increases in budgets of agencies in this subsection whose other state funds exceed amounts specified. In approving budget increases, the director of the state budget division shall advise the legislature through its officers and appropriate committees, in writing, of the justification for the approval.

Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall not revert to the general fund.

COMMISSION ON HIGHER EDUCATION SPECIAL

APPROPRIATIONS:

[~~(a) Training for middle school~~

~~teachers 200.0 200.0~~

~~(b) Geography education in~~

~~public schools 200.0 200.0~~

~~The general fund appropriation to the commission on higher education for training middle school teachers is to provide a program that trains middle school teachers to improve their skills, technical knowledge and teaching techniques in science, mathematics and technology.~~

~~Subtotal 400.0~~]

UNIVERSITY OF NEW MEXICO:

(a) Instruction and general

purposes 131,944.1 92,856.6 3,075.6 227,876.3

(b) Athletics 2,690.6 14,901.6 31.2 17,623.4

(c) Educational television 1,192.2 3,314.5 740.7 5,247.4

(d) Extended services

instruction 1,702.0 1,435.0 3,137.0

(e) Gallup 7,874.0 4,401.5 135.3 12,410.8

(f) Gallup extended services

instruction 18.9 18.9

(g) Los Alamos 1,929.2 1,838.0 164.9 3,932.1

(h) Los Alamos extended

services instruction 39.6 39.6

(i) Valencia 3,924.8 2,756.9 1,782.6 8,464.3

(j) Valencia extended

services instruction 25.2 25.2

(k) Taos off-campus center 1,263.9 2,006.3 112.3 3,382.5

(l) Judicial selection 68.8 68.8

(m) Judicial education center 284.2 284.2

(n) Spanish resource center 108.5 108.5

(o) Southwest research center 1,395.9 228.4 1,624.3

(p) Substance abuse program 182.6 182.6

(q) Native American intervention 229.7 229.7

(r) Resource geographic

information system 152.7 11.4 164.1

(s) Natural heritage program 96.0 96.0

(t) Southwest Indian law

clinic 143.2 4.4 147.6

(u) BBER census and population

analysis 60.7 4.4 65.1

(v) New Mexico historical

review 98.9 11.0 109.9

(w) Ibero-American education

consortium 197.4 197.4

(x) Youth education recreation

program 170.0 170.0

(y) Advanced materials research 81.0 81.0

(z) Manufacturing engineering

program 485.6 485.6

(aa) Office of international

technical cooperation 78.3 78.3

(bb) Hispanic student

center 142.3 142.3

(cc) Wildlife law education 59.9 59.9

(dd) Women in science and engineering

career development program 26.0 26.0

(ee) Youth leadership development 96.3 96.3

(ff) Disabled student services 257.4 257.4

(gg) Minority graduate

recruitment and retention 195.1 195.1

(hh) Graduate research

development fund 100.0 100.0

(ii) Community-based education 501.9 501.9

(jj) Morrissey hall research 52.9 52.9

[~~(kk) New Mexico mock trial~~

~~program 150.0 150.0~~

~~(ll) Barelas job opportunity~~

~~development 250.0 250.0~~

~~(mm) Community-based projects~~

~~for low-income communities 100.0 100.0~~]

(nn) Other - main campus 146,883.2 93,298.0 240,181.2

[~~(oo) Mentoring program for~~

~~African American students 45.0 45.0~~]

(pp) Medical school instruction

and general purposes 41,404.6 21,111.0 1,000.0 63,515.6

(qq) Office of medical

investigator 2,989.3 728.0 3,717.3

(rr) Emergency medical services

academy 701.8 428.0 1,129.8

(ss) Children's psychiatric

hospital 4,369.0 9,886.0 3.0 14,258.0

(tt) Hemophilia program 503.7 503.7

(uu) Carrie Tingley hospital 3,375.6 8,960.0 12,335.6

(vv) Out-of-county indigent

fund 1,541.5 1,541.5

(ww) Specialized perinatal care 494.1 494.1

(xx) Newborn intensive car 2,797.3 1,030.0 3,827.3

(yy) Pediatric oncology 213.7 213.7

(zz) Young children's health

center 237.4 725.0 962.4

(aaa) Pediatric pulmonary center 200.7 200.7

(bbb) Health resources registry 23.0 30.0 53.0

(ccc) Area health education

centers 217.5 255.0 472.5

(ddd) Grief intervention program 177.4 90.0 267.4

(eee) Pediatric dysmorphology 157.7 157.7

(fff) Locum tenens 409.8 1,000.0 1,409.8

(ggg) Disaster medicine program 112.0 112.0

(hhh) Poison control center 880.5 445.5 1,326.0

(iii) Fetal alcohol study 184.2 184.2

(jjj) Telemedicine 315.2 60.5 375.7

(kkk) Nurse-midwifery program 357.9 357.9

[~~(lll) College of nursing expansion 950.0 950.0~~]

(mmm) Research and other

programs 200.0 4,000.0 4,200.0

(nnn) Other - health sciences 176,860.0 40,731.0 217,591.0

(ooo) Cancer center 2,558.1 14,850. 1,100.0 18,508.1

[~~The general fund appropriation to the university of New Mexico for athletics includes fifty thousand dollars ($50,000) for gender equity.~~]

The general fund appropriation to the university of New Mexico for medical school instruction and general purposes includes [~~one hundred fifty thousand dollars ($150,000) to expand the occupational therapy and physical therapy programs to obtain accreditation;~~] fifty thousand dollars ($50,000) to train dentists to treat pediatric and developmentally disabled patients and to develop, in collaboration with the New Mexico dental association, a clearinghouse of dentists willing to provide care for economically disadvantaged and special-needs patients[~~; and seven hundred ninety-six thousand four hundred dollars ($796,400) to increase specialty education in pediatrics~~].

[~~The general fund appropriations to the university of New Mexico for the office of medical investigator include one hundred fifty thousand dollars ($150,000) to fund death or other forensic investigations on Indian lands when invited to do so by an Indian nation, tribe or pueblo.~~]

The general fund appropriation to the university of New Mexico for the Carrie Tingley hospital includes twenty thousand dollars ($20,000) for a neurobehavioral respite program for ambulatory children with special health care needs.

[~~The general fund appropriation to the university of New Mexico for research and other programs includes two hundred thousand dollars ($200,000) for lung-related research.~~]

The other state funds appropriation to the university of New Mexico for research and other programs includes four million dollars ($4,000,000) from the tobacco settlement program fund to support various programs within the health sciences center and for research and clinical care programs in lung and tobacco-related illnesses and four hundred thousand dollars ($400,000) from the tobacco settlement program fund to support the poison control center program.

[~~The general fund appropriation to the university of New Mexico for college of nursing expansion includes three hundred thousand dollars ($300,000) to expand enrollments and to provide market salary adjustments for faculty and staff in the college of nursing.~~]

Subtotal 877,073.6

| **Item** | **General Fund** | **Other State Funds** | **Intrnl Svc Funds/Inter-Agency Trnsf** | **Federal Funds** | **Total** |
|---|---|---|---|---|---|
| NEW MEXICO STATE UNIVERSITY: | | | | | |
| (a) Instruction and general purposes | 84,847.0 | 51,379.1 | 7,462.5 | | 143,688.6 |
| (b) Athletics | 2,787.3 | 4,939.5 | 39.8 | | 7,766.6 |
| (c) Educational television | 1,044.0 | 312.9 | 477.0 | | 1,833.9 |
| (d) Extended services instruction | 410.5 | 80.8 | | | 491.3 |
| (e) Alamogordo branch | 5,220.2 | 3,371.5 | 2,245.5 | | 10,837.2 |

(f) Carlsbad branch 3,285.7 2,729.4 1,194.3 7,209.4

(g) Dona Ana branch 9,991.2 7,637.3 4,666.4 22,294.9

(h) Grants branch 2,262.6 1,581.6 728.4 4,572.6

(i) Department of agriculture 8,410.8 2,792.7 1,062.1 12,265.6

(j) Agricultural experiment

station 11,256.8 1,911.4 6,295.1 19,463.3

(k) Cooperative extension

service 8,636.6 3,165.1 5,830.0 17,631.7

(l) Water resource research 381.8 179.9 598.1 1,159.8

(m) Coordination of Mexico

programs 108.3 32.5 140.8

(n) Indian resources development 364.1 1.0 365.1

(o) Manufacturing sector

development program 463.2 206.3 669.5

(p) Waste management

education program 536.8 233.2 4,240.0 5,010.0

(q) Campus security 106.3 106.3

(r) Carlsbad manufacturing

sector development program 449.5 449.5

[~~(s) Southwest and border~~

~~cultural institute 200.0 200.0~~

~~(t) Parenting education~~

~~program 200.0 200.0~~

~~(u) Math and science education~~

~~for border region 100.0 100.0~~]

(v) Alliances for

underrepresented students 445.6 445.6

(w) Other 46,778.5 65,623.2 112,401.7

The general fund appropriation to New Mexico state university for the New Mexico department of agriculture includes one hundred thousand dollars ($100,000) to market New Mexico agricultural products[~~, two hundred thousand dollars ($200,000) for the acequias and community ditch fund, and seventy-five thousand dollars ($75,000) for noxious weed control~~]. Not more than three hundred sixty-two thousand seven hundred fifty dollars ($362,750) of the general fund appropriation to the New Mexico department of agriculture shall be expended for animal damage control.

[~~The general fund appropriations to New Mexico state university for the agricultural experiment station include two hundred thousand dollars ($200,000) to support the ongoing economic viability of the New Mexico chili industry; and one hundred seventy-five thousand dollars ($175,000) to expand the hotel, restaurant and tourism management program's role as a provider of specialized training.~~

~~The general fund appropriation to New Mexico state university for the cooperative extension service includes fifty thousand dollars ($50,000) to support the San Miguel and Mora county 4-H programs; and seventy-five thousand dollars ($75,000) for a viticulturist.~~]

Subtotal 369,303.4

| | **Other** | **Intrnl Svc** |
|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| NEW MEXICO HIGHLANDS UNIVERSITY: | | | | | |
| (a) Instruction and general purposes | 17,179.5 | 8,283.5 | 1,500.0 | 26,963.0 | |
| (b) Athletics | 1,482.4 | 265.3 | 20.0 | 1,767.7 | |
| (c) Extended services instruction | 1,286.6 | 2,081.5 | | 3,368.1 | |
| (d) Upward bound | 131.7 | | | 131.7 | |
| (e) Advanced placement | 360.2 | | | 360.2 | |
| (f) Native American recruitment and retention | 51.2 | | | 51.2 | |
| (g) Diverse populations study | 230.0 | | | 230.0 | |
| (h) Visiting scientist | 22.0 | | | 22.0 | |

[~~The general fund appropriation to New Mexico highlands university for athletics includes one hundred fifty thousand dollars ($150,000) for gender equity.~~]

| | | | | | |
|---|---|---|---|---|---|
| Subtotal | 32,893.9 | | | | |
| WESTERN NEW MEXICO UNIVERSITY: | | | | | |
| (a) Instruction and general purposes | 11,302.6 | 3,476.8 | 534.4 | 15,313.8 | |

(b) Athletics 1,409.3 152.1 6.1 1,567.5

(c) Educational television 98.4 98.4

(d) Extended services

instruction 616.0 419.5 1,035.5

(e) Child development center 331.2 331.2

(f) North American free trade

agreement 20.0 20.0

[~~(g) Bachelor of arts in nursing~~

~~program 250.0 250.0~~

~~(h) Web-based teacher licensure 400.0 400.0~~]

(i) Other 1,541.9 2,429.7 3,971.6

[~~The general fund appropriation to western New Mexico university for athletics includes one hundred fifty thousand dollars ($150,000) for gender equity.~~]

Subtotal 22,988.0

EASTERN NEW MEXICO UNIVERSITY:

(a) Instruction and general

purposes 18,973.3 7,000.0 1,700.0 27,673.3

(b) Athletics 1,479.0 300.0 1,779.0

(c) Educational television 948.5 500.0 1,448.5

(d) Extended services

instruction 659.2 600.0 1,259.2

(e) Roswell branch 9,524.2 9,000.0 13,000.0 31,524.2

(f) Roswell extended services

instruction 344.7 250.0 594.7

(g) Ruidoso off-campus center 516.3 750.0 1,266.3

(h) Center for teaching

excellence 253.4 253.4

(i) Blackwater Draw site and

museum 106.2 106.2

[~~(j) Airframe mechanics 225.0 225.0~~]

(k) Assessment Project 160.2 160.2

[~~(l) Lighting and escort~~

~~services 50.0 50.0~~]

(m) Other 9,000.0 7,000.0 16,000.0

[~~The general fund appropriation to eastern New Mexico university for instruction and general purposes includes one hundred fifty thousand dollars ($150,000) to fund a baccalaureate degree program in social work.~~

~~The general fund appropriation to eastern New Mexico university for airframe mechanics includes seventy-five thousand dollars ($75,000) to market the airframe mechanics program.~~

~~The general fund appropriation to eastern New Mexico university for athletics includes fifty thousand dollars ($50,000) for gender equity.~~]

Subtotal 82,340.0

| | **Other** | **Intrnl Svc** |
|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY: | | | | | |
| (a) Instruction and general purposes | 19,119.0 | 4,050.0 | | | 23,169.0 |
| (b) Athletics | 145.9 | | | | 145.9 |
| (c) Extended services instruction | 34.1 | | | | 34.1 |
| (d) Bureau of mines | 3,567.6 | 62.0 | 585.0 | | 4,214.6 |
| (e) Petroleum recovery research center | 1,674.1 | 2,975.0 | | | 4,649.1 |
| (f) Bureau of mine inspection | 271.3 | 239.0 | | | 510.3 |
| (g) Energetic materials research center | 790.1 | 11,300.0 | | | 12,090.1 |
| (h) Science and engineering fair | 123.7 | | | | 123.7 |
| (i) Institute for complex additive systems analysis | 350.0 | | | | 350.0 |
| [~~(j) State match for oil and gas research grants~~ | ~~150.0~~ | ~~150.0~~] | | | |

(k) Cave and karst research 350.0 350.0

(l) Geophysical research center 792.0 120.0 1,800.0 2,712.0

(m) Other 6,900.0 14,500.0 21,400.0

The general fund appropriation to New Mexico institute of mining and technology for the bureau of mines includes one hundred thousand dollars ($100,000) from federal Mineral Lands Leasing Act receipts.

Subtotal 69,898.8

NORTHERN NEW MEXICO COMMUNITY

COLLEGE:

(a) Instruction and general

purposes 7,448.1 1,825.0 2,280.0 11,553.1

(b) Extended services

instruction 158.6 158.6

(c) Northern pueblos institute 57.1 57.1

(d) Other 674.0 2,252.4 2,926.4

Subtotal 14,695.2

SANTA FE COMMUNITY COLLEGE:

(a) Instruction and general

purposes 8,079.1 11,540.0 1,650.0 21,269.1

(b) Small business development

centers 2,822.0 2,822.0

(c) Working to learn 58.6 58.6

(d) Sign language services 25.0 25.0

[~~(e) Allied health program 150.0 150.0~~]

(f) Other 3,270.0 3,290.0 6,560.0

Subtotal 30,884.7

TECHNICAL-VOCATIONAL INSTITUTE:

(a) Instruction and general

purposes 33,089.6 30,000.0 3,200.0 66,289.6

(b) Other 20,400.0 9,000.0 29,400.0

Subtotal 95,689.6

LUNA VOCATIONAL TECHNICAL INSTITUTE:

(a) Instruction and general

purposes 6,062.1 817.9 3,200.0 10,080.0

(b) Other 707.7 9,000.0 9,707.7

Subtotal 19,787.7

MESA TECHNICAL COLLEGE:

(a) Instruction and general

purposes 2,063.1 325.0 349.2 2,737.3

(b) Extended services

instruction 33.9 33.9

(c) Other 360.0 389.3 749.3

Subtotal 3,520.5

NEW MEXICO JUNIOR COLLEGE:

(a) Instruction and general

purposes 6,978.0 6,080.0 1,717.0 14,775.0

(b) Athletics 34.2 34.2

(c) Extended services

instruction 80.7 80.7

(d) Other 285.0 3,918.0 4,203.0

Subtotal 19,092.9

SAN JUAN COLLEGE:

(a) Instruction and general

purposes 12,801.0 17,000.0 2,500.0 32,301.0

(b) Dental hygiene program 195.0 195.0

(c) Other 3,500.0 7,000.0 10,500.0

Subtotal 42,996.0

CLOVIS COMMUNITY COLLEGE:

(a) Instruction and general

purposes 8,852.4 200.0 700.0 9,752.4

(b) Extended services

instruction 85.0 85.0

(c) Other 1,100.0 400.0 1,500.0

Subtotal 11,337.4

NEW MEXICO MILITARY INSTITUTE:

(a) Instruction and general

purposes 407.7 13,138.8 13,546.5

(b) Athletics 150.0 731.4 881.4

(c) Other 4,686.9 183.8 4,870.7

[~~The general fund appropriation to New Mexico military institute for athletics includes one hundred fifty thousand dollars ($150,000) for the women's volleyball program.~~]

Subtotal 19,298.6

TOTAL HIGHER EDUCATION 551,105.2 809,584.2 351,510.9 1,712,200.3

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

**J. PUBLIC SCHOOL SUPPORT**

PUBLIC SCHOOL SUPPORT:

(1) State equalization guarantee

distribution: 1,648,881.3 2,000.0 1,650,881.3

(2) Transportation distribution: 96,366.5 96,366.5

(3) Supplemental distribution:

(a) Out-of-state tuition 993.0 993.0

(b) Emergency supplemental 990.6 990.6

(c) Emergency capital outlay 479.0 479.0

The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the superintendent of public instruction. The superintendent of public instruction shall establish a preliminary unit value to establish budgets for the 2001-2002 school year; and then upon verification of the number of units statewide for fiscal year 2002 but no later than January 31, the superintendent of public instruction may adjust the program unit value.

The general fund appropriation for the state equalization guarantee distribution contains sufficient funds to provide an eight percent salary increase for teachers, and a six and one-half percent increase for other instructional staff, certified and noncertified staff. Prior to the approval of a district's budget, the state superintendent of public instruction shall verify that each local school board is providing the eight percent increase for teachers. The appropriation for the transportation distribution contains sufficient funding to provide a statewide average six and one-half percent salary increase for transportation employees.

[~~The general fund appropriation for the state equalization guarantee distribution includes three million five hundred thousand dollars ($3,500,000) for expenditure in fiscal year 2002. The appropriation is contingent on House Appropriations and Finance Committee Substitute for House Bill 949 or similar legislation of the first session of the forty-fifth legislature, becoming law and on the certification, before September 1, 2001, by the superintendent of public instruction that the federal government has allowed the state to calculate disparity on the unit value.~~]

[~~The general fund appropriation for the state equalization guarantee distribution includes three million five hundred dollars ($3,500,000) for the state department of public education in fiscal year 2002 to conduct the rapid response intervention program pilot project. The appropriation is contingent on House Appropriations and Finance Committee Substitute for House Bill 949 or similar legislation of the first session of the~~

~~forty-fifth legislature, becoming law, and shall be expended only if the superintendent of public instruction does not make the certification pursuant to the previous paragraph of this subsection pertaining to the calculation of disparity.~~

~~The general fund appropriation for the state equalization guarantee distribution includes four million dollars ($4,000,000) for enrollment growth, contingent on House Bill 23 or similar legislation of the first session of the forty-fifth legislature, becoming law; and one million two hundred thousand dollars ($1,200,000) for the at-risk factor, contingent on House Bill 49 or similar legislation of the first session of the forty-fifth legislature, becoming law.~~]

The general fund appropriation in the state equalization guarantee distribution reflects the deduction of federal revenue 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 "PL 874 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.

For the 2001-2002 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.

Any unexpended or unencumbered balance in the distributions authorized remaining at the end of fiscal year 2002 from appropriations made from the general fund shall revert to the general fund.

Subtotal 1,749,710.4

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

FEDERAL FLOW THRU: 279,649.8 279,649.8

INSTRUCTIONAL MATERIAL FUND: 31,000.0 31,000.0

The appropriation to the instructional material fund is made from federal Mineral Lands Leasing Act receipts.

Subtotal 31,000.0

EDUCATIONAL TECHNOLOGY
FUND: 6,000.0 6,000.0

INCENTIVES FOR SCHOOL IMPROVEMENT

FUND: 1,900.0 1,900.0

[~~READING PROFICIENCY FUND: 1,000.0 1,000.0~~

~~INTERVENTION FOR SCHOOL IMPROVEMENT: 600.0 600.0~~]

TOTAL PUBLIC SCHOOL
SUPPORT 1,788,210.4 2,000.0 279,649.8 2,069,860.2

GRAND TOTAL FISCAL YEAR 2002

APPROPRIATIONS 2,562,437.6 1,077,475.8 230,369.7 693,185.5 4,563,468.6"

**Section 5. PERFORMANCE-BASED BUDGET APPROPRIATIONS.--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified for expenditure in fiscal year 2002. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2002 shall revert to the appropriate fund.**

[~~Under guidelines developed by the state budget division, in consultation with the legislative finance committee, each agency for which appropriations are made or 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 2002 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 reports filed with the state budget division and the legislative finance committee analyzing agency performance shall include a detailed listing and summary of changes in fees imposed by the agency and a detailed listing and summary of all changes of rules by the agency. Each of the summaries must include the agency's justification for the change in addition to any relevant meeting notes from the public hearing where the action occurred. The quarterly and year-end reports for the period ending June 30, 2002, shall be filed with the state budget division and the legislative finance committee on or before September 1, 2002.

It is the intent of the legislature to continue to improve implementation of the Accountability in Government Act by emphasizing measures that are meaningful to the public and measures that cross agency lines by including them in the General Appropriation Act of 2001 and the Supplemental Performance Measures and Targets Act. The legislature expects implementation of the Accountability in Government Act to improve as additional agencies submit performance-based budget requests and as agencies, the department of finance and administration and the legislative finance committee continue to cooperate on the development of programs, performance measures and targets. For those agencies that have already submitted performance-based program budgets, the legislature expects continued refinement of measures to improve their consistency, reliability and relevance, and continued emphasis on defining and measuring the constituent activities of a program.

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 2002. In cases where there are no targets for output, outcome, efficiency or quality measures, agencies are expected to develop baseline data for fiscal year 2002 and to propose targets when submitting budget requests for fiscal year 2003.

~~In concert with the annual agency strategic planning process required by the state budget division, the state budget division shall require strategic plans, including internal and external assessments and development of programs and performance measures, be coordinated among the state agency on aging, human services department, labor department, department of health and the children, youth and families department.~~]

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| **A. JUDICIAL** | | | | | |
| 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 | 1,603.9 | | | | 1,603.9 |
| (b) Contractual services | 181.5 | | | | 181.5 |
| (c) Other financing uses | .5 | | | | .5 |
| (d) Other | 228.9 | | | | 228.9 |
| (e) Supervised child visitation program | 220.0 | | | | 220.0 |

(f) Court-appointed special

advocates 943.0 943.0

(g) Court-appointed attorney fee

fund 2,900.0 2,900.0

(h) Judges pro tempore 40.0 40.0

(i) Judicial performance evaluation 100.0 100.0

(j) Water rights litigation 220.5 220.5

(k) Jury witness fee fund 3,099.2 650.0 3,749.2

Authorized FTE: 27.50 Permanent; 1.50 Term

Performance Measures:

(a) Outcome: Judicial branch staff turnover rate 10%

(b) Quality: Percent of payments processed and transmitted to vendors or employees within ten days 100%

(c) Quality: Average number of days to produce and issue jury summons 5

(d) Quality: Percent of magistrate court financial reports timely submitted to fiscal services division 100%

(e) Quality: Average number of days from receipt of department of finance and administration central accounting system report to reconciliation 15

(f) Quality: Percent of magistrate court financial reports reconciled on a monthly basis 100%

(g) Output: Percent of drug courts being evaluated 100%

[~~(h) Quality: Percent of magistrate court remittances sent by the tenth day of each month 100%~~]

(i) Efficiency: Cost per summons

(j) Efficiency: Percent of magistrate funds deposited with state treasurer in appropriate fund within twenty-four hours of court receipt 100%

(2) Statewide judiciary automation:

The purpose of the statewide judiciary automation program is to provide development, enhancement, maintenance and support for automation and usage skills for appellate, district, magistrate and municipal courts and ancillary judicial agencies so they can maintain records, manage cases, manage case-related financial receivables and provide information to court users and to the public.

Appropriations:

| | | | |
|---|---|---|---|
| (a) Personal services and employee benefits | 1,287.0 | 1,682.3 | 2,969.3 |
| (b) Contractual services | 25.0 | 272.1 | 297.1 |
| (c) Other | 231.0 | 3,419.3 | 3,650.3 |

Authorized FTE: 35.50 Permanent; 11.00 Term

The other state funds appropriation to the statewide judiciary automation program of the administrative office of the courts includes nine hundred thousand dollars ($900,000) for technical services and equipment contingent on a study being conducted by the

administrative office of the courts regarding cases and workload of magistrate judges statewide and making recommendations on redistribution of judgeships based on those findings.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

Performance Measures:

(a) Quality: Percent reduction in complaints received regarding database, servers and networks from complaints received in prior year 3%

(b) Quality: Percent of hours during which court systems are fully operational 95%

(c) Output: Number of user training sessions held 6

(d) Quality: Percent of court reports accurate 95%

(e) Quality: Average time to resolve calls for assistance, in minutes 30

(f) Quality: Rate of resolution of automation issues on first contact 60%

(3) Warrant enforcement:

The purpose of the warrant enforcement program is to enforce outstanding bench warrants and to collect outstanding fines, fees and costs in the magistrate courts so they may uphold judicial integrity.

| | General | Other State | Intrnl Svc Funds/Inter- | Federal |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Total |
|---|---|---|---|---|
| Appropriations: | | | | |
| (a) Personal services and employee benefits | 1,096.2 | | | 1,096.2 |
| (b) Contractual services | 652.0 | | | 652.0 |
| (c) Other financing uses | .8 | | | .8 |
| (d) Other | 227.0 | | | 227.0 |

Authorized FTE: 37.00 Term

Performance Measures:

(a) Output: Amount of bench warrant revenue collected annually, in millions $1.4

(b) Output: Amount of outstanding fines and fees collected after a bench warrant letter has been sent, in millions $1.9

(c) Efficiency: Ratio of overall revenue collected to program expenditures 4:1

(d) Outcome: Amount of fines, fees and costs collected, in millions $3.2

(e) Output: Number of cases in which bench warrant fees are collected 9,000

(4) Magistrate courts:

Appropriations:

(a) Personal services and

employee benefits 11,087.2 200.0 11,287.2

(b) Contractual service 55.1 55.1

(c) Other financing uses 4.5 4.5

(d) Other 3,764.0 3,764.0

Authorized FTE: 259.00 Permanent

[~~The general fund appropriations to the magistrate courts of the administrative office of the courts include one hundred twenty-five thousand dollars ($125,000) for a magistrate judge and court clerk and other costs in Dona Ana county.~~]

Subtotal 34,191.0

TOTAL JUDICIAL 25,991.3 8,199.7 34,191.0

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

**B. GENERAL CONTROL**

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 ensure the administration, collection, compliance and enforcement of state taxes and fees that provide funding for services to the general public through fiscal appropriations.

Appropriations:

(a) Personal services and

employee benefits 14,651.2 429.2 729.7 15,810.1

(b) Contractual services 304.0 304.0

(c) Other 4,868.7 186.5 253.5 5,308.7

Authorized FTE: 391.00 Permanent; 17.00 Term; 49.10 Temp

Performance Measures:

(a) Output: Number of federal oil and gas royalty audits performed 24

(b) Output: Number of field audits performed for corporate income tax and combined reporting system 350

(c) Outcome: Number of dollars assessed as a result of audits, in millions $26

(d) Output: Number of taxpayer accounts resolved 7,600

(e) Output: Number of electronically-filed returns processed 150,000

(2) Motor vehicle:

The purpose of the motor vehicle program is to register, title and license vehicles, boats and motor vehicle dealers. The motor vehicle program enforces operator compliance with the motor vehicle code and federal regulations by conducting tests, investigations and audits. These activities complement the state's efforts to provide a safe, compliant environment for transportation and commerce.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |

(a) Personal services and

employee benefits 9,649.3 198.8 9,848.1

(b) Contractual services 980.8 1,985.0 2,965.8

(c) Other 1,666.4 2,404.2 4,070.6

Authorized FTE: 282.00 Permanent; 4.00 Term; 4.00 Temp

The other state funds appropriations to the motor vehicle program of the taxation and revenue department include two million six hundred forty-three thousand dollars ($2,643,000) for the Mandatory Financial Responsibility Act unit, contingent on House Bill 476, Senate Bill 438 or similar legislation of the first session of the forty-fifth legislature, becoming law.

Performance Measures:

(a) Outcome: Percent of registered vehicles having liability insurance 60%

(b) Output: Number of driver transactions completed through mail and electronic

means 32,500

(c) Output: Percent of drivers' tests administered to prospective motor vehicle

operators through web-based testing 95%

(d) Output: Number of eight-year drivers' licenses issued 100,625

(e) Outcome: Average waiting time in high volume field offices, in minutes 15

(3) Property tax:

The purpose of the property tax program is to administer the Property Tax Code and to ensure fair appraisal of property and the assessment of property taxes in the state of New Mexico.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 873.0 | 1,061.8 | | | 1,934.8 |
| (b) Contractual services | 42.0 | 42.0 | | | 84.0 |
| (c) Other | 188.7 | 274.9 | | | 463.6 |

Authorized FTE: 44.00 Permanent

Performance Measures:

(a) Output: Number of appraisals or valuations for corporations conducting business within the state and allocating values to the respective taxing districts 400

(b) Outcome: Percent of resolved accounts resulting from delinquent property tax sales 40%

(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 the taxation and revenue department for the general public and the legislature in order to give agency personnel the resources needed to meet

departmental objectives. This program also provides a hearing process for resolving taxpayer protests and to provide stakeholders with reliable information regarding the state's tax programs.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 11,059.3 | 330.7 | 174.8 | | 11,564.8 |
| (b) Contractual services | 750.4 | 190.0 | | | 940.4 |
| (c) Other financing uses | 18.2 | | | | 18.2 |
| (d) Other | 7,980.7 | 207.7 | | | 8,188.4 |

Authorized FTE: 213.00 Permanent; 4.00 Term

Performance Measures:

(a) Efficiency: Percent of total tax protest cases resolved

(b) Outcome: Percent of DWI drivers' license revocations rescinded due to failure to meet ninety-day deadline <5%

(c) Quality: Percent of distributions from the combined reporting system made to all beneficiaries by the twentieth day of each month 80%

(d) Outcome: Number of electronically-filed tax returns processed through the oil

and natural gas administration and revenue database 1,044

Subtotal 61,501.5

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Policy development, fiscal and budget analysis and oversight:

The purpose of the policy development, fiscal and budget analysis and oversight program is to provide professional, coordinated policy development and fiscal and budgetary analysis and oversight to the governor, the legislature and state agencies so that 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,180.3 | | | | 2,180.3 |
| (b) Contractual services | 107.0 | | | | 107.0 |
| (c) Other financing uses | 2.8 | | | | 2.8 |
| (d) Other | 246.8 | | | | 246.8 |

Authorized FTE: 31.80 Permanent

Performance Measures:

(a) Outcome: General fund reserve level as a percent of recurring appropriations in the executive budget recommendation [~~5%~~]

(b) Outcome: Percent of agencies that meet statutory deadlines established in the Accountability in Government Act 90%

[~~(c) Output: Percent of bills referred to the house appropriations and finance committee, senate finance committee and house taxation and revenue committee for which a fiscal analysis is prepared and forwarded to the legislative finance committee. 50%~~]

(d) Outcome: Error rate for eighteen-month general fund revenue forecast [~~3%~~]

(e) Outcome: Error rate for six-month general fund revenue forecast 1.5%

(2) Community development and local government:

The purpose of the community development and local government 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |

(a) Personal services and

employee benefits 1,479.3 231.3 649.5 2,360.1

(b) Contractual services 23.3 4.5 46.5 74.3

(c) Other 357.5 64.2 171.5 593.2

Authorized FTE: 26.00 Permanent; 17.00 Term

The general fund appropriation to the community development and local government program of the department of finance and administration in the other category includes fifty thousand dollars ($50,000) for the Santa Fe junior wrestling program[~~; fifty thousand dollars ($50,000) to acquire water rights for the Chamberino and La Mesa community water systems in Dona Ana county; seventy-five thousand dollars ($75,000) for the operation of the boys and girls club in Santa Fe; and seventy-five thousand dollars ($75,000) to establish a family education program for the Martineztown, San Jose and Sawmill neighborhoods of Albuquerque.~~]

Performance Measures:

(a) Quality: Percent of findings resolved on opinions issued on audited financial

statements and other reports of local governments 80%

(b) Outcome: Percent of local government officials attending trainings sponsored

by this program who express satisfaction 80%

(c) Output: Percent of community development block grant closeout letters issued

within forty-five days of review of final report 65%

(d) 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,743.4 | | | | 2,743.4 |
| (b) Contractual services | 326.8 | | | | 326.8 |
| (c) Other | 2,084.5 | | | | 2,084.5 |
| Authorized FTE: | 56.20 Permanent | | | | |

[~~The general fund appropriation to the fiscal management and oversight program of the department of finance and administration in the other category includes seven hundred fifty thousand one hundred dollars ($750,100) for costs associated with the establishment of the state comptroller's office as an adjunct agency, contingent on House Bill 26 or similar legislation of the first session of the forty-fifth legislature, becoming law.~~]

Performance Measures:

(a) Outcome: Type of audit opinion on the state's general fund financial statements Unqualified

(b) Quality: Percent of time the central accounting system is operational 95%

(c) Quality: Average number of business days required to process payments after being received and accepted 5

(d) Output: Percent of time the central document imaging system is operational 95%

(e) 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 governor's exempt salary plan; and to review and approve professional services contracts.

Appropriations:

(a) Personal services and employee benefits 1,016.7 1,016.7

(b) Contractual services 70.0 70.0

(c) Other 160.4 160.4

Authorized FTE: 19.00 Permanent

Performance Measures:

(a) Output: Percent of department fund accounts that are reconciled within two months following the closing of each month 100%

(b) Quality: Percent of employee files that contain final performance appraisal

development plans completed by employees' anniversary dates 95%

Subtotal 11,966.3

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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Contractual services | 116,511.2 | | | | 116,511.2 |
| (b) Other financing uses | 708.5 | | | | 708.5 |
| (c) Other | 1,500.0 | | | | 1,500.0 |

Performance Measures:

(a) Quality: Percent of employees expressing satisfaction with the group health benefits plan 51%

(b) Efficiency: Medical premium percent change compared to industry average, within three percent

(c) Efficiency: Dental premium percent change compared to industry standard, within

three percent

(2) Risk management:

The purpose of the risk management program is to protect the state's assets against property, public liability, workers' compensation, state unemployment compensation, local public bodies unemployment compensation, and surety bond losses so that agencies can perform their mission in an efficient and responsive manner.

Appropriations:

(a) Personal services and

employee benefits 2,559.3 2,559.3

(b) Contractual services 514.0 514.0

(c) Other financing uses 217.9 217.9

(d) Other 935.0 935.0

Authorized FTE: 51.00 Permanent

(3) Risk management funds:

Appropriations:

(a) Public liability 39,626.3 39,626.3

(b) Surety bond 126.4 126.4

(c) Public property reserve 3,996.7 3,996.7

(d) Local public bodies unemployment

compensation 697.8 697.8

(e) Workers' compensation retention 11,595.9 11,595.9

(f) State unemployment compensation 3,832.0 3,832.0

The internal service funds/interagency transfers appropriation to the surety bond fund includes one hundred twenty-six thousand four hundred dollars ($126,400) in operating transfers from the surety bond account [~~in the risk reserve~~].

Performance Measures:

(a) Outcome: Percent decrease of state government workers' compensation claims

compared with all workers' compensation claims 6%

(b) Quality: Percent of workers' compensation benefit recipients rating the risk

management program's claims processing services "satisfied" or

better 20%

(c) Efficiency: Public property self-insured claims costs, in millions $4

(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 mission in an efficient and responsive manner.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |

(a) Personal services and

employee benefits 13,280.3 13,280.3

(b) Contractual services 9,679.9 9,679.9

(c) Other financing uses 3,420.2 3,420.2

(d) Other 21,476.9 21,476.9

Authorized FTE: 235.00 Permanent

Performance Measures:

(a) Quality: Customer satisfaction with information technology services on a scale of one to five, with one being the lowest 3.6

(b) Efficiency: Total information processing operating expenditures as a percentage of revenue 100%

(c) Efficiency: Total communications operating expenditures as a percent of revenue 100%

(d) Efficiency: Total printing operating expenditures as a percent of revenue 100%

(e) Quality: Percent of customers satisfied with data and voice communication network 85%

(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 that agencies can perform their mission in an efficient and responsive manner.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 4,879.1 | 12.0 | | | 4,891.1 |
| (b) Contractual services | .7 | | | | .7 |
| (c) Other financing uses | 109.7 | | | | 109.7 |
| (d) Other | 3,979.7 | 149.0 | | | 4,128.7 |

Authorized FTE: 140.00 Permanent

Performance Measures:

(a) Efficiency: Operating costs per square foot in Santa Fe for state-owned buildings $5.14

(b) Quality: Percent of customers satisfied with custodial and maintenance services, as measured by an annual survey 90%

(c) Outcome: Average number of days to process lease requests 140

(d) Output: Number of scheduled preventive maintenance tasks completed 5,300

(e) Efficiency: Percent increase in average per-square-foot cost of both leased and owned office space in Santa Fe, as adjusted for inflation 0%

(f) Efficiency: Percent of contractor pay requests approved within seven working

days 95%

(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 that agencies can perform their mission in an efficient and responsive manner.

Appropriations:

(a) Personal services and

employee benefits 212.2 1,185.8 1,398.0

(b) Contractual services 2.8 93.2 96.0

(c) Other financing uses 25.3 2,717.7 2,743.0

(d) Other 338.6 8,383.6 8,722.2

Authorized FTE: 32.00 Permanent

Performance Measures:

(a) Efficiency: Percent of short-term vehicle utilization 80%

(b) Quality: Percent of customers satisfied with lease services 80%

(c) Efficiency: Percent of vehicle lease revenues to expenditures 100%

(d) Efficiency: Percent of aircraft revenues to expenditures 100%

(e) Efficiency: Comparison of lease rates to other public vehicle fleet rates

(7) Procurement services:

The purpose of the procurement services program is to provide a procurement process for tangible property for government entities to ensure compliance with the Procurement Code so that agencies can perform their mission in an efficient and responsive manner.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,064.2 | 216.1 | 184.8 | | 1,465.1 |
| (b) Contractual services | 50.0 | | | | 50.0 |
| (c) Other financing uses | 21.6 | 11.0 | .1 | | 32.7 |
| (d) Other | 213.3 | 91.4 | 67.2 | | 371.9 |

Authorized FTE: 25.00 Permanent; 6.00 Term

Performance Measures:

(a) Efficiency: Average cycle completion times for information technology projects, in days 90

(b) Efficiency: Average cycle completion times for construction projects, in days 90

(c) Efficiency: Average cycle completion times for small purchases, in days 15

(d) Efficiency: Average cycle completion times for tangible products and services,

in days 45

(e) Quality: Percent of customers satisfied with procurement services 80%

(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 2,516.2 2,516.2

(b) Contractual services 1,720.0 1,720.0

(c) Other financing uses 225.0 225.0

(d) Other 1,196.2 1,196.2

Authorized FTE: 47.00 Permanent

Performance Measures:

(a) Efficiency: Percent of employee files that contain performance appraisal development plans that were completed by employees' anniversary

dates 98%

(b) Efficiency: Satisfaction rating of administrative services provided to all

divisions 80%

(c) Outcome: Number of prior year audit findings that recur 0

Subtotal 260,344.8

TOTAL GENERAL CONTROL 74,678.7 7,679.3 249,351.8 2,102.8 333,812.6

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

**C. COMMERCE AND INDUSTRY**

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 tourist destination so that New Mexico may increase its tourism market share.

Appropriations:

(a) Personal services and

employee benefits 1,034.1 1,034.1

(b) Contractual services 156.6 156.6

(c) Other financing uses .6 .6

(d) Other 4,062.2 4,062.2

Authorized FTE: 33.50 Permanent

Performance Measures:

(a) Outcome: New Mexico's domestic tourism market share 1.43%

(b) Outcome: Print advertising conversion rate 45%

(c) Outcome: Broadcast conversion rate 33%

(2) Promotion:

The purpose of the promotion program is to produce and provide collateral, editorial and special events for the consumer and for the trade industry so that they may increase their awareness of New Mexico as a premier tourist destination.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 192.2 | | | | 192.2 |
| (b) Other | 220.8 | | | | 220.8 |
| Authorized FTE: | 4.00 | Permanent | | | |

Performance Measures:

(a) Outcome: Increase awareness of state as a visitor destination (percent of inquiries planning to visit within next twelve months) 60%

(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 98.0 98.0

(b) Other 1,102.9 1,102.9

Authorized FTE: 2.00 Permanent

Performance Measures:

(a) Output: Number of cooperative advertising applications funded/received 148/175

(b) Output: Number of outreach activities to communities 67

(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 1,062.9 1,062.9

(b) Contractual services 908.7 908.7

(c) Other financing uses .5 .5

(d) Other 2,797.6 2,797.6

Authorized FTE: 22.00 Permanent

Performance Measures:

(a) Outcome: Circulation rate 117,600

(5) Program support:

Program support provides administrative assistance to support the department's programs and personnel so that they may be successful in implementing and reaching their strategic initiatives and maintaining full compliance with state rules and regulations.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 665.4 | | | | 665.4 |
| (b) Contractual services | 192.8 | | | | 192.8 |
| (c) Other financing uses | .6 | | | | .6 |
| (d) Other | 902.3 | | | | 902.3 |
| Authorized FTE: | 12.00 Permanent | | | | |
| Performance Measures: | | | | | |
| (a) Outcome: | Number of audit exceptions 0 | | | | |
| Subtotal | 13,398.2 | | | | |

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, improved infrastructure and quality of place so New Mexicans can increase their wealth and improve their quality of life.

Appropriations:

(a) Personal services and

employee benefits 854.9 854.9

(b) Contractual services 420.5 420.5

(c) Other financing uses .3 .3

(d) Other 596.3 596.3

Authorized FTE: 17.00 Permanent

[~~The general fund appropriation to the community development program of the economic development department in the other category includes fifty thousand dollars ($50,000) to help establish and assist local film and multimedia production companies; and fifty thousand dollars ($50,000) to promote New Mexico as a location for out-of-state film production companies.~~]

Performance Measures:

(a) Outcome: Average hourly salary for rural jobs created by the efforts of the

agency programs $10.67

(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 743.4 743.4

(b) Contractual services 466.3 466.3

(c) Other financing uses 0.3 0.3

(d) Other 371.4 371.4

Authorized FTE: 14.00 Permanent

[~~The general fund appropriation to the job creation and job growth program of the economic development department in the contractual services category includes one hundred fifty thousand dollars ($150,000) to support and expand business incubation services in northern New Mexico for expenditure in fiscal years 2002 through 2005.~~]

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 2,860

(b) Outcome: Number of jobs created (out of net new jobs created in New Mexico)

as a result of the job creation and job growth program 5,201

(c) Outcome: Percent of jobs created that pay more than fifty percent over the

national minimum wage 100%

(d) Outcome: Total per capita income attributable to the new jobs created $24,180

(e) Output: Dollar value of exports to Mexico, in millions $58.1

(f) Outcome: Total economic impact of film projects in New Mexico, in millions $22

(g) Outcome: Percent of jobs created in the foreign trade zone (out of net new jobs in the foreign trade zone) as a result of the job creation and job growth program 33%

(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 so the citizens of New Mexico may have opportunities for high-paying jobs.

| Item | Federal Funds | Total | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | | 529.5 | 529.5 | | |
| (b) Contractual services | | 167.5 | 167.5 | | |
| (c) Other financing uses | | .2 | .2 | | |
| (d) Other | | 141.7 | 141.7 | | |
| Authorized FTE: | | 9.00 | Permanent | | |
| Performance Measures: | | | | | |

(a) Outcome: Percent increase of number of high-tech jobs created as a result of

the technology commercialization program 10%

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,285.3 | | | | 1,285.3 |
| (b) Contractual services | 83.3 | | | | 83.3 |
| (c) Other financing uses | .5 | | | | .5 |
| (d) Other | 661.3 | | | | 661.3 |

Authorized FTE: 24.00 Permanent

Performance Measures:

(a) Quality: Percent of employee files that contain performance appraisals that were completed and submitted within state personnel guidelines 100%

Subtotal 6,322.7

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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,099.6 | 86.2 | | | 5,185.8 |
| (b) Contractual services | 145.0 | 75.0 | | | 220.0 |
| (c) Other financing uses | 2.0 | .1 | | | 2.1 |
| (d) Other | 1,036.0 | 41.5 | | | 1,077.5 |
| Authorized FTE: | 106.00 | Permanent | | | |

[~~The general fund appropriation to the construction industries and manufactured housing program of the regulation and licensing department in the contractual services category includes seventy thousand dollars ($70,000) for the purpose of conducting field inspections of manufactured homes.~~]

Performance Measures:

(a) Output: Percent of consumer complaint cases resolved of the total number of

complaints filed 96%

(b) Efficiency: Decrease in cycle time for processing of plan review and permitting

for commercial construction 5%

(c) Efficiency: Percent of permitted manufactured housing projects inspected 75%

(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; promote investor protection and confidence so that capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a) Personal services and

employee benefits 1,961.0 1,961.0

(b) Contractual services 45.0 45.0

(c) Other financing uses .8 .8

(d) Other 408.4 13.9 422.3

Authorized FTE: 39.00 Permanent

Performance Measures:

(a) Output: Percent of statutorily-complete applications that are processed

within a standard number of days by type of application 80%

(b) Efficiency: Average number of days to resolve a financial institutions complaint 19

(c) Efficiency: Average number of days to resolve a securities complaint 511

(3) Alcohol and gaming:

The purpose of the alcohol and gaming program is to license qualified people and, in cooperation with the department of public safety, to enforce the Liquor Control Act and the Bingo and Raffle Act to ensure the sale, service and public consumption of alcoholic beverages and the holding, operating and conducting of games of chance are regulated to protect the health, safety and welfare of citizens and visitors to New Mexico and the economic vitality of licensees.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 675.5 | 74.9 | | | 750.4 |
| (b) Contractual services | 8.7 | | | | 8.7 |
| (c) Other financing uses | .3 | | | | .3 |
| (d) Other | 188.5 | 6.3 | | | 194.8 |

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) Outcome: Number of days to resolve an administrative citation 153

(4) Program support:

The purpose of program support is to provide leadership and centralized direction, financial management, information systems support and human resources support for all agency organizations in compliance with governing regulations, statutes and procedures so they can license qualified applicants, verify compliance with statutes and resolve or mediate consumer complaints.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,392.2 | 394.6 | | | 1,786.8 |
| (b) Contractual services | 26.8 | 18.1 | | | 44.9 |
| (c) Other financing uses | .5 | .1 | | | .6 |
| (d) Other | 348.4 | 174.8 | | | 523.2 |

Authorized FTE: 32.20 Permanent

Performance Measures:

(a) Quality: Number of prior year audit findings resolved All

(b) Outcome: Percent of agency performance measures achieved 95%

(c) Outcome: Number of days from receipt of vendor invoice until payment is

mailed out 10

Subtotal 12,224.2

TOTAL COMMERCE AND
INDUSTRY 26,244.9 4,828.6 587.6 284.0 31,945.1

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

**D. AGRICULTURAL, ENERGY AND NATURAL RESOURCES**

OFFICE OF CULTURAL AFFAIRS:

(1) Preservation and collections:

The purpose of the preservation and collections program is to preserve New Mexico's cultural heritage for the future use, education and enjoyment of all citizens of the state so they will better understand their cultural heritage.

Appropriations:

(a) Personal services and

employee benefits 4,663.6 455.7 1,086.2 31.5 6,237.0

(b) Contractual services 297.6 104.3 488.4 160.7 1,051.0

(c) Other financing uses 2.4 1.0 3.4

(d) Other 1,287.1 890.3 241.6 120.0 2,539.0

Authorized FTE: 137.90 Permanent; 40.25 Term; 8.30 Temp

The appropriations to the preservation and collections program of the office of cultural affairs include [~~one hundred sixty-six thousand two hundred dollars ($166,200) from the general fund and~~] two hundred forty-nine thousand two hundred dollars ($249,200) from federal funds for 2.25 FTE and for program costs to establish and manage a Native American preservation program to assist tribal governments in developing historic preservation offices.

The internal service funds/interagency transfers appropriations to the preservation and collections program of the office of cultural affairs include one million dollars ($1,000,000) from the state road fund for archaeological studies relating to highway projects. Unexpended or unencumbered balances in the office of archaeological studies remaining at the end of fiscal year 2002 from appropriations made from the state road fund shall revert to the state road fund.

Performance Measures:

(a) Outcome: Percent of archaeological field work requested by the state highway

and transportation department that met or surpassed budget and

schedule requirements 85%

(b) Output: Number of sites saved through compliance review 2,000

(c) Outcome: Percent of museum collections, excluding archaeological collections,

that are housed in areas that meet museum standards for adequate

environmental and storage conditions 96%

(d) Outcome: Success rate in transmitting traditional artistic skills through folk arts apprenticeships (there were eleven apprenticeships in fiscal year 2000) 90%

(e) Quality: Percent of objects identified as in need of treatment, receiving treatment (twenty-one thousand four hundred thirty objects were identified in fiscal year 2000) 10%

(f) Outcome: Annual percent increase in total number of registered historic sites and structures in New Mexico (eight thousand one hundred sites were registered for fiscal year 2000) 4%

(g) Quality: Percent of existing office of cultural affairs facilities that have completed assessments, including historic structures reports and long-range maintenance and construction plans 50%

(2) Exhibitions and public programs:

The purpose of exhibitions and public programs is to present exhibitions and public programs to the public so they can participate in the state's cultural resources, thereby stimulating understanding about New Mexico and its relationship to other parts of the world.

| | General | Other State | Intrnl Svc Funds/Inter-Agency | Federal |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Total |
|---|---|---|---|---|
| Appropriations: | | | | |
| (a) Personal services and employee benefits | 5,071.4 | 556.5 | | 5,627.9 |
| (b) Contractual services | 761.5 | 79.2 | | 840.7 |
| (c) Other financing uses | 2.5 | | | 2.5 |
| (d) Other | 709.2 | 1,038.8 | | 1,748.0 |

Authorized FTE: 133.80 Permanent; 17.70 Term

The general fund appropriation to the exhibitions and public programs of the office of cultural affairs in the contractual services category includes two hundred thousand dollars ($200,000) for a year-round youth education program in performing arts in Santa Fe county.

Performance Measures:

(a) Outcome: Percent of surveyed visitors who experience "enhanced" cultural appreciation and awareness from their visits to agency exhibitions and public programs 97%

(b) Explanatory: Total attendance at exhibitions and public programs 943,000

(c) Explanatory: Admissions revenue per paying visitor $2.65

(d) Efficiency: Percent of exhibitions square footage per FTE dedicated towards

exhibitions production (design, fabrication, installation) over 1990

level 32%

(e) Quality: Percent of rated exhibitions and public programs scoring "very good"

to "excellent" by panels of non-agency experts 80%

(f) Explanatory: Percent of general fund revenue to overall total revenue 75%

(3) Education, outreach and technical assistance:

The purpose of the education, outreach and technical assistance program is to provide education and outreach programs for New Mexicans and visitors of all ages, and to provide technical assistance to all citizens requesting information or services in order to ensure a better understanding of New Mexico's cultural heritage.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,302.8 | 731.9 | 596.4 | | 6,631.1 |
| (b) Contractual services | 917.1 | 170.0 | 225.4 | | 1,312.5 |
| (c) Other financing uses | | 3.3 | | | 3.3 |
| (d) Other | 1,326.8 | 1,248.9 | 521.1 | | 3,096.8 |

Authorized FTE: 113.80 Permanent; 46.80 Term; .50 Temp

The appropriations to the education, outreach and technical assistance program of the office of cultural affairs include one hundred eighty-nine thousand dollars ($189,000) for the New Mexico endowment for the humanities.

The appropriations to the education, outreach and technical assistance program of the office of cultural affairs include [~~eighty thousand two hundred dollars ($80,200) from the general fund and~~ ]one hundred twenty thousand three hundred dollars ($120,300) from federal funds for two FTE and for program costs to establish and manage a volunteer site stewards program to protect and preserve cultural sites throughout New Mexico.

[~~The other state funds appropriations to the education, outreach, and technical assistance program of the office of cultural affairs include one hundred thousand dollars ($100,000) from cash balances of the office of cultural affairs operating fund to provide funding for public concerts in communities throughout the state and for educational performances in public schools.~~]

Performance Measures:

(a) Outcome: Percent increase of participants in agency educational and special

events within agency facilities 1.5%

(b) Outcome: Percent increase of participants in agency educational and special

events outside agency facilities 5.5%

(c) Outcome: Percent of total events occurring in communities outside Santa Fe,

Albuquerque and Las Cruces

(d) Output: Number of programs delivered through grants for humanities projects 450

(e) Output: Number of tutors trained by the New Mexico coalition for literacy 1,300

(f) Output: Number of students served by the New Mexico coalition for literacy 3,500

(g) Explanatory: Dollar amount of net sales, plus accounts receivable, for the museum

of New Mexico press, in thousands $600

(4) Cultural resources development:

The purpose of the cultural resources development program is to provide opportunities for the development and stabilization of cultural resources for organizations and local communities throughout New Mexico.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 669.4 | 78.8 | | | 748.2 |
| (b) Contractual services | 100.3 | 94.9 | 305.1 | | 500.3 |
| (c) Other financing uses | | .2 | | | .2 |
| (d) Other | 1,292.7 | 403.0 | | | 1,695.7 |

Authorized FTE: 11.70 Permanent; 6.25 Term; 1.30 Temp

The appropriations to the cultural resources development program of the office of cultural affairs include [~~seventy-eight thousand dollars ($78,000) from the general fund and~~] one hundred seventeen thousand dollars ($117,000) from federal funds for 0.75 FTE and for program costs to enhance and expand the surveys of sites and buildings

eligible for listing on the state register of cultural properties and the national register of historic places.

Performance Measures:

(a) Explanatory: Percent of funds distributed to communities outside of Albuquerque,

Santa Fe and Las Cruces 54%

(b) Outcome: Attendance at new programs partially funded by New Mexico arts,

provided by arts organizations statewide 2,000,000

(c) Efficiency: Dollar value of buildings rehabilitated through tax credit program,

per tax dollar credited $2.20:1

(d) Outcome: Total number of new structures preserved annually which utilize

preservation tax credits 57

(e) Explanatory: Number of pieces of public art placed throughout New Mexico

purchased with state funds 175

(f) Output: Number of public library visits per capita 5.6

(5) Program support:

The purpose of program support is to provide administrative support for all programs and divisions to assist the agency in delivering its programs and services so that it can serve its constituents.

| | **Other** | **Intrnl Svc** |
|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,085.5 | 30.5 | 50.0 | | 1,166.0 |
| (b) Contractual services | 4.1 | | | | 4.1 |
| (c) Other financing uses | .5 | | | | .5 |
| (d) Other | 113.6 | | 60.0 | | 173.6 |

Authorized FTE: 21.70 Permanent

The general fund appropriation to the office of cultural affairs in the contractual services category is contingent on the office of cultural affairs including performance measures in its contracts to increase contract oversight and accountability.

Unexpended or unencumbered balances in the office of cultural affairs remaining at the end of fiscal year 2002 from appropriations made from the general fund shall not revert.

Performance Measures:

(a) Outcome: Percent of employee files with performance appraisal development plans completed by anniversary date 55%

(b) Output: Percent of time computer servers down 5%

(c) Quality: Percent of audit findings resolved over prior fiscal year 100%

(d) Outcome: Percent of agency program objectives met 90%

(e) Efficiency: Ratio of program support FTE to total program FTE 1:30

Subtotal 33,381.8

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:

(1) Healthy ecosystems:

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 provided the needs of rural communities and traditional farming and ranching techniques are a priority factor in determining healthy ecosystems.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,724.6 | 68.9 | 97.4 | 923.7 | 3,814.6 |
| (b) Contractual services | 116.1 | 500.9 | 4,694.8 | | 5,311.8 |
| (c) Other financing uses | 3.7 | 830.2 | .9 | 2,045.3 | 2,880.1 |
| (d) Other | 701.7 | 10.0 | 231.0 | 552.7 | 1,495.4 |

Authorized FTE: 62.00 Permanent; 18.00 Term; 1.00 Temp

[~~The general fund appropriations to the healthy ecosystems program of the energy, minerals and natural resources department include forty-five thousand dollars ($45,000) for a pilot program for fire risk reduction and tree recovery through development of~~

~~economic uses for small diameter and under-utilized tree species recovered from forest restoration and fuel reduction efforts in Taos, Mora, Rio Arriba, Colfax and San Miguel counties.~~]

Performance Measures:

(a) Output: Number of abandoned wells plugged 39

(b) Outcome: Percent of inventoried temporarily abandoned wells that are plugged 19%

(c) Output: Number of acres restored annually 18,000

(d) Output: Number of seedlings delivered through conservation tree seedling program 170,000

(e) Output: Number of department of energy compliance project management plan training courses/practical exercises conducted per fiscal year 18

(f) Outcome: Percent increase in alternative fuels consumption of gasoline-equivalent gallons from state-sponsored activities 4%

(g) Explanatory: Number of abandoned mines safeguarded 40

(h) Output: Number of abandoned mine reclamation projects completed, as specified in the abandoned mine land federal grants 5

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,559.4 | 4,178.9 | 279.1 | | 10,017.4 |
| (b) Contractual services | 273.4 | 93.5 | 1,480.7 | | 1,847.6 |
| (c) Other financing uses | 4.6 | 2,071.3 | | | 2,075.9 |
| (d) Other | 2,186.6 | 3,247.8 | 2,070.7 | 308.2 | 7,813.3 |

Authorized FTE: 217.00 Permanent; 5.00 Term; 47.00 Temp

Performance Measures:

(a) Output: Number of visitors to state parks 4,700,000

(b) Explanatory: Percent of general fund to total funds 41%

(c) Explanatory: Self-generated revenue per visitor $0.79

(d) Output: Number of interpretive programs available to park visitors 85

(e) Output: Number of visitors participating in interpretive programs, including displays at visitor centers and self-guided tours 81,600

(f) Output: Number of boat safety inspections conducted 8,000

(3) Voluntary compliance:

The purpose of the voluntary compliance program is to encourage mining, oil and gas operators to develop workable permits and to comply with those permits by providing sound technical review, monitoring operators and resolving violations.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 3,450.0 | 555.5 | 659.9 | | 4,665.4 |
| (b) Contractual services | 69.3 | 41.5 | 30.8 | | 141.6 |
| (c) Other financing uses | 1.5 | 669.9 | .1 | 108.8 | 780.3 |
| (d) Other | 1,097.0 | 8.0 | 113.0 | 104.9 | 1,322.9 |

Authorized FTE: 76.00 Permanent; 10.00 Term

Performance Measures:

(a) Output: Number of inspections conducted per year to ensure mining is being conducted in compliance with approved permits and regulations 180

(b) Outcome: Percent of operators who perform adequate safeguarding without guidance from mining and minerals division under the mine registration and safeguarding program 75%

(c) Efficiency: Percent of Mining Act permit submittals reviewed within ninety days 75%

(d) Output: Number of inspections of oil and gas wells and associated facilities 24,250

(e) Outcome: Percentage of violations resolved in ninety days 99%

(f) Efficiency: Percentage of applications for administrative orders reviewed within

thirty days 75%

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 339.9 | 51.0 | | | 390.9 |
| (b) Contractual services | 1.4 | 200.0 | 475.4 | | 676.8 |
| (c) Other financing uses | .2 | 345.4 | 120.0 | | 465.6 |
| (d) Other | 4.6 | 198.5 | | | 203.1 |

Authorized FTE: 5.00 Permanent; 1.00 Term

Performance Measures:

(a) Explanatory: Annual utility costs for state-owned buildings pursuant to Executive

Order 99-40

(b) Output: Energy savings, in million of British thermal units, as a result of

state-sponsored projects 32,266

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,364.4 | 129.9 | | | 2,494.3 |
| (b) Contractual services | 56.5 | 30.0 | | | 86.5 |
| (c) Other financing uses | .9 | | | | .9 |
| (d) Other | 393.2 | 90.1 | | | 483.3 |

Authorized FTE: 41.50 Permanent; 3.00 Term

Performance Measures:

(a) Outcome: Percent of employee files with performance appraisal development

plans completed by anniversary date 95%

(b) Outcome: Percent of prior year audit findings resolved 90%

(c) Efficiency: Percent of time local area network is available 95%

(6) Youth conservation corps:

Appropriations:

(a) Personal services and

employee benefits 97.2 97.2

(b) Contractual services 2,065.4 2,065.4

(c) Other financing uses .1 .1

(d) Other 37.3 37.3

Authorized FTE: 2.00 Permanent

Subtotal 49,167.7

STATE ENGINEER:

(1) Water resource allocation:

The purpose of the water resource allocation program is to provide beneficial use of the public surface and underground waters of the state to any person; association; corporation, public or private; the state of New Mexico; and the United States so they can maintain their quality of life and so they can efficiently use the available water supplies of the state for beneficial purposes.

**Other Intrnl Svc**

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,276.7 | | 235.6 | | 5,512.3 |
| (b) Contractual services | 11.5 | | 600.0 | | 611.5 |
| (c) Other financing uses | | | 2.2 | | 2.2 |
| (d) Other | 880.1 | | 33.2 | | 913.3 |
| Authorized FTE: | 112.00 | Permanent | | | |

The internal services funds/interagency transfers appropriations to the water resources allocation program of the state engineer include six hundred thousand dollars ($600,000) from the improvement of the Rio Grande income fund.

Performance Measures:

(a) Output: Average number of unprotested new and pending applications processed per month 54

(b) Output: Average number of protested and aggrieved applications processed per month 16

(c) Explanatory: Number of unprotested/unaggrieved water right applications backlogged 624

(d) Explanatory: Number of protested/aggrieved water rights backlogged 148

(2) Interstate stream compact compliance and water development:

The purpose of the interstate stream compact compliance and water development program is to provide representation of the state in the resolution of federal and interstate water issues and to investigate, protect, conserve and develop the water resources and stream systems of New Mexico, interstate and otherwise, for the people of New Mexico so they can have maximum, sustained beneficial uses of available water resources.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,599.3 | 85.3 | | | 1,684.6 |
| (b) Contractual services | 436.4 | 21.2 | 8,960.0 | | 9,417.6 |
| (c) Other financing uses | .4 | .1 | | | .5 |
| (d) Other | 399.8 | 66.4 | 1,700.0 | | 2,166.2 |
| Authorized FTE: | 25.00 Permanent; | 1.00 Temp | | | |

The internal services funds/interagency transfers appropriations to the interstate compact compliance and water development program of the state engineer include two million fifteen thousand dollars ($2,015,000) in the contractual services category and one million seven hundred thousand dollars ($1,700,000) in the other category from the irrigation works construction fund.

The internal services funds/interagency transfers appropriation to the interstate compact compliance and water development program of the state engineer in the contractual services category includes six million nine hundred forty-five thousand dollars ($6,945,000) in contractual services from the improvements of the Rio Grande income fund.

The other state funds appropriations to the interstate compact compliance and water development program for the Ute dam operation of the state engineer include one hundred thousand dollars ($100,000) from the game protection fund. Unexpended or unencumbered balances remaining at the end of fiscal year 2002 from appropriations made from the game protection fund shall revert to the game protection fund.

Performance Measures:

(a) Outcome: Pecos river compact accumulated delivery credit or deficit, in acre feet 10,000

(b) Outcome: Rio Grande river compact accumulated delivery credit or deficit, in acre feet 100,000

(c) Explanatory: Cumulative number of regional water plans completed and accepted by interstate stream commission 4

(3) Water rights protection and adjudication:

The purpose of the water rights protection and adjudication program is to obtain a judicial determination and definition of water rights within each system and underground basin as required by law so that the state engineer may effectively perform water rights administration and meet New Mexico's interstate stream obligations. This will prevent over-allocation of water and, during times of drought and water shortages, will establish the priorities for water usage.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,384.5 | | | | 2,384.5 |
| (b) Contractual services | 758.0 | 2,500.0 | | | 3,258.0 |
| (c) Other financing uses | .8 | | | | .8 |
| (d) Other | 437.6 | | | | 437.6 |
| Authorized FTE: | 44.00 Permanent | | | | |

The internal services funds/interagency transfers appropriations to the water rights protection and adjudication program of the state engineer include two million five hundred thousand dollars ($2,500,000) from the irrigation works construction fund.

Performance Measures:

(a) Outcome: Number of offers to defendants in adjudications 7,000

(b) Outcome: Percent of all water rights that have judicial determinations 10%

(4) Program support:

The purpose of program support is to provide necessary administrative support to state engineer programs so the agency can be successful in reaching its goals and objectives.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf Funds | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,686.7 | | | | 1,686.7 |
| (b) Contractual services | 182.5 | 820.0 | | | 1,002.5 |
| (c) Other financing uses | 75.5 | | | | 75.5 |
| (d) Other | 623.8 | | | | 623.8 |
| Authorized FTE: | 27.00 Permanent | | | | |

The internal services funds/interagency transfers appropriation to the program support program of the state engineer includes eight hundred twenty thousand dollars ($820,000) from the irrigation works construction fund.

[~~The general fund appropriation to program support of the state engineer in the other financing uses category includes seventy-five thousand dollars ($75,000) for assisting the Taos valley acequia association and the Rio de Chama acequia association in developing regional acequia geographic information systems that are compatible with those of the state engineer.~~]

Performance Measures:

(a) Output: Average number of days required to process payment vouchers from the date request is received until transmission of the voucher to the department of finance and administration 30

(b) Quality: Percent of employee files that contain performance appraisal development plans that are completed by employees' anniversary date 90%

(5) Irrigation works construction

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Other | 4,291.2 | 2,743.8 | | | 7,035.0 |

The appropriations to the irrigation works construction fund programs of the state engineer include: (a) one million two hundred thousand dollars ($1,200,000) 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 and provided that no more than two hundred and fifty thousand dollars ($250,000) shall be appropriated to one acequia per fiscal year; (b) two hundred fifty thousand dollars ($250,000) for the planning, design, supervision of construction, and construction of approved acequia improvement projects in cooperation with the United States department of agriculture, natural resources conservation service; and (c) one hundred fifty thousand dollars ($150,000) for the construction, improvement, repair and protection from floods of dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state, provided that not more than sixty thousand dollars ($60,000) of this appropriation shall be used for any one community ditch. The state engineer may enter into cooperative agreements with the owners or commissioners of ditch associations to ensure that 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. No

state funds other than loans may be used to meet the acequia's twenty percent share of the total cost of the project.

The appropriations to the irrigation works construction fund programs of the state engineer include (a) 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; (b) loans to irrigation districts and soil and water conservation districts for re-loan to farmers for implementation of water conservation improvements that shall not exceed two million five hundred thousand dollars ($2,500,000); and (c) small loans to acequias and community ditches for construction of improvements that shall not exceed five hundred thousand dollars ($500,000).

The general fund appropriation to state engineer in the contractual services category is contingent on the state engineer including performance measures in its contracts to increase contract oversight and accountability.

None of the money appropriated to the state engineer for operating or trust purposes shall be expended for primary clearing of vegetation in a phreatophyte removal project, except insofar as is required to meet the terms of the Pecos river compact between Texas and New Mexico. However, this prohibition shall not apply to removal of vegetation incidental to the construction, operation or maintenance of works for flood control or carriage of water or both.

Subtotal 49,036.6

TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES 57,716.4 30,547.7 28,596.2 14,725.8 131,586.1

**E. HEALTH, HOSPITALS AND HUMAN SERVICES**

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, 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 decisions about quality service.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 406.9 | 276.6 | | | 683.5 |
| (b) Contractual services | 11.3 | 21.8 | | | 33.1 |
| (c) Other | 214.5 | 201.1 | | | 415.6 |

Authorized FTE: 11.00 Permanent; 2.50 Term

[~~The general fund appropriation to the elder rights and health advocacy program of the state agency on aging in the personal services and employee benefits category includes one hundred thousand dollars ($100,000) for two FTE for the long-term care ombudsman program.~~

~~The general fund appropriations to the elder rights and health advocacy program of the state agency on aging include one hundred fifty thousand dollars ($150,000) for one FTE and associated costs for prescription drug assistance outreach.~~]

Performance Measures:

(a) Output: Number of long-term care complaints identified and investigated during the federal fiscal year 4,100

(b) Efficiency: Percent of long-term care complaints resolved during the federal fiscal year 65%

(c) Output: Number of volunteers trained in the state fiscal year to provide health insurance and benefits assistance 30

(d) Output: Number of client contacts to assist on health insurance and benefits choices 18,300

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | 838.7 | 173.8 | 384.9 | | 1,397.4 |

Performance Measures:

(a) Output: Number of individuals enrolled in the state older worker program in relation to the number of authorized slots of one hundred five

(b) Outcome: Percent of individuals participating in the state older worker program obtaining unsubsidized permanent employment 5%

(c) Output: Number of individuals enrolled in the federal older worker program in relation to the number of authorized slots of sixty-nine 96

(d) Outcome: Percent of individuals participating in the federal older worker program obtaining unsubsidized permanent employment in relation to the authorized slots of sixty-nine 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Other financing uses | 1,499.5 | | | | 1,499.5 |
| (b) Other | 16,432.8 | 5,786.9 | | | 22,219.7 |

The general fund appropriations 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 in the other costs category includes [~~fifty thousand dollars ($50,000) for personal care, home management, transportation, household maintenance, case management and advocacy services to elderly and disabled low-income persons at risk of institutionalization, abuse, neglect or exploitation in the south valley of Bernalillo county; ~~]two million two hundred forty thousand dollars ($2,240,000) to the six area agencies on aging for senior services including case management, Alzheimer's respite care, adult daycare, congregate meals, home-delivered meals, transportation, in-home services and senior center services; one hundred fifty thousand dollars ($150,000) to provide for increased volunteers for the foster grandparent, senior companion and retired and senior volunteers programs; twenty-five thousand dollars ($25,000) for increased information, assistance and education services for individuals with Alzheimer's disease and related disorders and their families and caregivers; sixty-five thousand dollars ($65,000) for statewide senior olympics activities[~~; forty thousand dollars ($40,000) for salaries and transportation expenses for la casa senior center in Clovis; and fifty thousand dollars ($50,000) for rio en medio senior center~~].

Performance Measures:

(a) Output: Number of unduplicated persons served through community services 40,000

(b) Output: Number of one-way trips provided for access to community services 800,000

(c) Outcome: Percent of individuals aged sixty and older served through community

services 15%

(d) Output: Unduplicated number of persons receiving home-delivered meals 4,500

(e) Output: Unduplicated number of persons receiving congregate meals 15,000

(f) Output: Number of congregate and home-delivered meals served to eligible

participants 2,800,000

(g) Output: Number of senior centers providing meals 135

(h) Output: Number of homemaker hours provided in the state fiscal year 81,500

(i) Output: Number of adult day care service hours provided 150,000

(j) Output: Number of hours of legal representation provided including legal advice and education 11,700

(k) Output: Number of hours of respite care provided 100,000

(l) Output: Number of participants in local, state and national senior olympic games 2,100

(m) Output: Number of children served through the foster grandparent program 3,500

(n) Output: Number of volunteer hours provided by retired and senior volunteers 1,600,000

(o) Output: Number of home-bound clients served through the senior companion program 1,700

(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.

| | General | Other State | Intrnl Svc Funds/Inter-Agency | Federal |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Total |
|---|---|---|---|---|
| Appropriations: | | | | |
| (a) Personal services and employee benefits | 1,050.9 | 125.4 | 505.2 | 1,681.5 |
| (b) Contractual services | 88.5 | 15.1 | | 103.6 |
| (c) Other | 174.7 | 34.7 | 76.3 | 285.7 |

Authorized FTE: 28.00 Permanent; 3.00 Term

[~~Unexpended or unencumbered balances in the state agency on aging remaining at the end of fiscal year 2002 from appropriations made from the general fund shall revert to the general fund sixty days after fiscal year 2001 audit reports have been approved by the state auditor.~~]

Performance Measures:

(a) Output: Number of contractors monitored and/or assessed 40

(b) Outcome: Percent of contractors assessed with no significant findings 75%

(c) Output: Number of program performance and financial expenditure reports analyzed and processed within established deadlines 800

(d) Output: Number of attendees at annual conference on aging 1,200

Subtotal 28,319.6

HUMAN SERVICES DEPARTMENT:

(1) Medical assistance:

The purpose of the medical assistance program is to improve the health of low-income individuals by providing access to free or low-cost quality health care.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,693.0 | 38.1 | 3,485.5 | | 6,216.6 |
| (b) Contractual services | 4,963.5 | 111.5 | 12,902.4 | | 17,977.4 |
| (c) Other financing uses | 17,933.0 | 1,070.1 | 79,922.5 | | 98,925.6 |
| (d) Other | 294,515.0 | 14,140.4 | 97,203.0 | 1,159,069.1 | 1,564,927.5 |
| Authorized FTE: | 121.00 | Permanent | | | |

[~~The other state funds appropriations to the medical assistance program of the human services department include eight million eight hundred forty-seven thousand six hundred dollars ($8,847,600) from the tobacco settlement program fund. Four hundred fifty thousand dollars ($450,000) is for a tobacco cessation and prevention program; three hundred thousand dollars ($300,000) is for the purpose of adding an optional medicaid eligibility category per the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000 for low-income women who have gone through the breast and cervical cancer early detection program of the department of health and have been diagnosed with breast or cervical cancer; five million three hundred twenty-two thousand six hundred dollars ($5,322,600) is to provide health insurance to the parents of a child under nineteen years of age who resides with the parent and whose income does not exceed one hundred percent of federal poverty guidelines through the state children's health insurance program; four hundred seventy-five thousand dollars ($475,000) is for the state children's health insurance program, phase two, for early~~

~~childhood home visits; and two million three hundred thousand dollars ($2,300,000) is for the base medicaid program.~~]

The general fund appropriations to the medical assistance program of the human services department include five hundred thousand dollars ($500,000) to increase the number of slots in the disabled and elderly waiver program; thirty-two thousand five hundred dollars ($32,500) for the purpose of establishing an ombudsman program within the medical assistance division to act as an intermediary and advocate for beneficiary concerns relating to behavioral health services; [~~five hundred thousand dollars ($500,000), which together with associated federal matching funds, shall be used for salaries, benefits, training and recruitment of direct care givers in long-term care facilities; one million dollars ($1,000,000) to establish a prescription drug-only medicaid waiver program for persons sixty-five years of age and older with incomes of no more than one hundred percent of the federal poverty level and to obtain any waiver necessary pursuant to Section 1115 of the federal Social Security Act;~~ ]and two million five hundred thousand dollars ($2,500,000) for medicaid coverage for temporary assistance for needy families program clients not eligible for medicaid.

The appropriations to the medical assistance program are contingent on the human services department limiting total behavioral health administrative costs, including the administrative costs of the managed care organizations and any other organizations they may contract with, to fifteen percent or less of total behavioral health expenditures.

Performance Measures:

(a) Output: Number of persons enrolled in the medicaid program at end of the fiscal year 346,600

(b) Output: Percent of children in medicaid receiving an early and periodic screening diagnosis and treatment screening 80%

(c) Output: Percent of adolescents in medicaid managed care who receive well care visits compared to the national average of twenty-six percent 26%

(d) Output: Percent of children in medicaid managed care receiving an annual dental exam 40%

(e) Output: Percent of women enrolled in medicaid managed care receiving breast cancer screens 63%

(f) Output: Percent of women in medicaid managed care receiving cervical cancer screens 68%

(2) Income support:

The purpose of the income support program is to improve the well-being of eligible persons and families through work support programs, cash assistance, food and nutrition assistance, and ancillary services.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 14,751.0 | 17,273.5 | | | 32,024.5 |
| (b) Contractual services | 3,941.9 | 205.0 | | 23,276.7 | 27,423.6 |
| (c) Other financing uses | 6.8 | 38,853.2 | | | 38,860.0 |
| (d) Other | 18,693.4 | 258,198.7 | | | 276,892.1 |

Authorized FTE: 883.50 Permanent

[~~The general fund appropriation to the income support program of the human services department in the contractual services category includes seventy-five thousand dollars ($75,000) for the eastern plains community action program for a youth intervention program.~~]

The appropriations to the income support program of the human services department include five million two hundred ninety thousand one hundred dollars ($5,290,100) from the general fund and eight million seven hundred fourteen thousand six hundred dollars ($8,714,600) 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 three million five hundred seventy-four thousand four hundred dollars ($3,574,400) from the general fund and seventy-eight million one hundred ninety-seven thousand two hundred dollars ($78,197,200) from the 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, housing subsidies, clothing allowances, employment subsidies and one-time diversion payments.

The appropriations to the income support program of the human services department include sixteen million four hundred thousand dollars ($16,400,000) from the temporary assistance for needy families block grant for support services including ten million five hundred thousand dollars ($10,500,000) for job training and placement; five hundred thousand dollars ($500,000) for adult basic education; two million five hundred thousand dollars ($2,500,000) for a domestic violence program; two million four hundred thousand dollars ($2,400,000) for transportation services; and five hundred thousand dollars ($500,000) for substance abuse treatment.

The appropriations to the income support program of the human services department include thirty-two million one hundred twenty-five thousand dollars ($32,125,000) from the temporary assistance for needy families block grant for transfers to other agencies, including six hundred twenty-five thousand dollars ($625,000) to the state department of public education for teen pregnancy education and prevention; five hundred thousand dollars ($500,000) to the commission on the status of women for the team works program; two million dollars ($2,000,000) to the children youth and families department

for adult protective services; twenty-eight million five hundred thousand dollars ($28,500,000) to the children youth and families department for child-care programs; and five hundred thousand dollars ($500,000) to the children youth and families department for child-care training services.

The general fund appropriations to the income support program of the human services department include three million one hundred eighty-two thousand five hundred dollars ($3,182,500) for transfers to other agencies, including two million four hundred eighty-two thousand five hundred dollars ($2,482,500) to the state department of public education for early childhood development and seven hundred thousand dollars ($700,000) to the commission on the status of women for the team works program.

The general fund appropriations to the income support program of the human services department include five million dollars ($5,000,000) for general assistance.

[~~The general fund appropriations to the income support program of the human services department include four hundred thousand dollars ($400,000) for contracting with a statewide food bank program to gather, pack, transport, distribute and prepare unsaleable and surplus fresh produce to feed hungry and homeless New Mexicans.~~]

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 families cases at the end

of the fiscal year 18,200

(b) Output: Number of temporary assistance for needy families clients placed in

jobs 7,000

(c) Outcome: Percent of all temporary assistance for needy families clients

participating in work activities 40%

(d) Outcome: Percent of temporary assistance for needy families clients in two-parent families participating in work activities 70%

(e) Outcome: Six-month job retention rate 60%

(f) Output: Percent of families leaving the temporary assistance for needy families program who are receiving food stamps 65%

(3) Child support enforcement:

The purpose of the child support enforcement program is to provide financial and medical support to children through locating parents, and establishing and enforcing support obligations.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 7,310.0 | 4,000.0 | 875.6 | 2,097.8 | 14,283.4 |
| (b) Contractual services | 12,357.8 | | | | 12,357.8 |
| (c) Other financing uses | 8.3 | | | | 8.3 |
| (d) Other | 6,807.3 | | | | 6,807.3 |

Authorized FTE: 335.00 Permanent; 49.00 Term; 49.00 Temp

Performance Measures:

(a) Outcome: Amount of child support collected, in millions of dollars $62

(b) Outcome: Amount of child support collected for the temporary assistance for needy families program, in millions of dollars $6.1

(c) Outcome: Percent of current support owed that is collected 57%

(d) Outcome: Percent of cases with support orders 36%

(e) Outcome: Percent of children born out-of-wedlock with voluntary paternity acknowledgment 73%

(f) Efficiency: Ratio of dollars collected to program expenditures 3:1

(4) 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,028.8 | 5,029.3 | 10,058.1 | | |
| (b) Contractual services | 74.4 | 187.0 | 261.7 | 523.1 | |
| (c) Other financing uses | 1.9 | 2.0 | 3.9 | | |

(d) Other 1,240.8 900.7 2,141.7 4,283.2

Authorized FTE: 206.00 Permanent

Performance Measures:

(a) Outcome: Percent of payments to vendors and employees processed within thirty

days from receipt of invoice 90%

(b) Outcome: Percent of prior year audit exceptions resolved 80%

(c) Quality: Number of current year material audit findings <3

(d) Quality: Percent of state and federal financial reports completed on time 95%

(5) Cross-agency measures:

Performance Measures:

(a) Output: Percent of people with diabetes who have seen a health provider in

the past year 87.5%

(b) Outcome: Teenage birth rate per one thousand population for females aged

fifteen through seventeen, compared to the national average of 32.1 39

Subtotal 2,111,572.4

LABOR DEPARTMENT:

(1) Operations:

The purpose of the operations program is to provide unemployment insurance, workforce development, welfare-to-work and labor market services that meet the needs of job seekers and employers.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 18,269.8 | | | | 18,269.8 |
| (b) Contractual services | [~~800.0~~] 1,255.4 | | | | 2,055.4 |
| (c) Other | 28,203.6 | | | | 28,203.6 |

Authorized FTE: 428.00 Permanent; 29.00 Term; 34.00 Temp

[~~The general fund appropriation to the operations program of the labor department in the contractual services category includes fifty thousand dollars ($50,000) for the west Las Vegas school district to establish a one-stop youth career center and fifty thousand dollars ($50,000) for the east Las Vegas school district to establish a one-stop youth career center.~~]

Performance Measures:

(a) Explanatory: Number of persons served by the labor market services program 150,000

(b) Outcome: Percent of adults receiving workforce development services who have entered employment within one quarter of leaving the program 68%

(c) Outcome: Percent of dislocated workers receiving workforce development

services who have entered employment within one quarter of leaving

the program 73%

(d) Outcome: Number of individuals served by labor market services who found

employment 46,460

(e) Explanatory: Number of participants enrolled in the welfare-to-work program

during the state fiscal year 2,500

(f) Outcome: Percent of welfare-to-work participants placed in stable,

unsubsidized employment 50%

(g) Outcome: Average hourly wage of the welfare-to-work participants placed in

jobs $6.25

(h) Outcome: Percent of welfare-to-work participants placed in stable,

unsubsidized employment who are employed six months after placement 50%

(i) Outcome: Percent of status determinations for newly established employers

made within ninety days of the quarter end 60%

(2) Compliance:

The purpose of the compliance program is to monitor and evaluate compliance with labor law, including nonpayment of wages, unlawful discrimination, child labor, apprentices and wage rates for public works projects.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 757.8 | 830.5 | 200.0 | | 1,788.3 |
| (b) Contractual services | 16.6 | | | | 16.6 |
| (c) Other | 505.0 | | | | 505.0 |

Authorized FTE: 37.00 Permanent; 3.00 Temp

Performance Measures:

(a) Output: Number of targeted public works inspections completed 1,500

(b) Outcome: Percent of wage claims investigated and resolved within one hundred twenty days 75%

(c) Efficiency: Number of backlogged human rights commission hearings pending 35

(d) Efficiency: Percent of discrimination cases settled through alternative dispute resolution 25%

(e) Efficiency: Average number of days for completion of discrimination investigations and determinations 150

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,078.9 | | | | 1,078.9 |
| (b) Contractual services | 62.9 | | | | 62.9 |
| (c) Other | 673.7 | | | | 673.7 |

Authorized FTE: 20.00 Permanent; 2.00 Term

Performance Measures:

(a) Quality: Percent of monthly sets of employment statistics developed in conformance with United States bureau of labor statistics guidelines 100%

(b) Quality: Percent of monthly sets of economic statistics developed in

conformance with United States bureau of labor statistics guidelines 100%

(4) 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 133.3 | 6,291.7 | 6,425.0 | | |
| (b) Contractual services | 7.8 | 1,013.1 | 1,020.9 | | |
| (c) Other | 704.1 | 2,068.6 | 2,772.7 | | |

Authorized FTE: 117.00 Permanent; 4.00 Term; 16.30 Temp

Performance Measures:

(a) Quality: Percent of employees' files that contain performance appraisal development plans completed by employees' anniversary dates 80%

(b) Quality: Average number of days required to process payment vouchers from the date request is received until payment is generated 5

(c) Outcome: Percent of all prior year's audit findings resolved 50%

Subtotal 62,872.8

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitation services:

The purpose of the rehabilitation services program is to provide vocational rehabilitation services to eligible people with disabilities so they can become employed and gain economic self-sufficiency, and to promote independent living of individuals with disabilities.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,378.8 | 7,982.5 | | | 9,361.3 |
| (b) Contractual services | 84.8 | 568.8 | | | 653.6 |
| (c) Other | 3,681.0 | 115.0 | 13,362.0 | | 17,158.0 |

Authorized FTE: 184.00 Permanent; 22.00 Term

Performance Measures:

(a) Output: Number of persons achieving a suitable employment for a 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 for social security disability applicants so they can be allowed or denied social security disability benefits and to produce timely disability reviews for recipients.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 12.5 | 4,136.3 | | | 4,148.8 |
| (b) Contractual services | | 113.8 | | | 113.8 |
| (c) Other financing uses | | 1.8 | | | 1.8 |
| (d) Other | | 5,370.6 | | | 5,370.6 |
| 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 balance in the division of vocational rehabilitation remaining at the end of fiscal year 2002 from appropriations made from the general fund shall not revert.

Performance Measures:

(a) Quality: Percent of disability determinations completed accurately 97.5%

(b) Efficiency: Number of days for completing an initial disability claim 60

Subtotal 36,807.9

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 protection, disease 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.

| Item | Federal Funds | Total | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | |
|---|---|---|---|---|---|---|
| Appropriations: | | | | | | |
| (a) Personal services and employee benefits | 18,401.6 | | 3,399.6 | 894.8 | 14,312.8 | 37,008.8 |
| (b) Contractual services | 24,723.6 | | 6,241.5 | 775.5 | 13,740.0 | 45,480.6 |
| (c) Other financing uses | 159.4 | | 1.8 | .5 | 7.6 | 169.3 |
| (d) Other | 13,337.9 | 11,135.2 | 693.6 | 27,907.9 | 53,074.6 | |

Authorized FTE: 359.00 Permanent; 549.00 Term

The other state funds appropriations to the prevention, health promotion and early intervention program of the department of health include five million dollars ($5,000,000) from the tobacco settlement program fund for smoking prevention and cessation programs, one million dollars ($1,000,000) from the tobacco settlement program fund for juvenile and adult diabetes prevention and control services, four hundred seventy thousand dollars ($470,000) from the tobacco settlement program fund for HIV/AIDS prevention, services and medicine, and three hundred fifty thousand dollars ($350,000) from the tobacco settlement program fund for mobile prenatal and neonatal medical services in rural areas of Dona Ana county.

[~~The general fund appropriation to the prevention, health promotion and early intervention program of the department of health in the contractual services category includes ninety-six thousand dollars ($96,000) to provide medication and transportation assistance for end-stage renal disease dialysis patients, up to a maximum of three hundred dollars ($300) per patient per year; and twenty thousand dollars ($20,000) to disseminate information on teenage pregnancy prevention.~~]

The general fund appropriation to the prevention, health promotion and early intervention program of the department of health in the other financing uses category includes one hundred fifty thousand dollars ($150,000) for staffing, staff development and equipment for para los ninos pediatric specialty clinic at the children's hospital of New Mexico at the university of New Mexico.

Performance Measures:

(a) Output: Number of children aged zero to four with or at risk for developmental disabilities receiving early intervention 3,705

(b) Output: Number of women and children served by the families and infants perinatal case management program 7,350

(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 thirty-five months of age 80%

(e) Output: Number of adolescents aged fifteen to seventeen receiving agency-funded family planning services 10,200

(f) Outcome: Teenage birth rate per one thousand population for females aged fifteen through seventeen compared to the national average of 32.1 39

(g) Outcome: Percent change in past thirty-day use of alcohol among seventh and eighth graders served in agency programs -5%

(h) Outcome: Percent change in past thirty-day use of cigarettes among seventh and eighth graders served in agency programs -7%

(i) Outcome: Percent of merchants selling tobacco products to minors 12.5%

(j) Outcome: Percent of women screened for violence, alcohol and substance abuse training in local health offices 70%

(k) Output: Number of non-infected individuals at high risk for HIV infection, including injection drug users, receiving disease prevention education and counseling 30,000

(l) Output: Percent of people with diabetes who have seen a healthcare provider

in the past year 87.5%

(2) Health systems improvement and public health support:

The purpose of the health systems improvement and public health support program is to provide a statewide system of epidemiological services, primary care, rural health, school health, and emergency medical and quality management services for the people of New Mexico so they can be assured of access to basic health services, timely response to emergencies and threats to the public health, and high quality health systems.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 11,282.4 | 1,765.1 | 1,829.4 | 2,069.4 | 16,946.3 |
| (b) Contractual services | 11,755.0 | 407.0 | 963.7 | 1,909.6 | 15,035.3 |
| (c) Other financing uses | 2.2 | .7 | .5 | .6 | 4.0 |
| (d) Other | 6,413.3 | 903.0 | 552.0 | 839.0 | 8,707.3 |
| Authorized FTE: | 202.00 Permanent; | | 150.00 Term | | |

[~~The general fund appropriation to the health systems improvement and public health support program of the department of health in the other costs category includes six hundred thousand dollars ($600,000) for emergency medical services for expenditure in~~

~~fiscal year 2002 and subsequent fiscal years, contingent on Senate Bill 302 or similar legislation of the first session of the forty-fifth legislature, becoming law.~~]

Performance Measures:

(a) Outcome: Percent and number of long-term services, developmental disabilities waiver, supported living and day habilitation high volume and/or high risk community providers receiving on-site reviews 100%/16

(b) Outcome: Percent and number of behavioral health services regional care coordinator reviews conducted 100%/5

(c) Efficiency: Percent of community-based program complaint investigations completed by the division of health improvement incident management within forty-five days 88%

(d) Efficiency: Percent of inquiries and incidents regarding urgent threats to public health that result in initiation of follow-up investigation and/or control activities by the office of epidemiology within thirty minutes of initial notification 90%

(e) Outcome: Percent of individuals served by a comprehensive emergency medical

services response within ten minutes for first response and within

fifteen minutes for an ambulance 90%

(f) Efficiency: Percent of samples submitted to the scientific laboratory that are

analyzed within standard holding times 98%

(g) Efficiency: Percent of birth certificates issued within three weeks after

receipt of completed request and fees 95%

(h) Output: Number of law enforcement officers trained and certified to conduct

forensically defensible breath and alcohol analyses 750

(3) Behavioral health treatment:

The purpose of the behavioral health treatment program is to provide an effective, accessible, and integrated continuum of behavioral health treatment services that are consumer driven and provided in the least restrictive setting, to help eligible New Mexicans become stabilized and improve their functioning levels.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 27,584.5 | 4,732.2 | 3,196.3 | 724.2 | 36,237.2 |

(b) Contractual services 29,909.8 314.1 259.5 4,343.2 34,826.6

(c) Other financing uses 1,948.0 2.6 1.7 269.4 2,221.7

(d) Other 3,773.1 576.6 433.4 83.6 4,866.7

Authorized FTE: 882.00 Permanent; 89.00 Term

[~~The general fund appropriation to the behavioral health treatment program of the department of health in the personal services and employee benefits category for the southern New Mexico rehabilitation center Pecos lodge activity includes one hundred thousand dollars ($100,000) for one FTE to staff a diagnostic detoxification center.~~]

The general fund appropriation to the behavioral health treatment program of the department of health in the contractual services category includes one million five hundred thousand dollars ($1,500,000) to provide psychiatric medications and other treatment services for indigent and low-income persons with mental illness, as well as medications, housing, case management and psychiatric care for persons with mental illness eligible for jail diversion programs[~~; and one hundred twenty-five thousand dollars ($125,000) for services to children whose mothers are incarcerated~~].

Performance Measures:

(a) Efficiency: Percent of eligible adults with urgent behavioral health treatment needs who have first face-to-face meeting with a community-based behavioral health professional within twenty-four hours of request for services 95%

(b) Efficiency: Percent of eligible adults with routine behavioral health treatment

needs who have 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 50%

(e) Quality: Maintain substantial compliance for joint commission on

accreditation of healthcare organizations accreditation for the

sequoyah adolescent residential treatment center behavioral health

facility Retain

(f) Quality: Maintain substantial compliance for joint commission on

accreditation of healthcare organizations accreditation for the Las

Vegas medical center behavioral health facility Retain

(g) Quality: Turquoise lodge will retain accreditation by the commission on accreditation of rehabilitation facilities Retain

(h) Quality: New Mexico rehabilitation center will retain accreditation by the joint commission on accreditation of healthcare organizations and the commission on accreditation of rehabilitation facilities Retain

(i) Outcome: Las Vegas medical center re-admission rate per one thousand patient days within thirty days compared to the national average 9.5%

(j) Efficiency: Percent of adults discharged from inpatient care who receive follow-up care within seven days 75%

(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 persons in New Mexico so their quality of life and independence can be maximized.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| (a) Personal services and employee benefits | 10,037.1 | 6,698.6 | 28,820.9 | 1,501.9 | 47,058.5 |
| (b) Contractual services | 12,391.5 | 1,866.1 | 2,659.2 | 43.5 | 16,960.3 |
| (c) Other financing uses | 52,487.1 | 1,505.0 | 23.5 | .9 | 54,016.5 |
| (d) Other | 2,310.6 | 1,459.0 | 6,851.4 | 363.9 | 10,984.9 |
| Authorized FTE: | 1,007.00 Permanent; | | 306.00 Term | | |

One million five hundred thousand dollars ($1,500,000) of the general fund appropriations made to the department of health in Subsection F of Section 4 of Chapter 5 of Laws 2000 (S.S.) shall not revert at the end of fiscal year 2001 and is re-appropriated from other state funds to the medicaid waivers activity of the long-term care program of the department of health.

The general fund and other state funds appropriation to the long-term care program of the department of health in the other financing uses category includes two million dollars ($2,000,000) to provide increased reimbursement rates for developmental disabilities and disabled and elderly service providers, and to provide assistance to community-based providers to expand residential capacity for new clients with developmental disabilities; and seven million five hundred eighty-three thousand four hundred dollars ($7,583,400) to provide developmental disabilities services to individuals not being served.

[~~The general fund appropriation to the long-term care program of the department of health in the other financing uses category includes seventy-five thousand dollars ($75,000) to be transferred to the developmental disabilities planning council for an ombudsman program.~~]

The general fund appropriation to the long-term care program of the department of health in the contractual services category includes ten thousand dollars ($10,000) for special olympics.

[~~Unexpended or unencumbered balances remaining at the end of fiscal year 2002 in the medicaid waivers activity of the long-term care program of the department of health shall be expended to increase provider rates in the developmental disabilities medicaid waiver activity and developmental disabilities general fund activity as allowed by the federal health care financing administration.~~]

Performance Measures:

(a) Quality: Number of abuse, neglect or exploitation allegations in agency community-based long-term care services that are confirmed by the division of health improvement or substantiated through the adult protective services program of the children, youth and families department 450

(b) Outcome: Percent of individual service plans for community-based long-term care programs that contain specific strategies to promote or maintain independence such as daily living skills, work and functional skills 80%

(c) Quality: Percent of community long-term services contractors' direct contact staff who leave employment annually <50%

(d) Quality: Retain or acquire joint commission on accreditation of healthcare organizations accreditation for the Las Vegas medical center long-term care facility Retain

(e) Quality: Retain or acquire joint commission on accreditation of healthcare organizations accreditation for the Fort Bayard medical center long-term care facility Acquire

(f) Quality: Retain or acquire joint commission on accreditation of healthcare organizations accreditation for the New Mexico veterans' center long-term care facility Retain

(g) Quality: Retain or acquire joint commission on accreditation of healthcare organizations accreditation for the southern New Mexico rehabilitation center long-term care facility Retain

(h) Explanatory: Number of customers/registrants requesting and actively waiting for admission to the disabled and elderly medicaid waiver program 1,600

(i) Efficiency: Length of time for an individual on the waiting list for the disabled and elderly medicaid waiver program, in months [~~3~~]

(j) Explanatory: Number of customers/registrants requesting and actively waiting for admission to the developmental disabilities medicaid waiver program [~~0~~]

(k) Efficiency: Length of time for an individual on the waiting list for the

developmental disabilities medicaid waiver program, in months [~~3~~]

(l) Output: Number of crisis referrals for individuals with developmental disabilities that are addressed by the Los Lunas community program crisis network 95

(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 mission and goals of the department of health.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 4,484.0 | 178.5 | 1,443.6 | | 6,106.1 |
| (b) Contractual services | 177.3 | 7.9 | 77.7 | | 262.9 |
| (c) Other financing uses | 1.4 | .1 | .5 | | 2.0 |
| (d) Other | 1,033.3 | 479.0 | 428.2 | | 1,940.5 |
| Authorized FTE: | 122.00 | Permanent | | | |
| Performance Measures: | | | | | |

(a) Outcome: Average rating on human resources management services survey

assessing the quality of human resources services on a scale of one

to five 3.5

(b) Output: Compliance with the federal Health Insurance Portability and

Accountability Compliance Act including development and deployment

of information systems disaster recovery plan Compliance

(c) Efficiency: Percent of invoices paid within thirty days from the date of

acceptance of invoices by agency divisions/facilities 90%

Subtotal 391,910.1

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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and | | | | | |

employee benefits 273.3 2,821.4 711.3 3,806.0

(b) Contractual services 11.0 270.1 28.5 309.6

(c) Other financing uses 5.9 136.0 15.5 157.4

(d) Other 83.7 958.7 218.2 1,260.6

Authorized FTE: 23.00 Permanent; 57.00 Term

Performance Measures:

(a) Output: Number of air quality inspections completed 270

(b) Efficiency: Percent of construction permit decisions within first ninety days

allowed by statute 90%

(c) Efficiency: Percent of portable source relocation applications processed within

ten days 40%

(d) Efficiency: Percent of portable source relocation applications processed within

twelve days 60%

(e) Efficiency: Percent of portable source relocation applications processed within

fifteen days 100%

(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.

| | **Other** | **Intrnl Svc** |
|---|---|---|

| Item | General Fund | State Funds | Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,349.2 | 388.6 | 3,292.4 | | 6,030.2 |
| (b) Contractual services | 166.1 | 52.7 | 2,906.7 | | 3,125.5 |
| (c) Other financing uses | 4.8 | 51.1 | 33.7 | | 89.6 |
| (d) Other | 328.5 | 138.6 | 672.2 | | 1,139.3 |

Authorized FTE: 42.00 Permanent; 82.00 Term

Performance Measures:

(a) Efficiency: Percent of public drinking water systems inspected within one week of notification of system problems that may impact public health 75%

(b) Efficiency: Percent of ground water pollution prevention permits renewed that have been expired for at least one year 35%

(c) Efficiency: Completed percent of drinking water chemical sampling within regulatory period 70%

(d) Efficiency: Percent of ground water pollution prevention permits issued within

regulatory timeframes 70%

(e) Outcome: Percent of impaired total stream miles restored to beneficial uses 2%

(f) Outcome: Percent of permitted facilities that have not polluted ground water 70%

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,656.5 | 2,821.5 | 1,345.9 | 5,823.9 | |
| (b) Contractual services | 35.8 | 758.3 | 162.4 | 956.5 | |
| (c) Other financing uses | 10.8 | 141.2 | 30.4 | 182.4 | |
| (d) Other | 228.1 | 947.5 | 286.6 | 1,462.2 | |
| Authorized FTE: | 30.00 Permanent; | 94.50 Term | | | |

Performance Measures:

(a) Efficiency: Percent of hazardous waste generator inspections completed 7%

(b) Outcome: Percent of landfills meeting ground water monitoring requirements 92%

(c) Outcome: Percent of confirmed underground storage tank release sites undergoing assessment or corrective action 40%

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,022.2 | 1,300.9 | 3,368.4 | 9,691.5 | |
| (b) Contractual services | 2.8 | 1,830.2 | 1,240.3 | 3,073.3 | |
| (c) Other financing uses | 39.6 | 28.9 | 81.6 | 150.1 | |
| (d) Other | 1,162.8 | 746.6 | 1,307.0 | 3,216.4 | |
| Authorized FTE: | 128.00 Permanent; 84.00 Term | | | | |

The internal service funds/interagency transfers appropriations to the environmental and occupational health, safety and oversight program include one hundred eleven thousand five hundred dollars ($111,500) from radioactive materials license fees and

two hundred eighty-five thousand two hundred dollars ($285,200) from liquid waste permit fees.

Performance Measures:

(a) Explanatory: Number of new septic tanks 7,000

(b) Efficiency: Percent of new septic tank inspections completed 70%

(c) Explanatory: Number of commercial food establishments 6,000

(d) Efficiency: Percent of commercial food establishment inspections completed 100%

(e) Outcome: Percent reduction in the injury/illness rate in selected industries

by June 30, 2002 3%

(5) Program support:

The purpose of program support is to provide overall leadership, administrative, legal and information management support to all department staff, the public and oversight and regulatory bodies to allow programs to operate in the most knowledgeable, efficient and cost effective manner and so the public can receive the information it needs to hold the department accountable.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,885.1 | 1,873.1 | 1,110.7 | 4,868.9 | |

(b) Contractual services 68.3 107.8 49.1 225.2

(c) Other financing uses .8 .8 .6 2.2

(d) Other 640.9 311.2 320.7 1,272.8

Authorized FTE: 60.00 Permanent; 30.00 Term

Performance Measures:

(a) Output: Percent of prior year significant audit findings resolved 50%

(b) Quality: Average favorable percent rating on annual program support customer

satisfaction survey 60%

(6) Radioactive material license fund:

| Item | Federal Funds | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Total |
|---|---|---|---|---|---|
| | | | 111.5 | | 111.5 |

(7) Liquid waste fund:

| | | | | | |
|---|---|---|---|---|---|
| | | | 285.2 | | 285.2 |

(8) Tire recycling fund:

| | | | | | |
|---|---|---|---|---|---|
| | | | 68.7 | | 68.7 |

(9) Air quality Title V fund:

| | | | | | |
|---|---|---|---|---|---|
| | | | 3,357.3 | | 3,357.3 |

(10) Responsible party prepay:

264.2 264.2

(11) Hazardous waste fund:

2,403.5 2,403.5

(12) Water quality management fund:

303.2 303.2

3,012.8 3,012.8

(14) Air quality permit fund:

1,295.7 1,295.7

(15) Miscellaneous revenue:

48.8 48.8

(16) Radiologic technology fund:

57.1 57.1

(17) Underground storage tank fund:

648.0 648.0

(18) Corrective action fund:

Appropriations:

(a) Contractual services 6,000.0 6,000.0

(b) Other financing uses 2,611.8 2,611.8

(c) Other 12,000.0 12,000.0

(19) Food service sanitation fund:

494.1 494.1

No money appropriated to the department of environment shall be expended to implement any fee increase unless a specific rule is adopted by the department that raises the fee.

Subtotal
79,805.5

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. Services include early intervention and prevention, detention and screening, probation and parole supervision aimed at keeping youth from committing additional delinquent acts.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 32,539.4 | 1,771.0 | | | 34,310.4 |
| (b) Contractual services | 7,502.1 | 38.0 | | | 7,540.1 |
| (c) Other financing uses | 25.2 | | | | 25.2 |

(d) Other 9,145.4 589.6 1,619.3 11,354.3

Authorized FTE: 853.00 Permanent; 31.90 Term; 6.00 Temp

[~~The general fund appropriation to the juvenile justice program of the children, youth and families department in the other category includes three hundred thousand dollars ($300,000) to implement the following programs and services in the sixth judicial district: one hundred thousand dollars ($100,000) for the star model leadership academy; fifty thousand dollars ($50,000) for the youth shelter program; one hundred twenty-five thousand dollars ($125,000) for truancy, citation, surveillance and community service programs for troubled juveniles in each county; and twenty-five thousand dollars ($25,000) for transportation and detention costs for juveniles from Hidalgo county.~~]

Performance Measures:

(a) Output: Percent of eligible clients receiving a high school diploma in agency facilities 24%

(b) Output: Percent of clients who complete formal probation 52%

(c) Outcome: Average improvement in educational grade level of clients 2

(d) Outcome: Percent of re-adjudicated clients 10%

(e) Outcome: Percent of clients recommitted to a state juvenile or adult correctional facility in New Mexico 12.6%

(2) Child protective services:

The purpose of the child protective services program is to receive and investigate child abuse and neglect referrals, provide family preservation and treatment, legal intervention or other services to assure the safety of children.

| | **General** | **Other State** | **Intrnl Svc Funds/Inter-** | **Federal** |
|---|---|---|---|---|

| Item | Fund | Funds | Agency Trnsf Funds | Total |
|---|---|---|---|---|
| Appropriations: | | | | |
| (a) Personal services and employee benefits | 14,452.5 | 7,159.7 | 12,253.4 | 33,865.6 |
| (b) Contractual services | 2,065.5 | 4,825.2 | | 6,890.7 |
| (c) Other financing uses | 17.4 | 78.8 | | 96.2 |
| (d) Other | 11,000.5 | 1,262.6 | 3,784.2 | 13,453.3 | 29,500.6 |
| Authorized FTE: | 745.00 Permanent; | 6.00 Term; | 2.00 Temp | | |

[~~The general fund appropriation to the child protective services program of the children, youth and families department in the other category includes one hundred thousand dollars ($100,000) to provide funds to establish a legal relationship between a child and a caregiver when the child is not residing with either parent and the child's parents are unwilling or unable to establish a stable and consistent relationship.~~]

Performance Measures:

(a) Output: Number of children in foster care twelve months with no more than two placements 1,650

(b) Output: Number of children adopted within twenty-four months of entry into foster care 50

(c) Outcome: Percent of children with repeat maltreatment 24%

(d) Outcome: Percent of children in care twelve months with no more than two placements 81%

(e) Outcome: Percent of children adopted in less than twenty-four months from

entry into foster care 18%

(3) Adult protective services:

The purpose of the adult protective services program is to receive referrals on adult abuse, neglect or exploitation and to investigate allegations and provide services to promote safety, self-sufficiency and well-being through the least restrictive intervention or legal intervention for incapacitated adults.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 3,168.1 | 813.7 | 2,877.3 | | 6,859.1 |
| (b) Contractual services | 2,341.0 | | 1,916.0 | | 4,257.0 |
| (c) Other financing uses | 14.8 | | 14.8 | | 29.6 |
| (d) Other | 3,855.1 | 491.0 | 4,389.5 | | 8,735.6 |
| Authorized FTE: | 175.70 | Permanent | | | |

Performance Measures:

(a) Output: Average number of cases served per month 1,140

(b) Output: Number of adults with repeat maltreatment 365

(c) Output: Percent of adults with repeat maltreatment 25%

(4) 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 physical, social and emotional growth and development and can access quality care.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,257.1 | 406.2 | 2,352.8 | 8,016.1 | |
| (b) Contractual services | 2,719.2 | 211.0 | 131.0 | 706.5 | 3,767.7 |
| (c) Other financing uses | 3.1 | 320.0 | 1,250.5 | 1,573.6 | |
| (d) Other | 27,529.5 | 601.2 | 30,405.7 | 80,765.0 | 139,301.4 |
| Authorized FTE: | 143.80 Permanent; | 40.50 Term | | | |

The general fund appropriation to the prevention and intervention program of the children, youth and families department in the contractual services category includes [~~seven hundred fifty thousand dollars ($750,000) for services and programs for victims of domestic violence and their families; seventy-five thousand dollars ($75,000) for increasing contractual services to expand child development programs for children under five and their families in Bernalillo county; and~~ ]one hundred thousand dollars ($100,000) for a drug demand harm-reduction program for teenagers and young adults in Chimayo in Rio Arriba and Santa Fe counties.

Performance Measures:

(a) Outcome: Percent of slots providing specialty child care 13.7%

(b) Outcome: Number of slots available providing specialty child care 9,416

(c) Outcome: Percent of clients who experience an increased level of functioning

and the percent of families with improved family functioning as measured by the child function assessment rating system 60%

(5) Program support:

The purpose of program support is to provide the direct service divisions 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 5,269.7 | 686.5 | 2,342.0 | 8,298.2 | |
| (b) Contractual services | 592.5 | 173.4 | 468.2 | 1,234.1 | |
| (c) Other financing uses | 2.9 | | | 2.9 | |
| (d) Other | 2,355.0 | 373.6 | 1,011.1 | 3,739.7 | |

Authorized FTE: 157.00 Permanent

The general fund appropriation to program support of the children, youth and families department in the contractual services category is contingent upon the department including performance measures in its outcome-based contracts to increase contract oversight and accountability.

Performance Measures:

(a) Efficiency: Percent of vendor payments made and established within prescribed

timeframes 95%

(b) Outcome: Turnover rate for social worker classification 15%

(c) Outcome: Turnover rate for juvenile corrections officer classification 35%

(d) Quality: Percent of employee performance appraisal development plans

completed by employees' anniversary dates 90%

Subtotal 309,398.1

TOTAL HEALTH, HOSPITALS AND

HUMAN SERVICES 775,137.7 99,128.4 210,854.4 1,935,565.9 3,020,686.4

**F. PUBLIC SAFETY**

CORRECTIONS DEPARTMENT:

(1) Inmate management and control:

The purpose of the inmate management and control program is to incarcerate in a humane, professionally sound manner offenders sentenced to prison, and to provide safe and secure prison operations that protect the public from escape risks and the

prison staff, contractors and inmates from inmate violence exposure to the extent possible within budgetary resources.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 61,912.4 | 7,453.4 | | | 69,365.8 |
| (b) Contractual services | 22,459.8 | | | | 22,459.8 |
| (c) Other financing uses | 41.6 | | | | 41.6 |
| (d) Other | 60,821.3 | 1,379.4 | 100.0 | 500.0 | 62,800.7 |
| Authorized FTE: | 1,656.00 Permanent; | 14.00 Term | | | |

The general fund appropriations in the inmate management and control program of the corrections department for health services include twenty-one million four hundred seventeen thousand three hundred thirty-nine dollars ($21,417,339) to be used for the comprehensive health-care contract.

The general fund appropriations to the inmate management and control program of the corrections department include forty-two million five hundred eleven thousand two hundred fifty-one dollars ($42,511,251) to be used only for housing inmates in privately operated facilities; and seven hundred nineteen thousand dollars ($719,000) to increase the per-diem rate for housing male inmates at the Guadalupe county correctional facility and the Lea county correctional facility.

Included in the department's appropriation are funds to provide base salary adjustments for correctional officers and correctional officer specialists.

Performance Measures:

(a) Output: Number of major disturbances requiring external assistance per year in department-run male facilities 1

(b) Outcome: Number of escapes in custody levels three and above 1

(c) Efficiency: Daily cost per inmate, in dollars. $85.12

(d) Outcome: Number of homicides in department-run male facilities 2

(e) Outcome: Percent decrease of inmate-on-inmate assaults 1%

(f) Outcome: Percent decrease of inmate-on-staff assaults 1%

(g) Output: Percent of inmates testing positive in monthly drug tests <=10%

(h) Quality: Percent of standard care requirements made by medical contract vendor 85%

(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, which can assist them on release.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|

Appropriations:

(a) Personal services and

employee benefits 5,222.9 455.8 5,678.7

(b) Contractual services 326.1 326.1

(c) Other financing uses 2.2 .1 2.3

(d) Other 713.7 198.7 28.0 940.4

Authorized FTE: 111.50 Permanent; 10.50 Term

[~~The general fund appropriation to the inmate programming program of the corrections department in the contractual services category includes eighty-five thousand dollars ($85,000) to provide culturally competent counselors and advisors for spiritual counseling pursuant to the Native American Counseling Act to adults incarcerated in state correctional facilities.~~]

Performance Measures:

(a) Output: Number of inmates offered corrective thinking, employability, literacy and transferability skills 100

(b) Output: Number of inmates who successfully complete general equivalency diploma 150

(c) Output: Number of inmates enrolled in adult basic education 1,670

(d) Output: Percent of inmates who enter the individual success plan phase of the success for offenders after release program 60%

(e) Output: Percent of reception and diagnostic center intake inmates who receive substance abuse screening 95%

(f) Quality: Number of vocational programs implemented or retained that are related to available jobs in the current job market 31

(g) Output: Number of prison facilities that provide sweat lodge programs to qualifying inmates 8

(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, perform effectively in an employment position, and to reduce idle time of inmates while in prison.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,948.7 | | | | 1,948.7 |
| (b) Contractual services | 52.5 | | | | 52.5 |
| (c) Other financing uses | 100.8 | | | | 100.8 |
| (d) Other | 4,289.9 | | | | 4,289.9 |

Authorized FTE: 37.00 Permanent; 7.00 Term

Performance Measures:

(a) Output: Number of inmate jobs provided 400

(b) Outcome: Percent of eligible inmates employed 7%

(c) Outcome: Profit/loss ratio Break Even

(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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 11,950.7 | 936.5 | | | 12,887.2 |
| (b) Contractual services | 69.0 | | | | 69.0 |
| (c) Other financing uses | 5.9 | | | | 5.9 |
| (d) Other | 5,056.2 | | | | 5,056.2 |
| Authorized FTE: | 313.00 | Permanent | | | |

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.

Performance Measures:

(a) Quality: Number of regular caseloads of probation and parole officers 81

(b) Quality: Number of special caseloads of probation and parole officers 21

(c) Quality: Percent of service providers receiving clinical audits 70%

(5) Community corrections/vendor-run:

The purpose of the community corrections/vendor-run program is to provide selected offenders on probation and parole with residential and non-residential 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.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Contractual services | 181.9 | | | | 181.9 |
| (b) Other | 3,070.4 | | | 335.9 | 3,406.3 |

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: Percent of annual administrative audits completed on contract providers (number of providers total twenty-nine for fiscal year 2001 and thirty-three for fiscal year 2002) 100%

(b) Output: Graduation rate from male residential treatment center at Fort

Stanton 65%

(6) Program support:

The purpose of program support is to provide quality administrative support and oversight to the department operating units to ensure: quality hiring and in-service training for correctional officers, a well-trained professional workforce, a clean audit, effective budget and personnel management, and cost-effective management information system services.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 6,019.0 | 178.1 | | | 6,197.1 |
| (b) Contractual services | 222.1 | | | | 222.1 |
| (c) Other financing uses | 1.9 | | | | 1.9 |
| (d) Other | 1,397.2 | 1,370.2 | 19.9 | | 2,787.3 |
| Authorized FTE: | 100.00 | Permanent | | | |

One million two hundred fourteen thousand five hundred dollars ($1,214,500) of the other state funds appropriation in program support is appropriated to the corrections department building fund.

Performance Measures:

(a) Output: Graduation rate of correctional officer cadets from training academy 75%

(b) Quality: Percent of employee files that contain performance appraisal development plans that were completed and submitted by the employees' anniversary dates 90%

(c) Outcome: Number of prior year audit findings resolved <=3

(d) Outcome: Percent of prior year's audit findings resolved 67%

(e) Output: Number of cadets entering training academy 264

(f) Outcome: Percent turnover of correctional officers 25%

Subtotal 198,822.2

DEPARTMENT OF PUBLIC SAFETY:

(1) Law enforcement:

The purpose of the law enforcement program is to provide the highest quality law enforcement services to ensure a safer New Mexico.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 44,335.7 | 75.0 | 7,753.1 | 1,079.9 | 53,243.7 |
| (b) Contractual services | 705.0 | 4.0 | 25.0 | 734.0 | |
| (c) Other financing uses | 19.3 | | | | 19.3 |

(d) Other 13,350.4 585.0 1,207.6 758.3 15,901.3

Authorized FTE: 980.00 Permanent; 28.00 Term

The internal service funds/interagency transfers appropriations to the law enforcement program of the corrections department include seven million one hundred eighty-nine thousand one hundred dollars ($7,189,100) from the state road fund for the motor transportation division. Any unexpended or unencumbered balance in the law enforcement program remaining at the end of fiscal year 2002 from appropriations made from the state road fund shall revert to the state road fund.

[~~The general fund appropriation to the law enforcement program in the contractual services category includes two hundred thousand dollars ($200,000) for an at-risk youth program.~~]

The general fund appropriations to the law enforcement program include three million eighty-five thousand one hundred dollars ($3,085,100) for fifty-five additional state police officers.

The internal service funds/interagency transfers appropriations to the motor transportation division of the law enforcement program include five hundred ninety thousand one hundred dollars ($590,100) for expanded operations of the Santa Teresa port of entry.

Performance Measures:

(a) Output: Number of patrol hours 205,039

(b) Quality: Average response time for emergency calls, in minutes

(c) Efficiency: Overtime cost per commissioned officer $6,502

(d) Output: Number of DWI enforcement hours 6,500

(e) Output: Number of alcohol enforcement operations 958

(f) Output: Number of undercover narcotic buys 554

(g) Output: Number of illegal narcotic-related arrests 1,249

(h) Output: Number of traffic enforcement commercial vehicle inspections 11,672

(i) Outcome: Commercial vehicle crash rate per one million vehicle miles driven 33.0

(2) Public safety support:

The purpose of the public safety support program is to provide statewide training, criminal records services, forensic and emergency management support to law enforcement, governmental agencies and the general public that enhances their ability to maintain and improve overall public safety in New Mexico.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 3,886.7 | 101.2 | 115.6 | 716.8 | 4,820.3 |
| (b) Contractual services | 365.2 | | 176.4 | 16.0 | 4.0 | 561.6 |
| (c) Other financing uses | 1.9 | | | | 1.9 |
| (d) Other | 607.7 | | 213.1 | 144.5 | 87.3 | 1,052.6 |
| Authorized FTE: | 71.00 Permanent; | | 29.00 Term | | |

The general fund appropriation to the public safety support program of the department of public safety in the contractual services category includes fifty thousand dollars ($50,000) to reduce the backlog in unprocessed fingerprint cards.

Performance Measures:

(a) Quality: Number of unprocessed DNA cases 125

(b) Quality: Number of unprocessed firearms cases 100

(c) Efficiency: Number of DNA cases analyzed per FTE 50

(d) Efficiency: Number of firearms cases analyzed per FTE 72

(e) Quality: Percent of misconduct cases processed within timelines 90%

(f) Efficiency: Percent difference in number of arrest records with a final disposition compared to the baseline number 20%

(3) Information technology:

The purpose of the information technology program is to ensure access to information by its customers and to provide reliable and timely information technology services to agency programs and law enforcement and other governmental agencies in their commitment to build a safer, stronger New Mexico.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,706.2 | 74.9 | | | 1,781.1 |
| (b) Contractual services | 117.0 | | | | 117.0 |
| (c) Other financing uses | .6 | | | | .6 |

(d) Other 604.3 604.3

Authorized FTE: 29.00 Permanent; 1.00 Term

Performance Measures:

(a) Outcome: Hours of computer downtime as a percent of total computer uptime

capacity 10%

(b) Outcome: Percent of operability for all mission-critical software

applications residing on agency server 97%

(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 agency programs in their commitment to building a safer, stronger New Mexico and to ensure the fiscal integrity and responsibility of those programs.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 2,835.4 | 82.4 | 23.6 | 425.5 | 3,366.9 |
| (b) Contractual services | 82.6 | | 40.0 | | 122.6 |
| (c) Other financing uses | 1.4 | | | | 1.4 |

(d) Other 1,831.1 69.9 3,614.2 5,515.2

Authorized FTE: 64.00 Permanent; 8.00 Term

Performance Measures:

(a) Output: Number of technical assistance site visits provided to subgrantees 6

(b) Quality: Percent of employee files that contain performance appraisal development plans that were complete and submitted within thirty days of the employees' anniversary dates 75%

(c) Efficiency: Percent decrease of energy consumption as compared to prior year actual consumption as reported and adjusted by the department <=1%

(d) Quality: Average number of audit findings reported over the last four years in audits completed, keeping reportable and material weaknesses separate 1

Subtotal 87,843.8

TOTAL PUBLIC SAFETY 249,924.8 19,170.3 10,217.0 7,353.9 286,666.0

**G. 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, including highway planning, finance, design and construction.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 31,115.1 | 11,104.4 | | | 42,219.5 |
| (b) Contractual services | 72,288.0 | 220,938.2 | | | 293,226.2 |
| (c) Other | 21,669.1 | 1,420.8 | | | 23,089.9 |
| (d) Debt service | 6,191.1 | 86,584.9 | | | 92,775.9 |

Authorized FTE: 901.00 Permanent; 15.00 Term; 32.30 Temp

Performance Measures:

(a) Quality: Project profilograph for construction projects (road quality and smoothness) <=4.2

(b) Quality: Percent of final cost increase over bid amount 4.2%

(c) Efficiency: Return on investment for value engineering projects $113:1

(d) Outcome: Number of combined system wide miles in deficient condition 4,834

(e) Explanatory: Percent of programmed projects let in fiscal year 2000 56.7%

(f) Explanatory: Contracted engineering services as a percent of construction costs

in fiscal year 2000 14%

(2) Maintenance:

The purpose of the maintenance program is to provide maintenance and improvements to the state's highway infrastructure to preserve roadway integrity and maintain open highway access throughout the state system.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 32,456.4 | 5,668.7 | | | 38,125.1 |
| (b) Contractual services | | 41,070.1 | | | 41,070.1 |
| (c) Other | 63,244.0 | 247.1 | | | 63,491.1 |
| Authorized FTE: | 1,084.00 Permanent; | 1.00 Term; | 15.80 Temp | | |

[~~The other state funds appropriations contain sufficient funds for statewide renovation of historic markers to be completed in conjunction with the state's historic preservation officer.~~]

Performance Measures:

(a) Output: Number of statewide improved pavement surface miles 3,350

(b) Output: Maintenance expenditures per lane mile of combined system-wide miles $5,250

(c) Output: Number of non-interstate miles rated good 6,050

(d) Output: Number of interstate miles rated good 850

(e) Quality: Customer satisfaction level at rest areas 80%

(f) Outcome: Number of combined system wide miles by deficient condition 4,834

(3) Traffic safety:

The purpose of the traffic safety program is to reduce traffic-related fatalities, crashes and injuries by identifying traffic safety problems, and developing and supporting comprehensive, multiple-strategy initiatives to address safety concerns.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 430.5 | 300.7 | | | 731.2 |
| (b) Other | 3,610.2 | 5,309.2 | | | 8,919.4 |
| Authorized FTE: | 14.00 Permanent; 3.00 Term | | | | |
| Performance Measures: | | | | | |

(a) Outcome: Percent front occupant seat belt use by the public 89%

(b) Outcome: Number of head-on crashes per one hundred million vehicle miles 2.18

traveled

(c) Outcome: Number of alcohol-involved traffic fatalities per one hundred million

vehicle miles traveled .77

(d) Outcome: Number of traffic fatalities per one hundred million vehicle miles

traveled 1.74

(4) Public transportation:

The purpose of the public transportation program is to develop a coordinated public mass transportation program to increase transportation alternatives to citizens so they are not restricted to traveling by personal automobiles.

| Item | Federal Funds | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 373.4 | 118.7 | | | 492.1 |
| (b) Other | 99.9 | 5,985.3 | | | 6,085.2 |
| Authorized FTE: | 7.00 Permanent; | 2.00 Term | | | |

Performance Measures:

(a) Output: Annual urban public transportation ridership, in thousands 8,085

(b) Output: Annual rural public transportation ridership, in thousands 475.5

(5) Aviation:

The purpose of the aviation program is to promote, develop, maintain and protect air transportation infrastructure that provides for safe and efficient airborne movement of people, goods and services within the state and provides access to the global aviation network.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 376.6 | | | | 376.6 |
| (b) Contractual services | 184.0 | | | | 184.0 |
| (c) Other | 1,372.0 | 127.0 | | | 1,499.0 |

Authorized FTE: 7.00 Permanent

Performance Measures:

(a) Output: Number of airport improvement projects around the state 84

(b) Outcome: Fiscal year total dollar amount of airport projects completed, in

millions $33

(c) Outcome: Fiscal year dollar amount of airport deficiencies identified, in millions $42.7

(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 management of construction and maintenance projects.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 29,098.7 | 1,135.0 | | | 30,233.7 |
| (b) Contractual services | 2,736.4 | | | | 2,736.4 |
| (c) Other financing uses | 8,239.1 | | | | 8,239.1 |
| (d) Other | 18,152.9 | 15.4 | | | 18,168.3 |

Authorized FTE: 590.00 Permanent; 3.40 Temp

Performance Measures:

(a) Output: Level of employee turnover 3.75%

(b) Quality: Number of external audit findings 4

(c) Quality: Percent of prior year audit findings resolved 80%

(d) Outcome: Number of worker's compensation claims 135

Subtotal 671,662.8

TOTAL TRANSPORTATION 332,707.4 338,955.4 671,662.8

**H. OTHER EDUCATION**

STATE DEPARTMENT OF PUBLIC EDUCATION:

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 7,706.1 | 176.8 | 84.2 | 4,552.4 | 12,519.5 |
| (b) Contractual services | 472.6 | 43.0 | 183.0 | 1,865.5 | 2,564.1 |
| (c) Other financing uses | 3.5 | .1 | .1 | 154.0 | 157.7 |
| (d) Other | 1,002.2 | 292.6 | 2,176.5 | 1,416.7 | 4,888.0 |
| Authorized FTE: | 175.20 Permanent; | 80.00 Term; | .20 Temp | | |

The general fund appropriations to the state department of public education include three hundred one thousand six hundred dollars ($301,600) from federal Mineral Lands Leasing Act receipts.

Unexpended or unencumbered balances in the state department of public education remaining at the end of fiscal year 2002 from appropriations made from the general fund shall not revert.

Subtotal
20,129.3

(1) Educational attainment of students:

The purpose of the educational attainment of students program is to provide a statewide educational system for public schools and other educational entities so that they can increase academic achievement, decrease dropout rates, maintain high attendance, provide safe school environments, increase parent and community involvement, increase early literacy and end social promotion.

Performance Measures:

(a) Output: Number of students in schools providing full-day kindergarten with required early literacy component 8,000

(b) Outcome: Statewide percentile rank on CTBS Terra Nova norm-referenced test composite score 51.6-48.6

(c) Output: Number of students dropping out <=6,688

(d) Quality: Standard, benchmarks and performance standards alignment with assessments as established in the curriculum cycle

(e) Outcome: Percent of students promoted who are academically proficient 41%

Subtotal 20,129.3

(2) Financial and programmatic oversight:

The purpose of the financial and programmatic oversight program is to provide monitoring of public schools and other educational entities to ensure accountability so that they can improve educational outcomes for students.

Performance Measures:

(a) Output: Number of individual schools receiving instructional materials by September 1 700

(b) Outcome: Number of schools on probationary status

(c) Outcome: Percent of schools that are rated "meets standards" or above 78.6%

(3) Public school and vocational education policy:

The purpose of the public school and vocational education policy program is to provide leadership and direction in policy development to provide guidance to school districts so that they can improve educational outcomes for students.

Performance Measures:

(a) Outcome: Percent of schools rated as "exemplary" as measured by student achievement, dropout rate and attendance rate 10%

Subtotal 20,129.3

TOTAL OTHER EDUCATION 9,184.4 512.5 2,443.8 7,988.6 20,129.3

**I. HIGHER EDUCATION**

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 so that they can

ensure both the efficient use of state resources and progress in implementing the public agenda.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| Appropriations: | | | | | |
| (a) Personal services and employee benefits | 1,347.2 | 60.0 | 35.8 | 336.7 | 1,779.7 |
| (b) Contractual services | 75.8 | | 131.0 | | 206.8 |
| (c) Other financing uses | .6 | | | | .6 |
| (d) Other | 1,070.3 | 100.0 | 176.7 | 2,605.6 | 3,952.6 |
| Authorized FTE: | 24.00 Permanent; 9.50 Term | | | | |
| Performance Measures: | | | | | |
| (a) Efficiency: Percent of properly-completed capital infrastructure draws released to board of finance within thirty days of commission receipt from the institutions | 60% | | | | |
| (b) Outcome: Percent of the commission's funding recommendations explicitly targeted for incentives aimed at prompting a stronger connection | | | | | |

between higher education and the public agenda 20%

(c) Output: Percent of commission and committee meeting agendas that were devoted to discussion and actions which focused on the public agenda 50%

(d) Output: Number of outreach services/events provided to students 25

(e) Outcome: Percent of identified formula funding inequities addressed by the finance committee of the commission 97%

(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 postsecondary education and training beyond high school.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| | 21,849.6 | 267.5 | 43,662.3 | | |

The general fund appropriation to the student financial aid program includes [~~three hundred thousand dollars ($300,000) to support a teacher loan for service program, contingent on House Bill 68 or similar legislation of the first session of the forty-fifth legislature, becoming law; and~~ ]sixty-one thousand two hundred dollars ($61,200) to expand the western interstate commission for higher education loan for service program to allow no more than four students to attend Baylor university[~~, contingent on a contractual agreement between the commission on higher education and Baylor university~~].

Performance Measures:

(a) Output: Number of lottery success recipients enrolled in college and/or graduated from college after the ninth semester 600

(b) Outcome: Percent of students meeting eligibility criteria for state loan programs who continue to be enrolled by the sixth semester 80%

(c) Outcome: Percent of students meeting eligibility criteria for work study programs who continue to be enrolled by the sixth semester 41%

(d) Outcome: Percent of students meeting eligibility criteria for merit-based programs who continue to be enrolled by the sixth semester 80%

(e) Outcome: Percent of students meeting eligibility criteria for need-based programs who continue to be enrolled by the sixth semester 45%

Any unexpended or unencumbered balance in the student financial aid program of the commission on higher education remaining at the end of fiscal year 2002 shall not revert.

Subtotal 49,602.0

TOTAL HIGHER EDUCATION 24,039.1 22,009.6 212.5 3,340.8 49,602.0

GRAND TOTAL FISCAL YEAR 2002

PERFORMANCE-BASED BUDGET

APPROPRIATIONS 1,242,917.3 524,783.5 502,263.3 2,310,317.2 4,580,281.3

**Section 6. SPECIAL APPROPRIATIONS.--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified. Unless otherwise indicated, the appropriations may be expended in fiscal years 2001 and 2002. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2002 shall revert to the appropriate fund.**

[~~(1) LEGISLATIVE COUNCIL SERVICE: 50.0 50.0~~

~~For staffing, per diem and mileage expenses associated with a joint interim legislative redistricting committee.~~

~~(2) LEGISLATIVE COUNCIL SERVICE: 150.0 150.0~~

~~To contract for a study of impact aid funding of public schools and the state equalization guarantee funding formula and to pay per diem and mileage expenses of a legislative council committee to have oversight over any rapid response intervention program pilot if such a committee is appointed. The appropriation is contingent on House Appropriations and Finance Committee Substitute for House Bill 949 of the first session of the forty-fifth legislature, becoming law.~~]

(3) ADMINISTRATIVE OFFICE OF THE COURTS: 7,000.0
7,000.0

To defease New Mexico finance authority court automation bonds.

[~~(4) ADMINISTRATIVE OFFICE OF THE COURTS: 100.0 100.0~~

~~For wiring and moving costs for the statewide judiciary automation program to relocate to new office space.~~]

(5) FOURTH JUDICIAL DISTRICT ATTORNEY: 572.9 572.9

For prosecution of the criminal cases related to the Santa Rosa prison riots. The fourth judicial district attorney shall report on efforts to recoup prosecution costs associated with this appropriation.

[~~(6) THIRTEENTH JUDICIAL DISTRICT ATTORNEY: 300.0 300.0~~

~~To fund the expansion of the district attorney office in Cibola county.~~]

(7) ADMINISTRATIVE OFFICE OF THE

DISTRICT ATTORNEYS:

The period of time for expending the three hundred thousand dollars ($300,000) appropriation from other state funds contained in Item (1) of Section 8 of Chapter 5 of Laws of 2000 (S.S.) is extended through fiscal year 2002 for district attorney automated systems.

[~~(8) ADMINISTRATIVE OFFICE OF THE~~

~~DISTRICT ATTORNEYS: 1,331.5 1,331.5~~

~~To fund hardware and software replacements and general maintenance costs for all district attorneys' offices in the state.~~]

(9) ATTORNEY GENERAL: 250.0 250.0

For litigation costs of the criminal cases related to the Santa Rosa prison riots. The attorney general shall report on efforts to recoup litigation costs associated with this appropriation.

[~~(10) ATTORNEY GENERAL: 200.0 200.0~~

~~For contracts funding for Blue Cross merger and electric utility industry restructuring.~~]

(11) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 300.0 300.0

For finance and hosting expenses for Inc. 500 conference in Albuquerque.

(12) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 1,000.0 1,000.0

For weatherization program costs.

(13) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 75.0 75.0

For costs associated with conducting performance-based budgeting training.

[~~(14) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 200.0 200.0~~

~~To fund a pilot project for at-risk children at the Dona Ana county educational camp and recreational park.~~

~~(15) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 50.0 50.0~~

~~For McKinley county development foundation economic development costs.~~

~~(16) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 71.0 71.0~~

~~For costs to conduct Lea county groundwater assessments.~~

~~(17) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 75.0 75.0~~

~~For costs of surveying Chaves county housing needs.~~

~~(18) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 50.0 50.0~~

~~For costs of ambulance service in Pecos.~~

~~(19) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 5.0 5.0~~

~~To conduct a study of Sandoval county acequias.~~

~~(20) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 200.0 200.0~~

~~For costs of an engineering assessment of the Gallup water system as a component of the Navajo-Gallup water supply project.~~]

(21) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 105.0 105.0

For planning and development of a permanent Santa Fe farmers' market.

(22) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 40.0 40.0

For Cumbres and Toltec railroad litigation costs.

[~~(23) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 200.0 200.0~~

~~For adjudication costs of claimants related to the Carlsbad irrigation district.~~

~~(24) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 200.0 200.0~~

~~To provide funding for a comprehensive annual financial report for the state of New Mexico.~~

~~(25) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION: 100.0 100.0~~

~~For fire prevention by removal of excess fuels from within the Rio Grande bosque.~~]

(26) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 300.0 300.0

For collaboration between a food bank and a home-food delivery service for home-bound persons serving the population of the city of Santa Fe.

[~~(27) RETIREE HEALTH CARE AUTHORITY: 479.0 479.0~~

~~For the costs associated with a document imaging system.~~

~~(28) GENERAL SERVICES DEPARTMENT: 200.0 200.0~~

~~For national education association building maintenance.~~]

(29) PUBLIC DEFENDER DEPARTMENT: 964.6 964.6

For defense of the criminal cases related to the Santa Rosa prison riots. The public defender department shall report on efforts to recoup defense costs associated with this appropriation.

(30) PUBLIC DEFENDER DEPARTMENT:

The period of time for expending the four hundred thousand dollars ($400,000) appropriation made from the general fund for four habeas corpus cases contained in Item (21) of Section 6 of Chapter 5 of Laws 2000 (S.S.) is extended through fiscal year 2002.

[~~(31) INFORMATION TECHNOLOGY~~

~~MANAGEMENT OFFICE: 250.0 250.0~~

~~For a technical quantitative assessment of the state's telecommunications infrastructure.~~

~~(32) SECRETARY OF STATE: 120.0 120.0~~

~~To assist counties in purchasing digital facsimile signature scanners for fiscal years 2002 and 2003, contingent on House Bill 827 or similar legislation of the first session of the forty-fifth legislature, becoming law.~~

](33) PERSONNEL BOARD: 200.0 200.0

For training costs associated with the New Mexico human resources 2001 project.

[~~(34) TOURISM DEPARTMENT: 2,000.0 2,000.0~~

~~For general and cooperative advertising costs and Native American tourism.~~

~~(35) TOURISM DEPARTMENT: 25.0 25.0~~

~~To promote the celebration of the seventy-fifth anniversary of New Mexico historic route 66.~~

~~(36) TOURISM DEPARTMENT: 100.0 100.0~~

~~For expenses related to promotion of international tourism activities, including promotion of tourism activities at the Spain travel agents' association convention.~~

~~(37) TOURISM DEPARTMENT: 35.0 35.0~~

~~For support of sister city celebrations in Santa Fe county.~~]

(38) ECONOMIC DEVELOPMENT DEPARTMENT: 9,000.0
9,000.0

]For in-plant training costs. At least two million dollars ($2,000,000) of this appropriation shall be directed toward rural New Mexico areas. The economic development department shall develop performance measures for the in-plant training program. Unexpended or unencumbered balances in the development training fund remaining at the end of fiscal year 2002 shall not revert.

[~~(39) ECONOMIC DEVELOPMENT DEPARTMENT: 150.0 150.0~~

~~For Sandia science and technology park master development plan costs.~~]

(40) ECONOMIC DEVELOPMENT DEPARTMENT:

One million five hundred thousand dollars ($1,500,000) is appropriated from the general fund operating reserve to the economic development department for environmental impact studies, acquiring land and water, developing a proposal and other activities related to the southwest regional spaceport for fiscal years 2002 through 2004. The appropriation is contingent on a written commitment that New Mexico is one of three competing sites for the Lockheed Martin venturestar, a similar reusable vehicle or other launch system developer.

[~~(41) ECONOMIC DEVELOPMENT DEPARTMENT: 300.0 300.0~~

~~To match a federal grant for the manufacturing extension services program.~~]

(42) ECONOMIC DEVELOPMENT DEPARTMENT: 75.0 75.0

For contract services to establish an e-commerce initiative that provides access to New Mexico companies by developing a website template for on-line marketing, in conjunction with existing wholesale promotion.

(43) REGULATION AND LICENSING DEPARTMENT: 548.0 548.0

For vehicle lease costs.

(44) PUBLIC REGULATION COMMISSION:

The period of time for expending four hundred thousand dollars ($400,000) of the appropriation made in Section 1 of Chapter 60 of Laws 2000 from the excess money remaining on July 1, 1999 in the separate fund or account created by, Subsection D of Section 3 of Chapter 6 of Laws 1996 to the insurance division of the public regulation commission is extended through fiscal year 2002.

[~~(45) OFFICE OF CULTURAL AFFAIRS: 500.0 500.0~~

~~To the state library for grants to public libraries throughout the state.~~

~~(46) OFFICE OF CULTURAL AFFAIRS: 725.1 725.1~~

~~To conserve New Mexico depression era public art.~~

~~(47) OFFICE OF CULTURAL AFFAIRS: 200.0 200.0~~

~~For a statewide library database for public schools.~~

~~(48) OFFICE OF CULTURAL AFFAIRS: 175.0 175.0~~

~~For development of cross-cultural educational documentaries and electronic field trips in north central and northwestern New Mexico.~~

~~(49) OFFICE OF CULTURAL AFFAIRS: 500.0 500.0~~

~~For relocating the items in the repository collections of the museum of Indian arts and culture and the palace of the governors.]~~

(50) DEPARTMENT OF GAME AND FISH: 750.0 750.0

To mitigate whirling disease at Red River hatchery. The appropriation is from the game protection fund.

(51) DEPARTMENT OF GAME AND FISH: 500.0 500.0

For design, land acquisition and water rights for the construction of a warm-water fish hatchery facility in Guadalupe county. The appropriation is from the game protection fund.

(52) ENERGY, MINERALS AND NATURAL RESOURCES

DEPARTMENT: 356.6 356.6

For start-up costs for an inmate work camp in Grants.

(53) COMMISSIONER OF PUBLIC LANDS: 627.5 313.7 941.2

For the final payment of the oil and natural gas administration and revenue database bonds and interest payments. The other state funds appropriation is from the state lands maintenance fund.

(54) COMMISSIONER OF PUBLIC LANDS:

Unexpended or unencumbered balances of the appropriations for the purpose of litigating oil, gas and carbon dioxide royalty obligations, originally received through budget adjustments and continued by the General Appropriation Act of 2000, shall not revert at the end of fiscal year 2001 but may be expended in fiscal year 2002 for their original purpose and for other professional legal services related to the commercial development of state trust lands.

(55) STATE ENGINEER: 2,022.8 2,022.8

For the file abstraction and imaging to the water administration technical engineering resource system.

(56) STATE ENGINEER: 5,000.0 5,000.0

For hydrographic surveys for case adjudications.

[~~(57) STATE ENGINEER: 800.0 800.0~~

~~For debt reduction of the Fort Sumner irrigation district.~~

~~(58) STATE ENGINEER: 1,500.0 1,500.0~~

~~For regional water planning.~~

~~(59) STATE ENGINEER: 500.0 500.0~~

~~For regional water plan implementation.~~

~~(60) STATE ENGINEER: 65.0 65.0~~

~~To fund a feasibility study for a Tularosa pipeline project.~~

~~(61) STATE ENGINEER: 100.0 100.0~~

~~For a feasibility study of drilling a well field near the Texas border in Otero and Eddy counties or other locations along the Pecos river; and to drill water wells in a location determined in the study.~~

~~(62) STATE AGENCY ON AGING: 150.0 150.0~~

~~To develop and disseminate information to seniors and healthcare providers about how to order prescription medications through the mail from Canada or Mexico.]~~

(63) HUMAN SERVICES DEPARTMENT:

There is appropriated from the general fund operating reserve two hundred fifty thousand dollars ($250,000) to the human services department for the Navajo Nation child support program. The appropriation is to be disbursed on the certification of the secretary of the human services department to the secretary of the department of finance and administration and review by the legislative finance committee with approval by the state board of finance that additional funds are needed to match federal funds to support the program.

~~[(64) HUMAN SERVICES DEPARTMENT: 3,700.0 3,700.0~~

~~To assist with prescription drug costs for people under 200 percent of the federal poverty level.~~

~~(65) LABOR DEPARTMENT: 80.0 80.0~~

~~To pay for per diem and mileage expenses for members of the equal pay task force, contingent on House Bill 390 or similar legislation of the first session of the forty-fifth legislature, becoming law.]~~

(66) LABOR DEPARTMENT: 1,661.1 1,661.1

For administration of the unemployment compensation program. Funding is from federal Reed Act grant awards for federal fiscal years 2000, 2001, and 2002 for expenditure in state fiscal years 2001, 2002 and 2003.

(67) LABOR DEPARTMENT: 3,800.0 7,600.0 11,400.0

For state match for welfare-to-work program.

[~~(68) DIVISION OF VOCATIONAL REHABILITATION: 535.0 535.0~~

~~For a loan program for assistive technology for the disabled.~~

~~(69) DEPARTMENT OF HEALTH: 30.0 30.0~~

~~To conduct a prescription drug purchasing study.~~

~~(70) DEPARTMENT OF HEALTH: 200.0 200.0~~

~~For the acquisition and distribution of a videotape on child abduction prevention and methods to recover abducted children.~~]

(71) NEW MEXICO VETERANS' SERVICE

COMMISSION: 192.0 192.0

For architectural and engineering costs for the Fort Stanton state cemetery project.

[~~(72) NEW MEXICO VETERANS' SERVICE~~

~~COMMISSION: 100.0 100.0~~

~~To purchase uniforms for honor guards.~~

~~(73) CHILDREN, YOUTH AND~~

~~FAMILIES DEPARTMENT: 200.0 200.0~~

~~To fund gang intervention programs that attempt to use education and other interventions to develop life skills for combating the influence of gangs.~~

~~(74) CHILDREN, YOUTH AND~~

~~FAMILIES DEPARTMENT: 350.0 350.0~~

~~For the purpose of providing educational material on early childhood brain development, appropriate brain stimulation and learning techniques to new parents prior to discharge of a newborn from a New Mexico hospital. ]~~

(75) DEPARTMENT OF PUBLIC SAFETY: 2,015.0 2,015.0

For vehicles and equipment for fifty-five new officers.

(76) DEPARTMENT OF PUBLIC SAFETY: 600.0 600.0

For cars for the motor transportation division.

(77) STATE DEPARTMENT OF PUBLIC

EDUCATION: 45.0 45.0

To the charter school stimulus fund to provide start-up funding for the Red River charter school.

[~~(78) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 1,200.0 1,200.0~~

~~To retire Animas school district bonds.~~

~~(79) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 150.0 150.0~~

~~To study the potential separation of the Rio Grande cluster or schools south of interstate 40 from the Albuquerque public school district.~~

~~(80) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 9,045.0 9,045.0~~

~~To develop the criterion-referenced test and end-of-course tests for a designated core of high school subject areas that are required for graduation.~~

~~(81) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 65.0 65.0~~

~~For Acoma Keres language instruction.~~

~~(82) STATE DEPARTMENT OF PUBLIC~~

~~EDUCATION: 50.0 50.0~~

~~To conduct a pilot project that uses parental involvement in the teaching of reading.~~

~~(83) COMMISSION ON HIGHER EDUCATION: 1,000.0 1,000.0~~

~~For the purpose of developing, expanding and supporting broad-based entry-level high skills training programs at community colleges statewide. Each community college that receives funds for the programs shall provide an equal amount of funding from a source other than the general fund.~~

~~(84) UNIVERSITY OF NEW MEXICO: 50.0 50.0~~

~~For travel costs for the university of New Mexico-Spain academic exchange program.~~

~~(85) UNIVERSITY OF NEW MEXICO: 50.0 50.0~~

~~For the purpose of creating a transportation technology center at the alliance for transportation research institute for programs in the area of intelligent transportation systems, information management systems in transportation for urban and rural areas, multi-modal and community development, border-area trade and transportation and other technologies to enhance transportation delivery in the state.]~~

(86) UNIVERSITY OF NEW MEXICO: 5,600.0 5,600.0

For expenditure in fiscal years 2001 through 2004 for the cancer research and treatment center to achieve national cancer institute designation as a comprehensive cancer center. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 from this appropriation shall revert to the general fund.

(87) NEW MEXICO STATE UNIVERSITY: 300.0 300.0

To support the touring exhibition costs of the New Mexico state university retablo collection.

(88) NEW MEXICO STATE UNIVERSITY: 45.0 45.0

To promote local farmers' markets throughout the state.

[~~(89) NEW MEXICO STATE UNIVERSITY: 50.0 50.0~~

~~To provide a pilot child-care center in the department of education for children of students who attend~~

~~the university during nontraditional hours.~~

~~(90) NEW MEXICO STATE UNIVERSITY: 150.0 150.0~~

~~To enable New Mexico state university to participate in the Sloan digital sky survey of the astrophysical research consortium.~~

~~(91) NEW MEXICO STATE UNIVERSITY: 1,700.0 1,700.0~~

~~For expenditure in fiscal years 2001 through 2003 for cotton boll weevil control districts' expenditures pursuant to the Cotton Boll Weevil Control Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 from this appropriation shall revert to the general fund.~~

~~(92) NEW MEXICO STATE UNIVERSITY: 20.0 20.0~~

~~For development of a high school curriculum teaching the value and benefits of marriage, the impact of divorce on children, conflict resolution, and the social, financial and health implications of divorce.~~

~~(93) NEW MEXICO STATE UNIVERSITY: 500.0 500.0~~

~~For soil and water conservation cost sharing.~~

~~(94) SANTA FE COMMUNITY COLLEGE: 50.0 50.0~~

~~For costs related to a mariachi educational training conference.~~

~~(95) SAN JUAN COLLEGE: 158.0 158.0~~

~~To fund the purchase of dental education equipment.~~

~~(96) WATER PROJECT FUND: 10,000.0 10,000.0~~

~~For administration by the New Mexico finance authority, contingent on Senate Bill 169 or similar legislation of the first session of the forty-fifth legislature, becoming law. Any appropriation remaining at the end of a fiscal year shall not revert.]~~

(97) PUBLIC SCHOOL CAPITAL

IMPROVEMENTS FUND: 4,500.0 4,500.0

To provide state matching funds pursuant to the Public School Capital Improvements Act.

(98) COMPUTER SYSTEMS ENHANCEMENT FUND: 24,002.0 24,002.0

For allocations pursuant to the appropriations in Section 8 of the General Appropriation Act of 2001.

TOTAL SPECIAL APPROPRIATIONS 110,647.0 2,042.7 0.0 9,261.1 121,950.8

**Section 7. SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS.--The following amounts are appropriated from the general fund, or other funds as indicated, for expenditure in fiscal year 2001 for the purposes specified. Disbursement of these amounts shall be subject to the following conditions: certification by the agency to the department of finance and administration and the legislative finance committee that no other funds are available in fiscal year 2001 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 2001 shall revert to the appropriate fund.**

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (1) SUPREME COURT LAW LIBRARY: 40.0 | | 40.0 | | | |
| For personal services and employee benefits and legal material costs. | | | | | |
| (2) SUPREME COURT: 10.0 | | | 10.0 | | |
| For employee benefits and security contract costs. | | | | | |
| (3) ADMINISTRATIVE OFFICE OF THE COURTS: 400.0 | | 400.0 | | | |
| For the jury and witness fee fund. | | | | | |
| (4) ADMINISTRATIVE OFFICE OF THE COURTS: 225.0 | | 225.0 | | | |
| For the court-appointed attorney fee fund. | | | | | |
| (5) SUPREME COURT BUILDING COMMISSION: 6.8 | 6.8 | | | | |
| For utility costs. | | | | | |
| (6) BERNALILLO COUNTY METROPOLITAN COURT: 2,266.8 | 7,500.0 | | 9,766.8 | | |
| For expenditure in fiscal year 2001 through fiscal year 2003 for courthouse construction overrun and design modifications. The other state funds appropriation is from cash balances and the magistrate and metropolitan court capital fund. | | | | | |

[~~(7) SECOND JUDICIAL DISTRICT ATTORNEY: 80.5 80.5~~

~~For salaries and benefits for three FTE positions previously funded through a drug control systems improvement grant.~~

~~(8) ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS: 29.4 29.4~~

~~For personal services and employee benefits costs.~~]

(9) ATTORNEY GENERAL: 900.0 900.0

For the guardianship program.

(10) PUBLIC SCHOOL INSURANCE AUTHORITY: 500.0 500.0

To pay expenditures for anticipated claims.

(11) PUBLIC SCHOOL INSURANCE AUTHORITY: 8,000.0 8,000.0

To pay for health insurance costs.

(12) RETIREE HEALTH CARE AUTHORITY: 3,500.0 3,500.0

To pay expenditures for pharmaceutical costs.

(13) GENERAL SERVICES DEPARTMENT: 49.1 49.1

For operating expenses at Fort Stanton.

(14) GENERAL SERVICES DEPARTMENT: 2,000.0 2,000.0

For the repayment of federal recovery charges.

(15) GENERAL SERVICES
DEPARTMENT: 7,000.0 7,000.0

For health insurance costs.

(16) GENERAL SERVICES
DEPARTMENT: 500.0 500.0

For department of health litigation costs in fiscal year 2001 and fiscal year 2002.

[~~(17) GENERAL SERVICES~~
~~DEPARTMENT: 166.0 166.0~~

~~For utility costs for Santa Fe buildings and properties.~~

(18) GENERAL SERVICES
DEPARTMENT: 160.0 160.0

For litigation costs associated with an internet pornography case.

(19) INFORMATION TECHNOLOGY

MANAGEMENT OFFICE: 510.0 510.0

To replace non-materializing revenue.

(20) PUBLIC REGULATION
COMMISSION: 300.0 300.0

For personal services and employee benefits costs.

(21) LIVESTOCK BOARD: 20.6 20.6 41.2

For personal services and employee benefits costs.

[~~(22) ORGANIC COMMODITY~~
~~COMMISSION: 6.0 6.0~~

~~For information technology capital outlay and support.~~

~~(23) COMMISSION FOR THE BLIND: 600.0 600.0~~

~~To pay expenditures for the readjustment of retirement benefits.~~

](24) HUMAN SERVICES DEPARTMENT 1,350.0 1,350.0

To the income support division to reimburse the United States department of agriculture for food stamp administrative costs.

(25) HUMAN SERVICES DEPARTMENT: 800.0 1,553.6 2,353.6

Unexpended and unencumbered balances remaining from the appropriation provided in Item (24) of Section 7 of Chapter 5 of Laws 2000 (S.S.) are reauthorized for personal services and benefits in the child support enforcement division.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (26) HUMAN SERVICES DEPARTMENT: | 2,400.0 | 4,658.8 | | 7,058.8 | |

To the child support enforcement division to replace miscellaneous revenue that was not realized.

| | | | | | |
|---|---|---|---|---|---|
| (27) HUMAN SERVICES DEPARTMENT: | 120.0 | 130.0 | | 250.0 | |

To the administrative services division for professional accounting services in fiscal years 2001 and 2002.

| | | | | | |
|---|---|---|---|---|---|
| (28) HUMAN SERVICES DEPARTMENT: | 2,000.0 | | 2,000.0 | | |

To supplement the low income home energy assistance program.

(29) LABOR DEPARTMENT: 360.1 360.1

To reimburse the federal government for the state's Job Training Partnership Act. The appropriation is from the employment security department fund.

(30) DEPARTMENT OF MILITARY AFFAIRS: 200.0 200.0

For maintenance and repair costs of armories.

(31) DEPARTMENT OF MILITARY AFFAIRS: 61.7 37.3 99.0

For utility costs.

(32) CORRECTIONS DEPARTMENT: 260.0 260.0

To repay board of finance loan for correctional officers' salary increases.

(33) DEPARTMENT OF PUBLIC SAFETY: 2,872.8 2,872.8

To the law enforcement program for funding the costs for five hundred fifty (550) officers.

~~[(34) UNIVERSITY OF NEW MEXICO: 951.2 951.2~~

~~For utility costs.~~

~~(35) NEW MEXICO STATE UNIVERSITY: 501.2 501.2~~

~~For utility costs.~~

~~(36) NEW MEXICO HIGHLANDS UNIVERSITY: 102.9 102.9~~

~~For utility costs.~~

~~(37) WESTERN NEW MEXICO UNIVERSITY: 55.6 55.6~~

~~For utility costs.~~

~~(38) EASTERN NEW MEXICO UNIVERSITY: 121.5 121.5~~

~~For utility costs.~~

~~(39) NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY: 159.9 159.9~~

~~For utility costs.~~

~~(40) NORTHERN NEW MEXICO COMMUNITY COLLEGE: 36.5 36.5~~

~~For utility costs.~~

~~(41) SANTA FE COMMUNITY COLLEGE: 80.8 80.8~~

~~For utility costs.~~

~~(42) TECHNICAL -VOCATIONAL INSTITUTE: 186.1 186.1~~

~~For utility costs.~~

~~(43) LUNA VOCATIONAL TECHNICAL INSTITUTE: 30.0 30.0~~

~~For utility costs.~~

~~(44) MESA TECHNICAL COLLEGE: 8.0 8.0~~

~~For utility costs.~~

~~(45) NEW MEXICO JUNIOR COLLEGE: 29.3 29.3~~

~~For utility costs.~~

~~(46) SAN JUAN COLLEGE: 88.0 88.0~~

~~For utility costs.~~

~~(47) CLOVIS COMMUNITY COLLEGE: 16.8 16.8~~

~~For utility costs.~~

~~(48) PUBLIC SCHOOL SUPPORT: 4,571.0 4,571.0~~

~~For energy fuel costs.~~

](49) PUBLIC SCHOOL SUPPORT: 496.0 496.0

For transportation fuel costs.

TOTAL SUPPLEMENTAL AND DEFICIENCY

APPROPRIATIONS 39,969.5 12,160.1 500.0 6,400.3 59,029.9

**Section 8. 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 2001 and 2002. Unless otherwise indicated, any unexpended or unencumbered balances remaining at the end of fiscal year 2002 shall revert to the computer systems enhancement fund or other funds as indicated. The department of finance and administration shall allocate amounts from the funds for the purposes specified upon receiving certification and supporting documentation from the requesting agency that identifies benefits that can be quantified and nonrecurring costs and recurring costs for the development and implementation of the**

**proposed system and, for executive agencies, upon receiving certification from the chief information officer that identifies compliance with the information architecture and individual information and communication systems plans and the statewide information technology strategic plan. [If the funds are to continue on a project, the documentation shall include certification and written report by the 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 expended properly 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 chief information officer to achieve economies of scale and to provide the state with the best unit price. The state chief information officer shall, no later than July 1, 2001, 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 five-year strategy for systems to comply with the proposed architecture. Appropriations for any development project shall include a turn-key solution with associated warranty that the state's need 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) LEGISLATIVE COUNCIL SERVICE: 512.0 512.0

To replace and upgrade hardware and software for the legislative council service, legislative education study committee, legislative finance committee, and house and senate offices.

(2) ADMINISTRATIVE OFFICE OF THE COURTS: 400.0 400.0

To integrate systems of the criminal and justice agencies of administrative office of the courts, corrections department, department of public safety, children, youth and families

department, administrative office of the district attorneys, and public defender department. The criminal justice information management team shall approve all expenditures for the justice sharing project.

(3) TAXATION AND REVENUE DEPARTMENT: 1,000.0
1,000.0

To replace the mainframe audit and collection system with a client-server-based solution that will integrate with all tax programs systems, the automated call management system and automated skip tracing system.

(4) TAXATION AND REVENUE DEPARTMENT: 500.0 500.0

To replace the microfilm process with an imaging system for department-wide access to images of all tax programs returns that will interface with the taxation and revenue information management system.

(5) DEPARTMENT OF FINANCE AND
ADMINISTRATION: 1,500.0 4,500.0 6,000.0

To create a virtual one-stop workforce information and service delivery center. [~~The federal Workforce Investment Act virtual system project shall be under the direction of the chief information officer of the human services department.~~] The department of finance and administration shall setup 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 periodic written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(6) DEPARTMENT OF FINANCE AND
ADMINISTRATION: 1,500.0 4,637.5 6,137.5

To standardize selected financial transactions, code sets and definitions for electronic transmission to comply with the federal Health Insurance Portability and Accountability Act. [~~The project shall be under the direction of the chief information officer of the human services department.~~] The department of finance and administration shall setup 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 periodic written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(7) DEPARTMENT OF FINANCE AND ADMINISTRATION: 3,671.6 3,671.6

To provide a single statewide, centralized telecommunication backbone for state government based on asynchronous transfer mode technology. Two million one hundred seventy-one thousand six hundred dollars ($2,171,600) is from the state road fund. Funding is contingent on the state chief information officer and the state highway and transportation department coordinating with the office of communication of the general services department. 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 setup 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 periodic written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(8) DEPARTMENT OF FINANCE AND ADMINISTRATION: 500.0 4,500.0 5,000.0

To develop a non-vendor 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 be under the direction of the chief information officer of the human services department.~~] The department of finance and administration shall set up 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 periodic written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(9) DEPARTMENT OF FINANCE AND ADMINISTRATION: 700.0 700.0

To plan, design and begin implementation of a statewide New Mexico portal that will allow citizens query capabilities about government information and services followed by transaction capabilities from a central location. The department of finance and administration shall setup a special account from which funds can be drawn to pay for expenditures after approval by the information technology commission. The information technology commission shall approve expenditures for implementation only after approving the plan and design of the statewide portal. The state chief information officer shall provide periodic written reports to the information technology commission, information technology oversight committee and the legislative finance committee.

(10) EDUCATIONAL RETIREMENT BOARD: 3,000.0 3,000.0

To purchase and implement an off-the-shelf solution for managing educational retirement membership information system. The appropriation is from the educational retirement fund. The period of time for expending the appropriation contained in Item (2) of Section 8 of Chapter 5 of Laws 2000 (S.S.) of three million dollars ($3,000,000) is extended through fiscal year 2002. The appropriation includes two FTE. Funds shall be released incrementally after approval of a project plan by the state chief information officer. The educational retirement board shall provide periodic reports to the legislative finance committee and the state chief information officer.

(11) PUBLIC DEFENDER DEPARTMENT: 150.0 150.0

To complete the development and implementation of a case management system to track clients and cases, produce case-related documents and reports and provide data-sharing capabilities with other criminal justice agencies.

(12) PUBLIC EMPLOYEES RETIREMENT

ASSOCIATION: 2,000.0 2,000.0

To replace the 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 appropriation contained in Item (5) of Section 8 of Chapter 5 of Laws 2000 (S.S.) of six million dollars ($6,000,000) is extended through fiscal year 2002. Funds shall be released incrementally after approval of a project plan by the state chief information officer. The appropriation includes four FTE. The public employees retirement

association shall provide periodic reports to the legislative finance committee and state chief information officer.

(13) STATE COMMISSION OF PUBLIC RECORDS: 100.0 100.0

To replace the records management system with a windows-based, web-enabled system.

(14) SECRETARY OF STATE: 1,450.0 1,450.0

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. 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.

(15) REGULATION AND LICENSING DEPARTMENT: 300.0 300.0

To acquire the license 2000 system module for applying and renewing professional licenses over the Internet. Funding is contingent on the state chief information officer assisting with proper planning and implementation of the module and providing periodic written reports to the information technology commission and the legislative finance committee.

(16) PUBLIC REGULATION COMMISSION: 350.0 350.0

To continue to replace and integrate existing disparate mainframe applications for case docketing, transportation and corporations.

(17) ENERGY, MINERALS AND NATURAL RESOURCES

DEPARTMENT: 1,050.0 1,050.0

To create an electronic document management system, the petroleum information resources system, to maintain oil and gas technical and regulatory information and records. This system shall fully integrate with the oil and natural gas administrative data base.

(18) STATE ENGINEER: 490.0 490.0

To continue to design and implement an enterprise-wide water administration technical engineering resource system and geographical information system.

(19) HUMAN SERVICES DEPARTMENT: 4,000.0 4,000.0 8,000.0

To replace the mainframe-based income support system with a client-server-based distributed processing system. The appropriation includes five FTE. The human services department shall coordinate this project with the multi-agency network project proposed by the state chief information officer to take advantage of centralized telecommunication backbone.

(20) DEPARTMENT OF HEALTH: 3,100.0 3,100.0

To implement a single integrated hospital administration system, including equipment to be used at Fort Bayard medical center, turquoise lodge and southern New Mexico rehabilitation center. Sufficient funding is included for infrastructure upgrades at the Las Vegas medical center. The appropriation includes five FTE. Funding is contingent on the department of health reducing the reliance on the contractors, training internal information technology staff to maintain and support the system, applying best practices in the procurement of hardware that adheres to state technical standards, and submitting a plan detailing the cost of the software, hardware, wiring, data conversion, training, and all other cots, to the legislative finance committee and the state chief information officer. The department of health shall provide periodic written reports to the state chief information officer and to the legislative finance committee.

(21) DEPARTMENT OF HEALTH: 850.0 850.0

To complete the development, implementation and integration of the public health records management and behavioral health information systems and to fully integrate those systems with all other department of health client systems. Funding is contingent on the department of health reducing the reliance on the contractors, training internal information technology staff to maintain and support the system, applying best practices in the procurement of hardware that adheres to state technical standards, and submitting a plan detailing the cost of the software, hardware, wiring, data conversion,

training, and all other costs, to the legislative finance committee and the state chief information officer. The department of health shall provide periodic written reports to the state chief information officer and to the legislative finance committee.

(22) DEPARTMENT OF ENVIRONMENT: 700.0 725.0 1,425.0

To continue the implementation of commercial off-the-shelf software for a department-wide integrated database with a web interface.

(23) DEPARTMENT OF ENVIRONMENT: 150.0 75.0 225.0

To implement an agency portal for permit applications and payment of permit fees. The appropriation is contingent on the department of environment coordinating the planning, designing and implementation with the state chief information officer multi-agency portal.

| Item | General Fund | Other State Funds | Intrnl Svc Funds/Inter-Agency Trnsf | Federal Funds | Total |
|---|---|---|---|---|---|
| (24) CHILDREN, YOUTH AND FAMILIES DEPARTMENT: | 450.0 | | 450.0 | | |

To provide a decision support system to create ad hoc reports and data analysis.

| | | | | | |
|---|---|---|---|---|---|
| (25) CORRECTIONS DEPARTMENT: | 1,500.0 | | 1,500.0 | | |

To complete the original system requirements, incorporate the independent board of inquiry recommendations and to enhance existing capabilities in the corrections information management system. The appropriation includes probation and parole and the financial management information system, including three FTE positions to expedite system reporting capabilities and system maintenance activities.

| | | | | | |
|---|---|---|---|---|---|
| (26) DEPARTMENT OF PUBLIC SAFETY: | 1,250.0 | | 1,250.0 | | |

To complete the automation of the state police dispatching functions using computer aided dispatch and to establish regional dispatching centers throughout the state.

(27) STATE HIGHWAY AND TRANSPORTATION DEPARTMENT: 3,884.1 3,884.1

To migrate the financial and accounting data from the mainframe environment to a client server web-enabled environment. The appropriation is from the state road fund and includes three FTE.

(28) STATE DEPARTMENT OF PUBLIC EDUCATION: 175.0 175.0

To replace the current instructional materials database with a web-enabled database. The appropriation is from cash balances.

(29) STATE DEPARTMENT OF PUBLIC EDUCATION: 110.5 110.5

To complete the needs assessment for the transportation information management system. The appropriation is from cash balances.

(30) STATE DEPARTMENT OF PUBLIC EDUCATION: 50.0 50.0

To provide technical support for the accountability data system, upgrade of AIX operating system, sybase database, and to incorporate web enabled technologies. The appropriation is from cash balances.

(31) STATE DEPARTMENT OF PUBLIC EDUCATION: 400.0 400.0

To provide an electronic interface to the department of finance and administration central accounting system. The appropriation is from cash balances.

TOTAL DATA PROCESSING APPROPRIATIONS 35,793.2 18,437.5 54,230.7

## [Section 9. COMPENSATION APPROPRIATIONS.--

~~A. Seventeen million six hundred fifteen thousand two hundred dollars ($17,615,200) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 2002 to provide salary increases as follows:~~

~~(1) one million six hundred thirty-nine thousand three hundred dollars ($1,639,300) to provide:~~

~~(a) a salary increase to those judicial permanent employees whose salaries are not set by statute and whose salaries fall below the minimum salary range of the salary schedule, with a salary increase that shall be sufficient to raise their salaries to the minimum of the assigned salary range of the salary schedule. The salary increase shall be effective the first full pay period after July 1, 2001; and~~

~~(b) all judicial permanent employees whose salaries are not set by statute an anniversary date salary increase based on a variable pay-for-performance salary matrix that provides a minimum of two percent of the midpoint value of the employee's salary range; the increase is subject to a performance evaluation rating greater than "fails to meet expectations" in accordance with the judicial personnel and compensation plan. The salary increase shall be effective the first full pay period after the employee's anniversary date. The performance-based salary increase is intended to address performance and market competitiveness and shall be implemented with consideration to the recommendations resulting from the Hay management consultants' review of the judicial branch classification and compensation plan during fiscal year 2001 and shall limit the percentage of employees who are eligible for the highest anniversary date increase. The administrative office of the courts is directed to provide a report to the legislature no later than January 15, 2002 on a plan to move employees to the appropriate position within a salary range;~~

~~(2) nine hundred thirty-seven thousand three hundred dollars ($937,300) to provide the justices of the supreme court a salary increase to ninety-six thousand two hundred eighty-three dollars ($96,283); and to provide 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, a salary increase pursuant to the provisions~~

~~of Section 34-1-9 NMSA 1978. The salary increase shall be effective the first full pay period after July 1, 2001;~~

~~(3) one million two hundred sixty-one thousand seven hundred dollars ($1,261,700) to provide:~~

~~(a) district attorney permanent employees whose salaries fall below the minimum of the salary range a salary increase sufficient to raise their salaries up to the minimum of the assigned salary range of the salary schedule that becomes effective July 1, 2001. The salary schedule established shall be comparable to that established for the executive classified service. The salary increase shall be effective the first full pay period after July 1, 2001; and~~

~~(b) all district attorney permanent employees, other than elected district attorneys, with a salary increase based on a variable merit increase plan that provides a minimum of two percent of the midpoint value of the employee's salary range, with no more than thirty percent of all district attorney permanent employees being eligible for the highest increase. The increases shall be subject to satisfactory job performance and in accordance with the district attorney pay plan. The salary increase shall be effective the first full pay period after the employee's anniversary date;~~

~~(4) eighty-nine thousand seven hundred dollars ($89,700) 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-three thousand two hundred eighty-seven dollars ($83,287), and district attorneys who serve in a district that includes a class A county shall receive an annual salary of eighty-seven thousand six hundred seventy-two dollars ($87,672). The salary increase shall be effective the first full pay period after July 1, 2001;~~

~~(5) eleven million two hundred forty-five thousand five hundred dollars ($11,245,500) to provide:~~

~~(a) incumbents in agencies governed by the Personnel Act whose salaries fall below the minimum salary range a salary increase sufficient to raise their salaries to the minimum of the assigned salary range of the salary schedule that becomes effective July 1, 2001. The salary increase shall be effective the first full pay period after July 1, 2001; and~~

~~(b) incumbents in agencies governed by the Personnel Act an increase based on a compensation package approved by the personnel board that addresses both performance and market competitiveness and is based on a variable pay-for-performance salary matrix that provides a minimum two percent salary increase for all employees with a performance evaluation rating better than "unsatisfactory", with no more than thirty percent of state employees being provided with the highest increase. In granting this salary increase, any salary increases given pursuant to Subparagraph (a) of Paragraph (5) of Subsection A of this section may be taken into consideration. The salary increase shall be effective the first full pay period after the employee's anniversary date. The state personnel office shall provide a plan to the legislature no later than January 15, 2002 on how it intends to move employees to the appropriate position within a pay band;~~

~~(6) three hundred forty-eight thousand six hundred dollars ($348,600) to provide commissioned officers of the New Mexico state police division of the department of public safety with a salary step increase in accordance with the New Mexico state police career pay system and subject to satisfactory job performance;~~

~~(7) one million six thousand nine hundred dollars ($1,006,900) to provide executive exempt employees, including attorney general employees and workers' compensation judges, with an average six and one-half percent merit salary increase based on job performance. The salary increase shall be effective the first full pay period after the employee's anniversary date;~~

~~(8) five hundred seventy-nine thousand two hundred dollars ($579,200) to provide teachers in the children, youth and families department, department of health and corrections department, with an eight percent salary increase. The salary increase shall be effective the first full pay period after the employee's anniversary date; and~~

~~(9) five hundred seven thousand dollars ($507,000) 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 an average six and one-half percent merit salary increase based on job performance. The performance-based salary increase is intended to address~~

~~performance and market competitiveness and shall be implemented with consideration to the recommendations resulting from the national conference of state legislatures' study. The salary increase shall be effective the first full pay period after the employee's anniversary date.~~

~~B. The following amounts are appropriated to the department of finance and administration for expenditure in fiscal year 2002 to provide salary increases as follows:~~

~~(1) one million five hundred thousand dollars ($1,500,000) to provide a five percent salary increase for the social worker series of the protective services division of the children, youth and families department. The salary increase shall be effective the first full pay period after July 1, 2001;~~

~~(2) two million four hundred ninety thousand four hundred dollars ($2,490,400) to provide adult correctional officers of the following ranks: correctional officer one, correctional officer sergeant, correctional officer two, correctional officer three, correctional officer four and the correctional officer specialists series of the corrections department a fifty cent ($.50) per hour salary increase effective the first full pay period following July 1, 2001 and a fifty cent ($.50) per hour salary increase effective the first full pay period following January 1, 2002; and~~

~~(3) three hundred twenty thousand dollars ($320,000) to provide the tax account auditor series of the taxation and revenue department with a compa-ratio to compa-ratio that was in effect prior to July 1, 2001, salary increase based on new salary grades adopted by the personnel board in 1999. The salary increase shall be effective the first full pay period following January 1, 2002.~~

~~C. Thirty-three million eight thousand five hundred dollars ($33,008,500) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 2002 to provide faculty of four- and two-year post-secondary educational institutions with a seven percent salary increase and other staff of four- and two-year post-secondary educational institutions with a six and one-half percent salary increase. The salary increase shall be effective the first full pay period after July 1, 2001.~~

~~D. 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 2001. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.~~

~~E. 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 2001, 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 2002. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the appropriate fund.~~]

## Section 10. ADDITIONAL FISCAL YEAR 2001 BUDGET ADJUSTMENT AUTHORITY.--During fiscal year 2001, subject to review and approval by the department of finance and administration, in addition to the budget adjustment authority granted in Section 12 of Chapter 5 of Laws 2000 (S.S.) and pursuant to Sections

6-3-23 through 6-3-25 NMSA 1978:

A. the court of appeals may request transfers up to nine thousand dollars ($9,000) to the personal services category from the contractual services category;

B. the supreme court may request transfers up to ten thousand dollars ($10,000) from the contractual services category to any other category;

C. the administrative office of the courts may request transfers up to twenty thousand dollars ($20,000) to the contractual services category for the jury and witness fee fund from any other category; ten thousand dollars ($10,000) to any other category from the contractual services category for judicial performance evaluations; and sixty thousand dollars ($60,000) to any other category from the contractual services category in the administrative support program;

D. the supreme court building commission may request transfers up to seven thousand four hundred dollars ($7,400) to the contractual services category for a security contract;

E. the first judicial district court may request transfers up to seventeen thousand nine hundred dollars ($17,900) to the personal services and employee benefits categories from the contractual services category for services of a mediator and legal assistant;

F. the second judicial district court may request budget increases up to one hundred sixty thousand dollars ($160,000) to budget grant funds;

G. the third judicial district court may request transfers up to three thousand dollars ($3,000) to and from the contractual services category for bailiffs, court monitors and microfilm services;

H. the ninth judicial district court may request budget increases up to eight thousand dollars ($8,000) from other state funds for the personal services and employee benefits categories; and may request transfers up to ten thousand dollars ($10,000) to the travel category from the contractual services category for vehicle maintenance and travel costs;

I. the eleventh judicial district court may request transfers up to ten thousand dollars ($10,000) to the contractual services category from any other category for two microfilming contracts; and may request budget increases from other state funds from cash balances up to ten thousand dollars ($10,000) for the mediation fund;

J. the twelfth judicial district court may request transfers up to twelve thousand seven hundred dollars ($12,700) to the operating costs category from the contractual services category; and may request budget increases from other state funds up to twelve thousand dollars ($12,000);

K. the Bernalillo county metropolitan court may request transfers up to one hundred fifty-four thousand dollars ($154,000) to the personal services, supplies and materials and operating costs categories from the contractual services category;

L. the second judicial district attorney may request budget increases up to fifty thousand dollars ($50,000) from other state funds including discovery fee reimbursements and land forfeitures for attorney bar dues and training;

M. the eleventh judicial district attorney–-division I may request transfers up to seven thousand three hundred dollars ($7,300) to the contractual services category from any other category;

N. the attorney general may request transfers up to two hundred fifty thousand dollars ($250,000) from other state funds from settlement revenues in undesignated fund balances for reimbursement of a one hundred fifty thousand one hundred dollars ($150,100) prior year deficit balance and ninety-nine thousand nine hundred dollars ($99,900) for personal services and employee benefits;

O. the taxation and revenue department may request transfers to the contractual services category from any other category for final payments of the oil and gas administration and revenue database bonds and interest payments;

P. the department of finance and administration may request transfers up to two hundred eleven thousand dollars ($211,000) to the contractual services category from the operating costs category for the annual financial report and the conversion of the agency information management system to the central accounting system;

Q. the general services department may request transfers up to one hundred seventy-one thousand four hundred dollars ($171,400) from any other division to the property control division to cover projected shortfalls; may request transfers up to one hundred thirteen thousand eight hundred dollars ($113,800) from any other division to the aviation bureau; may request budget increases up to three million three hundred thousand dollars ($3,300,000) from cash balances of the workers' compensation fund for repayment of a federal claim; and may request budget increases from the public liability fund for payment of unanticipated claims;

R. the personnel board may request transfers up to thirty thousand dollars ($30,000) to the contractual services category from any other category for the New Mexico human resources 2001 project;

S. the tourism department may request budget increases up to twenty-three thousand dollars ($23,000) from other state funds for the continued operation of the Santa Fe visitor center;

T. the public regulation commission may request transfers up to two hundred fifty thousand dollars ($250,000) to and from the contractual services category for costs associated with telecommunications and electric utility deregulation; may request division transfers up to five hundred thousand dollars ($500,000) to and from any division; and may request budget increases from the reproduction revolving fund for office supplies or copier costs;

U. the New Mexico board of medical examiners may request transfers from any other category into the contractual services category for costs associated with disciplinary actions on physicians; and may request budget increases from other state funds for costs associated with disciplinary actions;

V. the board of veterinary medicine may request budget increases from other state funds for additional facility inspections and formal complaint investigations;

W. the office of cultural affairs may request transfers up to seventy-three thousand dollars ($73,000) to the space center museum from any other division for personal services and employee benefits;

X. the state engineer may request transfers up to three hundred seventy-five thousand dollars ($375,000) to any category from the contractual services category;

Y. the interstate stream commission may request transfers up to one hundred fifty thousand dollars ($150,000) to any category from the contractual services category;

Z. the organic commodity commission may request transfers up to three thousand five hundred dollars ($3,500) to the contractual services category from any other category to contract for site inspections and information technology services;

AA. the commission for the deaf and hard-of-hearing persons may request transfers to and from the contractual services category; and may request budget increases from internal service funds/interagency transfers for a joint powers agreement with the commission for the blind and the telecommunications access fund;

BB. the commission for the blind may request transfers to and from the contractual services category; and may request budget increases from other state funds and internal service/interagency transfers;

CC. the labor department may request transfers to and from the contractual services category for activities associated with the federal Workforce Investment Act and welfare-to-work programs; and the labor and industrial division of the labor department may request transfers up to ten thousand dollars ($10,000) to the contractual services category for the initiation of a short-term data system support service contract;

DD. the governor's committee on concerns of the handicapped may request transfers to and from the contractual services category;

EE. the department of health may request transfers up to twenty thousand dollars ($20,000) to the contractual services category from any other category for utility costs of the scientific laboratory; may request transfers up to fifty thousand dollars ($50,000) to the personal services category from the contractual services category for projected shortfalls at the southern New Mexico rehabilitation center; may request transfers up to three hundred eighty-five thousand dollars ($385,000) to the contractual services category from any other category for projected shortfalls in the food service contract for the Las Vegas medical center; may request transfers up to one hundred thousand dollars ($100,000) to the personal services and employee benefits categories from the contractual services category for projected shortfalls at the turquoise lodge; may request transfers up to one hundred thousand dollars ($100,000) to the contractual services category from any other category for psychiatric and nursing services at the Fort Bayard medical center; may request transfers up to seventy-six thousand dollars ($76,000) to the contractual services category from any other category for joint commission on accreditation of healthcare organizations consultation, nursing, mental health, pharmacy, rehabilitation, physical therapy and speech pathology services at the New Mexico veterans' center; may request transfers up to one hundred fifty thousand dollars ($150,000) to the other financing uses category from the contractual services category to maximize the general fund match available for medicaid waiver services for the developmental disabilities community programs; may request transfers up to one million five hundred sixty-five thousand nine hundred dollars ($1,565,900) from the other financing uses category to the contractual services category for the mental health

community programs at the Las Vegas medical center; may request transfers up to one hundred fifty thousand dollars ($150,000) to the other financing uses category from the contractual services category to maximize the general fund match available for medicaid waiver services in the long-term services division; and may request transfers up to nineteen thousand dollars ($19,000) to the employee benefits category from the contractual services category to cover projected shortfalls at the sequoyah adolescent residential treatment facility;

FF. the department of military affairs may request transfers up to twelve thousand dollars ($12,000) to the maintenance and repairs category from the contractual services category for critical maintenance needs at facilities statewide;

GG. the juvenile parole board may request transfers up to three thousand dollars ($3,000) to the contractual services category from any other category for computer package software support;

HH. the corrections department may request transfers up to five hundred forty-six thousand dollars ($546,000) to and from any division in addition to the division transfers authorized in Subsection D of Section 12 of Chapter 5 of Laws 2000 (S.S.);

II. the department of public safety may request budget increases up to seventy-five thousand dollars ($75,000) from state forfeiture balances for projected shortfalls in personal services;

JJ. the state department of public education may request budget increases up to ten million eight hundred nineteen thousand dollars ($10,819,000) from other state funds for special projects, incentives for school improvement and instructional materials; and

KK. the commission on higher education may request budget increases up to one hundred sixty thousand dollars ($160,000) from other state funds for the activities of the education trust board.

## Section 11. CERTAIN FISCAL YEAR 2002 BUDGET ADJUSTMENTS AUTHORIZED.--

A. As used in this section:

(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 financing uses and other;

(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) "division transfer" means an approved transfer of funds from one division of an agency to another division of that agency, provided that the annual cumulative effect of division transfers shall not increase or decrease the appropriation to any division by more than seven and one-half percent;

(5) "program transfer" means an approved transfer of funds from one program of an agency to another program of that agency, provided that the annual cumulative effect of program transfers shall not increase or decrease the appropriation to any program by more than seven and one-half percent; and

(6) "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. Budget adjustments are authorized pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978 for fiscal year 2002.

C. Except as otherwise provided, all agencies, including legislative agencies, may request

category transfers among personal services and employee benefits, other financing uses and other.

D. An agency with internal service 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 four percent of its internal service funds/interagency transfers or other state funds appropriation contained in Section 4 and Section 5 of the General Appropriation Act of 2001.

E. In order to track the four percent transfer limitation outlined in Subsection D of this section, 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.

F. In addition to the budget increase authority provided in Subsection D of this section, the following agencies may request specified budget increases:

(1) the statewide judiciary automation program in the administrative office of the courts may request budget increases up to seven hundred thousand dollars ($700,000) from other state funds to enter into agreements with other states and other governmental entities for cooperative computer automation projects; may request budget increases up to three hundred thousand dollars ($300,000) from other state funds to budget funds from other judicial agencies or divisions for consolidated equipment purchases and contractual services; and may request transfers to and from the contractual services category to and from the other category for maintenance and repairs;

(2) the thirteenth judicial district attorney may request budget increases from other state funds and internal service funds/interagency transfers;

(3) the attorney general may request budget increases up to two hundred fifty thousand dollars ($250,000) from the consumer protection fund; and up to one hundred thousand dollars ($100,000) from the investigative costs and forfeiture fund for the medicaid fraud division to be used for costs of investigation, attorney fees and enforcement;

(4) the state investment council may request budget increases from other state funds and internal service funds/interagency transfers 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. The state investment council may request category transfers to any other category except that money appropriated for investment manager fees in the contractual services category shall not be transferred;

(5) notwithstanding the provisions of Subsection D of Section 11 of the General Appropriation Act of 2001 the general services department may request budget increases from internal service funds/interagency transfers and other state funds for fiscal year 2002 greater than the four percent provided in that subsection;

(6) the educational retirement board may request budget increases from other state funds up to one million five hundred thousand dollars ($1,500,000) 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. The educational retirement board may request category transfers, except that funds authorized for investment manager fees within the contractual services category of the administrative division and for custody services within the other costs category of the administrative division shall not be transferred;

(7) the public defender department may request budget increases from cash balances for operating expenses, contracts and automation; and may request transfers from the contractual services, other, or other financing uses categories to any other category;

(8) the public employees retirement association may request budget increases from other state funds up to three million five hundred thousand dollars ($3,500,000) 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 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. The public employees retirement association may request category transfers, except that funds authorized for investment manager fees within the contractual services category of the administrative division and for custody services within the other costs category of the administrative division shall not be transferred;

(9) 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 affect the health and safety of workers;

(10) the New Mexico magazine division of the tourism department may request budget increases from other state funds for earnings from sales;

(11) the boards and commissions bureau of the regulation and licensing department, for purposes of compliance with Subsection E of this section, shall have the four percent budget increase limit applied to the aggregate of boards and commissions appropriations from unbudgeted cash balances and may request budget increases in excess of this limit for unanticipated board and commission litigation costs;

(12) 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;

(13) the department of game and fish may request budget increases from internal service funds/interagency transfers for emergencies;

(14) the oil conservation division of the energy, minerals and natural resources department may request budget increases from the oil and gas reclamation fund to close abandoned wells;

(15) the energy conservation division, the forestry division and the state parks division 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;

(16) the state engineer shall not request more than one million dollars ($1,000,000) in the aggregate in budget increases from other state funds;

(17) the commission on the status of women may request budget increases from other state funds for statutorily mandated recognition programs for women;

(18) the commission for the deaf and hard-of-hearing persons may request increases from other state funds to meet the mandate of its joint powers

agreement with the division of vocational rehabilitation and the telecommunications access fund;

(19) the commission for the blind may request increases from other state funds for the consumers' legal rights program pertaining to social security disability;

(20) the miners' hospital of New Mexico may request budget increases from other state funds to operate the hospital;

(21) the department of health may request budget increases from other state funds and internal service funds/interagency transfers for facilities and institutions, including laboratories, to maintain adequate services to clients; to maintain the buildings and grounds of the former Los Lunas medical center; and to fund investigations pursuant to the Caregivers Screening Act;

(22) 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;

(23) the office of the natural resources trustee may request budget increases from other state funds for court settlements to restore natural resource damage in accordance with court orders and from internal service funds/interagency transfers;

(24) the department of public safety may request budget increases from other state funds and from internal service funds/interagency transfers, excluding state forfeitures and forfeiture balances;

(25) the state highway and transportation department may not request transfers from the personal services and employee benefits category;

(26) the state highway and transportation department may request budget increases from the unbudgeted revenue in other state funds to match unanticipated federal funds in the construction and aviation programs;

(27) the state department of public education may request budget increases for the instructional materials fund, the public school capital outlay fund and the public school energy efficiency fund; and

(28) the commission on higher education may request budget increases from other state funds and federal funds strictly for financial aid programs.

G. 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 12. FUND TRANSFERS AND APPROPRIATION CONTINGENCY FUND APPROPRIATIONS.--

A. One hundred sixty-three million dollars ($163,000,000) is transferred from the general fund to the appropriation contingency fund during fiscal year 2001.

B. Fifty-three million dollars ($53,000,000) is appropriated from the appropriation contingency fund to the human services department for expenditure in fiscal year 2001 for the purpose of making medicaid payments. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the appropriation contingency fund.

C. If the amount needed for medicaid payments in fiscal year 2001 is greater than the appropriations for medicaid payments, including the appropriation made in Subsection B of this section, the governor, with the approval of the state board of finance, may transfer up to fifteen million dollars ($15,000,000) from the appropriation contingency fund to the human services department to meet the medicaid shortfall. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the appropriation contingency fund.

D. Five million dollars ($5,000,000) is appropriated from the appropriation contingency fund to the human services department for expenditure in fiscal year 2002 for the purpose of making medicaid payments. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the appropriation contingency fund.

**Section 13. TRANSFER AUTHORITY.--If revenues and transfers to the general fund, excluding transfers to the general fund operating reserve, appropriation contingency fund and public school state-support reserve, as of the end of fiscal year 2001, are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of that year the amount necessary to meet the year's obligations from the unencumbered balance remaining in the general fund operating reserve in a total not to exceed twenty-five million dollars ($25,000,000).**

**Section 14. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.**

# CHAPTER 65

**CHAPTER 65, LAWS 2001**

AN ACT

RELATING TO TAXATION; CLARIFYING THAT CERTAIN USES OF A CALL CENTER DO NOT CONSTITUTE A BUSINESS OR ACTIVITY SUBJECT TO THE GROSS RECEIPTS TAX OR OTHER PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

## Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2000, Chapter 84, Section 1 and also by Laws 2000, Chapter 101, Section 1) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating 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. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "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;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

(1) "engaging in business" does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person; and

(2) "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;

F. "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.

(1) "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 leasing, 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; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "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; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) 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;

G. "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;

H. "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;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "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;

K. "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;

L. "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;

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

N. "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;

O. "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;

P. "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) the development of 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) the development of 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) 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) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "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; and

R. "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 2. Section 7-9-10 NMSA 1978 (being Laws 1966, Chapter 47, Section 10, as amended) is amended to read:

"7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--DUTIES.--

A. Every person carrying on or causing to be carried on any activity within this state attempting to exploit New Mexico's markets who sells property or sells property and service for use in this state and who is not subject to the gross receipts tax on receipts from these sales shall collect the compensating tax from the buyer and pay the tax collected to the department. "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in New Mexico: maintaining an office or other place of business; soliciting orders through employees or independent contractors; soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico; canvassing, demonstrating, collecting money, warehousing or storing merchandise or delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers. "Activity", for the purposes of this section, does not include having a world wide web site as a third-party provider on a computer physically located in New Mexico but owned by another nonaffiliated person, and "activity" 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.

B. To ensure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected."

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

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HOUSE BILL 119 WITH EMERGENCY CLAUSE

SIGNED MARCH 16, 2001

# CHAPTER 66

**CHAPTER 66, LAWS 2001**

AN ACT

RELATING TO WILDLIFE; PROVIDING PROTECTION FOR AMPHIBIANS AND REPTILES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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. The state game commission shall have authority:

(1) to 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) to declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) to 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) to 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) to 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) to apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) to 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) to 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) to 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, to 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) to 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 any person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) to conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) to establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and to 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; and

(14) to 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.

B. 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.

C. 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.

D. 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."

## Section 2. A new Section 17-2-4.1 NMSA 1978 is enacted to read:

"17-2-4.1. AMPHIBIANS AND REPTILES--PROTECTED--

PERMITS--UNLAWFUL TAKING--MISDEMEANOR--PENALTIES.--

A. All species, except for those collected in rattlesnake roundups, for fish bait or for lizard races, of native, free-ranging amphibians and reptiles are hereby classified as protected nongame animals for commercial taking purposes. The commercial taking or capturing of native, free-ranging amphibians and reptiles is prohibited except by a permit issued by the state game commission.

B. The state game commission shall adopt rules necessary to administer Paragraph (14) of Subsection A of Section 17-1-14 NMSA 1978 and this section to assure that viable populations of native, free-ranging amphibians and reptiles are maintained in the state.

C. If the state game commission determines that it will offer permits to take or capture native, free-ranging amphibians or reptiles, the commission shall adopt a rule listing protected native, free-ranging amphibians and reptiles that may be taken or captured after taking into consideration any criteria that can be shown to have an effect from commercial takings on the viability of the species population in the state.

D. Unlawful taking of a native, free-ranging amphibian or reptile consists of intentionally taking or capturing, for commercial purposes, a regulated native, free-ranging amphibian or reptile without a valid permit from the state game commission.

E. Amphibians and reptiles may be removed, captured or destroyed without a permit, by any person, in emergency situations involving an immediate threat to human life or private property.

F. Whoever commits unlawful taking of a native, free-ranging amphibian or reptile is guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) per occurrence and not more than one thousand dollars ($1,000) per occurrence or be imprisoned for not more than one year or both.

G. As referred to in this section, "taking" means the act of seizing amphibians or reptiles for a commercial purpose."

## Section 3. REPEAL.--Sections 17-2-4 and 17-2-16 NMSA 1978 (being laws 1937, Chapter 217, Sections 1 and 2, as amended) are repealed.

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# CHAPTER 67

**CHAPTER 67, LAWS 2001**

AN ACT

RELATING TO WASTE; PROVIDING FOR THE DISPOSAL OF CERTAIN NONDOMESTIC OIL, GAS AND GEOTHERMAL WASTE AT SOLID WASTE FACILITIES; DECLARING AN EMERGENCY.

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

## Section 1. A new section of the Solid Waste Act, Section 74-9-43 NMSA 1978, is enacted to read:

"74-9-43. AUTHORITY TO ACCEPT NONDOMESTIC OIL, GAS AND GEOTHERMAL WASTES.--

A. A solid waste facility may accept for disposal nondomestic waste. For the purposes of this section, "nondomestic waste" means waste associated with the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, but does not include drilling fluids, produced waters, petroleum liquids, petroleum sludges or, except in the event of an emergency declared by the director of the oil conservation division of the energy, minerals and natural resources department, petroleum-contaminated soils associated with the exploration, development, production, transportation, storage, treatment or refinement of crude oil or natural gas.

B. The solid waste facility may accept nondomestic waste for disposal with the approval of the oil conservation division of the energy, minerals and natural resources department pursuant to its authority under the Oil and Gas Act if the nondomestic waste otherwise meets the requirements of the Solid Waste Act applicable to the solid waste facility. Upon presentation for disposal, nondomestic waste shall be regulated in the same manner as solid waste for purposes of the Solid Waste Act.

C. A solid waste facility operator proposing to accept for disposal nondomestic waste shall comply with rules adopted pursuant to the Solid Waste Act applicable to manifesting, testing and inspection of solid waste and any rules adopted pursuant to the Solid Waste Act applicable to record keeping for solid waste."

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

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HOUSE BILL 533, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 16, 2001

# CHAPTER 68

**CHAPTER 68, LAWS 2001**

AN ACT

RELATING TO CONSTRUCTION; ENACTING THE RETAINAGE ACT; APPLYING RETAINAGE PROVISIONS TO PUBLIC AND PRIVATE OWNERS; REQUIRING SPECIFIC PAYMENT SCHEDULES IN ALL CONSTRUCTION CONTRACTS; REQUIRING INTEREST ON LATE PAYMENTS; ESTABLISHING TRUST RELATIONSHIPS; REQUIRING ESCROW ACCOUNTS IF PARTIAL PAYMENTS ARE RETAINED; REPEALING SECTIONS OF THE NMSA 1978 PERTAINING TO GOVERNMENT RETAINAGE.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Retainage Act".

## Section 2. DEFINITIONS.--As used in the Retainage Act:

A. "construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewage or water treatment facility, power generating plant, pump station, natural gas compression station or similar facility;

(7) sewage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditions;

(13) air conditioning conduit, heating or other similar mechanical work;

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismographic shot holes or core drilling; and

(17) similar work, structures or installations;

B. "contractor" means a person performing construction through a contract with an owner;

C. "owner" means a person, local public body or state agency other than the state highway and transportation department;

D. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or similar legal entity;

E. "retainage" means money payable to the contractor or subcontractor that has been withheld by the owner conditioned on substantial completion of all work in connection with a construction contract; and

F. "subcontractor" means a person performing construction for the owner not through a contract with the owner.

## Section 3. APPLICABILITY OF ACT.--The provisions of the Retainage Act do not apply to construction contracts for residential property containing four or fewer dwelling units.

## Section 4. RETAINAGE IN ABSENCE OF ESCROW AGREEMENT.--

A. Except as otherwise provided in this section, retainage shall not be withheld on any construction contract within New Mexico unless an escrow arrangement is used. Securities may be offered by a contractor or subcontractor in lieu of retention.

B. A local public body may provide in its bidding documents the manner in which retainage is to be held. Retainage by a local public body shall be in an interest-bearing account. A local public body may combine retainage from more than one project into a single account, and the interest shall be allocated to the contractors and subcontractors pro rata to each project's retainage.

C. A manufacturing plant engaged in at least ten construction projects at the same time may serve as its own escrow agent; provided that all other conditions pertaining to escrow accounts shall apply.

## Section 5. PAYMENTS--PROMPT PAY REQUIRED--RETAINAGE.--

A. Except as provided in Subsection B of this section, all construction contracts shall provide that payment for amounts due, except for retainage, shall be paid within twenty-one days after the owner receives an undisputed request for payment. Payment by the owner to the contractor may be made by first-class mailing, electronic funds transfer or by hand delivery of the undisputed amount of a pay request based on work completed or service provided under the contact. If the owner fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If an owner receives an improperly completed invoice, he shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and he has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

B. A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if:

(1) the construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and

(2) the following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

"Notice of Extended Payment Provision

This contract allows the owner to make payment within _____ days after submission of an undisputed request for payment."

C. All construction contracts shall provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay his subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to his subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

D. A creditor shall not collect, enforce a security interest against, garnish or levy execution on those retainage, progress payments or other payments that are owed by an owner, contractor or subcontractor to a person, or his surety, who has furnished labor or material pursuant to a construction contract.

E. When making payments, the owner shall retain no more than five percent of the cost of estimated work done and the value of materials stored on the site or suitably stored and insured off-site. When the project is substantially complete, no further retainage shall be withheld. A contractor shall retain no more than five percent retainage, regardless of whether retainage is withheld by the owner.

F. The retainage may be held until substantial completion of each separate building, public work or other division of the contract on which a price is stated separately in the contract or that can be separately ascertained from the contractor's schedule of values if the escrow arrangement described in Section 6 of the Retainage Act is used.

## Section 6. ESCROW ACCOUNTS.--An escrow account, established pursuant to an escrow agreement, shall be entered into only on the following conditions:

A. only state or national banks chartered with the state or savings and loan associations domiciled in the state may serve as escrow agent;

B. the escrow agent shall limit the investment of funds held in escrow as retainage to certificates of deposit or similar time deposit investments, which may, at the election of the owner, be in excess of the maximum dollar amount of coverage by the federal deposit insurance corporation, the federal savings and loan insurance corporation or other similar agency; United States treasury bonds, United States treasurer notes, United States treasurer certificates of indebtedness and United States treasury bills; or bonds or notes of the state or political subdivision of the state;

C. as interest on all investments held in escrow becomes due, it shall be collected by the escrow agent and paid to the contractor. The contractor and his subcontractors shall pay interest as it is received pro rata to their subcontractors;

D. the escrow agent shall provide monthly reports to the owner, the contractor and the subcontractor as to the amount and value of the escrow account held by the escrow agent and any additions to the escrow account. Withdrawals from the escrow account shall be made only subject to approval of the owner;

E. if the owner has entered into more than one construction contract allowing for the maintenance of escrow accounts, the owner may elect to combine the amounts held as retainage under each contract into one or more escrow accounts or may establish a separate escrow account for each contract;

F. upon default or overpayment, as determined by a court of competent jurisdiction, the escrow agent shall deliver a cashier's check within ten days to the owner in the amount of the default or overpayment; provided, however, the amount is subject to the redemption value of the investments at the time of disbursement;

G. the escrow account may be terminated upon completion and acceptance of the contract as provided in the Retainage Act;

H. all fees and expenses of the escrow agent shall be paid by the owner;

I. the escrow account constitutes a specific pledge to the owner, and the contractor or subcontractor shall not, except to its surety, otherwise assign, pledge, discount, sell or transfer his interest in the escrow account, and money in the escrow account is not subject to levy, garnishment, attachment or other process;

J. the form and provisions of the escrow agreement shall be included in all solicitations for construction services and shall be given to the contractor and subcontractors prior to entering into a contract;

K. the owner is not liable to the contractor, subcontractor or their sureties for the failure of the escrow agent to perform under the escrow agreement, or for the failure of a financial institution to honor investments issued by it that are held in the escrow account; and

L. an escrow agent is not liable to a party to the escrow agreement unless the escrow agent is found by a court of competent jurisdiction to have breached his fiduciary duty to a beneficiary of the escrow agreement.

**Section 7. CARE AND PROTECTION OF WORK.--All material and work covered by partial payments become the property of the owner, but the contractor and subcontractor are not relieved from**

**the sole responsibility for the care and protection of materials and work for which payments have been made; provided, however, the contractor and subcontractor have no duty for the care and protection of materials and work after the owner has assumed occupancy or use of the work.**

**Section 8. FINAL PAYMENT.--Ten days after certification of completion, any amounts remaining due the contractor or subcontractor under the terms of the contract shall be paid upon the presentation of the following:**

A. a properly executed release and duly certified voucher for payment;

B. a release, if required, of all claims and claims of lien against the owner arising under and by virtue of the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor or subcontractor from the operation of the release in stated amounts to be set forth in the release; and

C. proof of completion.

**Section 9. DISPUTES--EFFECT ON RETAINAGE.--If a dispute arises between the owner and the contractor or subcontractor as to work performed or materials supplied, the owner is only entitled to retain the amount that is reasonably calculated to cover the cost to correct a deficiency in the work or materials supplied. All other money due to the contractor or subcontractor pursuant to the Retainage Act shall be paid as provided in that act. The money retained by the owner as provided in this section shall be deposited in the escrow account for the benefit of the contractor or subcontractor, but shall not be paid to the contractor or subcontractor until the dispute has been resolved.**

**Section 10. FAILURE TO DEPOSIT OR RELEASE RETAINAGE.--If an owner fails to deposit retainage that is withheld or to release retainage as required by the Retainage Act, the owner shall pay an additional one and one-half percent of the amount not deposited or released for each month or part of a month until retainage is paid.**

**Section 11. ATTORNEY FEES.--In an action to enforce the provisions of the Retainage Act, the court may award court costs and reasonable attorney fees.**

**Section 12. REPEAL.--Sections 13-4-27 through 13-4-30 NMSA 1978 (being Laws 1985, Chapter 124, Sections 1 and 2, Laws 1989, Chapter 217, Section 1 and Laws 1985, Chapter 124, Section 4, as amended) are repealed.**

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HOUSE BILL 320, AS AMENDED

# CHAPTER 69

**CHAPTER 69, LAWS 2001**

AN ACT

RELATING TO ELECTRONIC RECORDS; PROVIDING FOR TECHNOLOGICAL NEUTRALITY; CHANGING DEFINITIONS; PROVIDING BROAD RULE-MAKING AUTHORITY; CHANGING RESPONSIBILITY FOR ELECTRONIC AUTHENTICATION OF DOCUMENTS FROM THE SECRETARY OF STATE TO THE INFORMATION TECHNOLOGY MANAGEMENT OFFICE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 14-15-2 NMSA 1978 (being Laws 1996, Chapter 11, Section 2, as amended) is amended to read:

"14-15-2. PURPOSE.--The purpose of the Electronic Authentication of Documents Act is to:

A. provide a centralized technical approach to authenticating electronic documents;

B. promote electronic commerce by eliminating barriers resulting from uncertainties over signature requirements and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce;

C. facilitate electronic filing of documents with government agencies and promote efficient delivery of government services by means of reliable, secure electronic records and document transactions;

D. establish a coherent approach to rules and standards regarding the authentication of electronic records; and

E. promote technological neutrality in electronic authentication."

## Section 2. Section 14-15-3 NMSA 1978 (being Laws 1996, Chapter 11, Section 3, as amended) is amended to read:

"14-15-3. DEFINITIONS.--As used in the Electronic Authentication of Documents Act:

A. "authenticate" means to ascertain the identity of the originator, verify the integrity of the electronic data and establish a link between the data and the originator;

B. "document" means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. "Document" includes correspondence, agreements, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy formats;

C. "electronic authentication" means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities;

D. "office" means the information technology management office;

E. "originator" means the person who signs a document electronically;

F. "person" means an individual or entity, including:

(1) an estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; and

(2) any federal, state or local governmental unit or subdivision or any agency, department or instrumentality thereof;

G. "signed" or "signature" means a symbol executed or adopted or a security procedure employed or adopted using electronic means or otherwise, by or on behalf of a person with the intent to authenticate a record; and

H. "technological neutrality" means the methods selected to carry out electronic authentication that do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures."

## Section 3. Section 14-15-5 NMSA 1978 (being Laws 1996, Chapter 11, Section 5) is amended to read:

"14-15-5. RULES.--

A. The information technology commission shall adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act.

B. The rules shall address circumstances under which standards other than adopted standards may be used."

## Section 4. Section 14-15-6 NMSA 1978 (being Laws 1996, Chapter 11, Section 6) is amended to read:

"14-15-6. CONTRACTING SERVICES.--The office may contract with a private, public or quasi-public organization for the provision of services under the Electronic Authentication of Documents Act. A contract for services shall comply with rules adopted pursuant to the Electronic Authentication of Documents Act and the provisions of the Public Records Act and the Procurement Code."

## Section 5. REPEAL.--Section 14-15-4 NMSA 1978 (being Laws 1996, Chapter 11, Section 4) is repealed.

## Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 608, AS AMENDED

# CHAPTER 70

**CHAPTER 70, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING FOR ACADEMIC COMPETITIONS.

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:

"ACADEMIC COMPETITIONS.--Each public school in each

conference shall provide academic competitions similar to its athletic competitions. A student who participates in an

academic competition shall qualify for an academic letter in

the subject in which he competes. Academic competitions

between schools shall be governed by the New Mexico

activities association."

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SENATE BILL 25

# CHAPTER 71

**CHAPTER 71, LAWS 2001**

AN ACT

RELATING TO COURTS; AUTHORIZING COMPENSATION FOR A RETIRED MAGISTRATE JUDGE WHO SERVES AS A MAGISTRATE JUDGE PRO TEMPORE; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 35-2-6 NMSA 1978 (being Laws 1997, Chapter 114, Section 1) is amended to read:

"35-2-6. APPOINTMENT AS SPECIAL MASTER, ARBITRATOR OR MAGISTRATE JUDGE PRO TEMPORE--COMPENSATION.--

A. A chief district court judge may appoint a retired magistrate judge, with the retired judge's consent, to serve as a magistrate judge pro tempore, subject to the money available to the judge pro tempore fund.

B. The retired magistrate judge shall be:

(1) compensated for his services in an amount equal to the hourly salary paid to magistrate judges; and

(2) reimbursed for his expenses in accordance with the provisions of the Per Diem and Mileage Act that apply to nonsalaried public officers."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 46

# CHAPTER 72

**CHAPTER 72, LAWS 2001**

AN ACTRELATING TO ELECTIONS; ENACTING PROCEDURES TO CANCEL A DECEASED PERSON'S VOTER REGISTRATION; AMENDING THE ELECTION CODE.

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

**Section 1. Section 1-4-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 81, as amended by Laws 1993, Chapter 314, Section 21 and also by Laws 1993, Chapter 316, Section 21) is amended to read:**

"1-4-25. CANCELLATION OF REGISTRATION--DETERMINATION OF DEATH.--

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices, probate records or by comparison of registration records with monthly certified lists of deceased residents filed with the secretary of state.

B. The state registrar of vital statistics shall file monthly with the secretary of state certified lists of deceased residents over the age of eighteen years, sorted by county, regardless of the place of death.

C. The monthly certified list of deceased residents shall show the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) address; and

(9) place and date of death of the deceased resident.

D. The secretary of state shall, upon receipt of the monthly certified list of deceased residents, forward each county's list to the county clerk.

E. The county clerk shall, upon receipt of the monthly certified list of deceased residents, cancel any deceased resident's certificate of registration."

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SENATE BILL 179

# CHAPTER 73

**CHAPTER 73, LAWS 2001**

AN ACT

RELATING TO TAXATION; PROVIDING A ONE-TIME INCOME TAX CREDIT FOR CERTAIN BUSINESSES THAT PURCHASE AND USE EQUIPMENT THAT ELECTRONICALLY READS IDENTIFICATION CARDS TO VERIFY AGE.

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:

"CREDIT--CERTAIN ELECTRONIC EQUIPMENT.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars ($300) for each business location the taxpayer has such equipment in use.

B. The credit provided in this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year.

C. 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 provided in this section that would have been allowed on a joint return.

D. A taxpayer who otherwise qualifies and claims a credit pursuant to this section for equipment owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed three hundred dollars ($300) in the aggregate for each business location for which the partnership or association has purchased equipment and has it in use."

## Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"CREDIT--CERTAIN ELECTRONIC EQUIPMENT.--

A. A taxpayer who files a New Mexico corporate income tax return, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars ($300) for each business location the taxpayer has such equipment in use.

B. The credit provided in this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year.

C. A taxpayer who otherwise qualifies and claims a credit pursuant to this section for equipment owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed three hundred dollars ($300) in the aggregate for each business location the partnership or association has purchased equipment and has it in use."

## Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2001.

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SENATE BILL 458

# CHAPTER 74

**CHAPTER 74, LAWS 2001**

AN ACTRELATING TO LAW ENFORCEMENT; PROVIDING CERTAIN POWERS TO CONSERVATION OFFICERS.

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

## Section 1. Section 17-2-19 NMSA 1978 (being Laws 1912, Chapter 85, Section 57, as amended) is amended to read:

"17-2-19. ENFORCEMENT OF GAME LAWS--POWERS OF

CONSERVATION OFFICERS.--

A. The director of the department of game and fish, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce Chapter 17 NMSA 1978 and shall:

(1) seize any game or fish held in violation of that chapter;

(2) with or without warrant, arrest any person whom he knows to be guilty of a violation of that chapter; and

(3) open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of that chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers may, under the direction of the state game commission and the director of the

department of game and fish:

(1) establish from time to time, as needed for the proper functioning of the game and fish research and management division, checking stations at points along established roads, or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws and the regulations referred to in Section 17-2-10 NMSA 1978;

(2) under emergency circumstances and while on official duty only enforce the provisions of the Criminal Code and the Motor Vehicle Code; and

(3) while on official duty only, enforce the provisions of:

(a) Sections 30-14-1 and 30-14-1.1

NMSA 1978 pertaining to criminal trespass;

(b) Section 30-7-4 NMSA 1978 pertaining to negligent use of a deadly weapon;

(c) Section 30-15-1 NMSA 1978 pertaining to criminal damage to property;

(d) Section 30-22-1 NMSA 1978 pertaining to resisting, evading or obstructing an officer; and

(e) Section 72-1-8 NMSA 1978 pertaining to camping next to a manmade water hole."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 74

# CHAPTER 75

**CHAPTER 75, LAWS 2001**

AN ACTREPEALING A SECTION OF THE NMSA 1978 PERTAINING TO FREIGHT BILLS OF STATE AGENCIES AND PUBLIC INSTITUTIONS.

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

**Section 1. REPEAL.--Section 13-2-1 NMSA 1978 (being Laws 1965, Chapter 245, Section 1) is repealed.**

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SENATE BILL 569

# CHAPTER 76

**CHAPTER 76, LAWS 2001**

AN ACT

RELATING TO AGRICULTURE; REPEALING CHAPTER 76, ARTICLES 13 AND 14 NMSA 1978 CONCERNING REGULATION OF CERTAIN PROCESSORS OF AGRICULTURAL PRODUCTS.

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

**Section 1. REPEAL.--Sections 76-13-1 through 76-13-9 and 76-14-1 through 76-14-15 NMSA 1978 (being Laws 1927, Chapter 101, Sections 1 through 9, Laws 1977, Chapter 116, Sections 1 and 2, Laws 1927, Chapter 164, Sections 1 through 5 and Laws 1957, Chapter 136, Sections 1 through 7 and 9, as amended) are repealed.**

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 577

# CHAPTER 77

**CHAPTER 77, LAWS 2001**

AN ACT

RELATING TO COURTS; INCREASING THE JURISDICTIONAL AMOUNT FOR CIVIL ACTIONS IN METROPOLITAN COURT AND MAGISTRATE COURT; AMENDING SECTIONS OF THE NMSA 1978.

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

**Section 1. Section 34-8A-3 NMSA 1978 (being Laws 1979, Chapter 346, Section 3, as amended) is amended to read:**

"34-8A-3. METROPOLITAN COURT--JURISDICTION.--

A. In addition to the jurisdiction provided by law for magistrate courts, a metropolitan court shall have jurisdiction within the county boundaries over all:

(1) offenses and complaints pursuant to ordinances of the county and of a municipality located within the county in which the court is located except municipalities with a population of more than two thousand five hundred but less than five thousand persons in the 1980 federal decennial census; provided that the

metropolitan court shall not have jurisdiction over uncontested municipal parking violations;

(2) civil actions in which the debt or sum claimed does not exceed ten thousand dollars ($10,000), exclusive of interest and costs; and

(3) contested violations of parking or operation of vehicle rules promulgated by a board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico located within the county in which the court is located.

B. For the purposes of this section, "uncontested violation" is a violation for which a citation has been issued and the person has paid the citation by mail or in person to the appropriate issuing authority; and "contested violation" is a violation for which a citation has been issued and the person has indicated his intent to contest the citation or the person has not paid or answered the citation.

C. The issuing authority shall provide to the metropolitan court on a mutually agreed schedule the unpaid citations and a listing in a manner mutually agreed upon of unpaid citations.

D. The municipality shall retain as reimbursement for its expenses all revenues from uncontested municipal parking violations."

## Section 2. Section 35-3-3 NMSA 1978 (being Laws 1968, Chapter 62, Section 48, as amended) is amended to read:

"35-3-3. JURISDICTION--CIVIL ACTIONS.--

A. Magistrates have jurisdiction in civil actions in which the debt or sum claimed does not exceed ten thousand dollars ($10,000), exclusive of interest and costs.

B. Except as provided in Subsection C of this section, civil jurisdiction extends to actions in contract, quasi-contract and tort and where expressly conferred by law.

C. A magistrate has no jurisdiction in a civil action:

(1) for malicious prosecution, libel or slander;

(2) against public officers for misconduct in office;

(3) for specific performance of contracts for the sale of real property;

(4) in which the title or boundaries of land may be in dispute or drawn into question;

(5) affecting domestic relations, including divorce, annulment or separation or custody, support, guardianship, adoption or dependency of children;

(6) to grant writs of injunction, habeas corpus or extraordinary writs; or

(7) where jurisdiction is vested exclusively in another court."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 584

# CHAPTER 78

**CHAPTER 78, LAWS 2001**

AN ACT

RELATING TO EXTRATERRITORIAL ZONING; REQUIRING A PORTION OF THE MEMBERSHIPOF AN EXTRATERRITORIAL ZONING COMMISSION TO RESIDE IN THE EXTRATERRITORIAL ZONE.

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

## Section 1. Section 3-21-3 NMSA 1978 (being Laws 1977, Chapter 80, Section 2) is amended to read:

"3-21-3. PROCEDURE FOR EXTRATERRITORIAL ZONING.--

A. Upon the initiative of any municipal governing body or of the board of county commissioners of any county wherein any portion of the extraterritorial zoning area of the municipality lies, the municipality and the county may enter into an agreement providing for the zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. In the absence of such agreement, a petition requesting the zoning of the extraterritorial zoning area and signed by twenty-five percent of the qualified electors residing in the extraterritorial zoning area and within the same county may be filed with the county clerk of the county of the petitioners' residence. Upon the filing of such petition, the governing body of the municipality and the board of county commissioners shall enter into an agreement providing for the

zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. Any agreement entered into pursuant to the provisions of this subsection may be subsequently amended by agreement of both parties.

B. The agreement entered into pursuant to Subsection A of this section shall provide for an extraterritorial zoning commission consisting of equal numbers of members appointed by the municipal zoning authority and the county commission; provided that at least one-half of these members shall reside in the extraterritorial zone. Additionally, one member from an area of the county not within the zoning jurisdiction of the municipality or within the area of the county affected by the proposed extraterritorial zoning ordinance shall be appointed by a majority of the members appointed by the board of county commissioners and by the municipal zoning authority. The agreement shall also provide for a joint municipal-county zoning authority consisting of one or more members of the municipal governing body and one or more members of the board of county commissioners, provided such authority membership shall contain one more county commission member than municipal governing body member.

C. No zoning ordinance shall be adopted by the joint municipal-county zoning authority unless the ordinance has been recommended by the extraterritorial zoning commission.

D. Within three hundred sixty days of the appointment of the last member to be appointed, the extraterritorial zoning commission shall recommend to the joint municipal-county zoning authority a zoning ordinance applicable to all or any portion of the extraterritorial zoning area lying within the county joining in the agreement pursuant to Subsection A of this section. The ordinance shall also provide, subject to the restrictions of

Section 3-21-6 NMSA 1978, for the manner in which zoning regulations, restrictions and the boundaries of districts are:

(1) determined, established and enforced; and

(2) amended, supplemented or repealed."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 621

# CHAPTER 79

**CHAPTER 79, LAWS 2001**

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING THE CRITERIA FOR ADMISSION TO THE RADIO DISPATCHER TRAINING PROGRAM; AMENDING A SECTION OF THE POLICE RADIO DISPATCHER TRAINING ACT.

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

## Section 1. Section 29-7A-2 NMSA 1978 (being Laws 1979, Chapter 228, Section 2) is amended to read:

"29-7A-2. QUALIFICATIONS FOR ADMISSION.--The director of the New Mexico law enforcement academy shall determine that all applicants for admission to the radio dispatcher training program:

A. are citizens or legal permanent residents of the United States and have reached the age of majority;

B. hold high school diplomas or the equivalent;

C. have not been convicted of a felony or other crime involving moral turpitude as determined by submission of the applicant's fingerprints to the New Mexico state police and to the federal bureau of investigation identification division and by such other investigations as required by the applicant's place of employment; and

D. are free of any physical, emotional or mental condition that might adversely affect their performance."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 695

# CHAPTER 80

**CHAPTER 80, LAWS 2001**

AN ACT

RELATING TO THE FIREFIGHTER TRAINING ACADEMY; CREATING A FUND FOR USE FEES RECEIVED.

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

**Section 1. FIREFIGHTER TRAINING ACADEMY--USE FEE FUND CREATED.--The "training academy use fee fund" is created in the state treasury. All fees received by the state fire marshal for use of the firefighter training academy and its services shall be deposited into the fund; provided that no fee shall be charged the state of New Mexico or any of its agencies, instrumentalities or political subdivisions; and provided further that each contract for services in which a fee is collected shall be entered into pursuant to a business plan that has been approved by the department of finance and administration and reviewed by the legislative finance committee. Balances in the fund shall be available for appropriation to the state fire marshal for paying the operating and capital expenses of the firefighter training academy. Earnings of the fund shall be credited to the fund, and the unexpended or unencumbered balance in the fund shall not revert to any other fund.**

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SENATE BILL 3, AS AMENDED

# CHAPTER 81

**CHAPTER 81, LAWS 2001**

AN ACT

RELATING TO ANIMALS; REPEALING CERTAIN EXCEPTIONS IN THE CRUELTY TO ANIMALS PROVISION.

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

## Section 1. Section 30-18-1 NMSA 1978 (being Laws 1999, Chapter 107, Section 1) is amended to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO ANIMALS--PENALTIES--EXCEPTIONS.--

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

(1) humanely destroying a sick or injured

animal; or

(2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

(1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;

(2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;

(3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;

(4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;

(5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;

(6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or

(7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

K. The provisions of this section shall not be interpreted to prohibit cockfighting in New Mexico."

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SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 35, AS AMENDED

# CHAPTER 82

**CHAPTER 82, LAWS 2001**

AN ACT

RELATING TO HEALTH; REQUIRING HEARING SENSITIVITY TESTING FOR ALL NEWBORN INFANTS; DECLARING AN EMERGENCY.

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

**Section 1. NEWBORN HEARING TESTING REQUIRED--DEPARTMENT OF HEALTH.--By July 1, 2001, the department of health shall adopt rules to require that infants born in health facilities licensed by the department shall be screened for hearing sensitivity prior to being discharged. The rules shall also require the testing of newborns brought to licensed health facilities after birth who have not received a hearing sensitivity screening and notification to the parents of all screened infants of the results of the hearing sensitivity screening. Nothing in this section shall be construed to require screening for hearing sensitivity of a newborn infant if the infant's parents object to the screening on the grounds that it conflicts with their religious beliefs.**

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

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SENATE BILL 101, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED April 2, 2001

# CHAPTER 83

**CHAPTER 83, LAWS 2001**

AN ACT

RELATING TO VITAL STATISTICS; PROVIDING THAT A REGISTERED NURSE EMPLOYED BY A HOSPITAL MAY PRONOUNCE THE DEATH OF A PATIENT IN CERTAIN CIRCUMSTANCES.

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

## Section 1. Section 24-14-20 NMSA 1978 (being Laws 1961, Chapter 44, Section 18, as amended) is amended to read:

"24-14-20. DEATH REGISTRATION.--

A. A death certificate for each death that occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978; provided that:

(1) if the place of death is unknown but the dead body is found in this state, a death certificate shall be filed with a local registrar within ten days after the occurrence. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be approximated by the state medical investigator; and

(2) if death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as can be determined by the state medical investigator.

B. The funeral service practitioner or person acting as a funeral service practitioner who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death.

C. The medical certification shall be completed and signed within forty-eight hours after death by the physician in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by law. Except as provided in Subsection D of this section, in the absence of the physician, or with his approval, the medical certification may be completed and signed by his associate physician, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent, provided that individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

D. Unless there is reasonable cause to believe that the death is not due to natural causes, a registered nurse employed by a nursing home may pronounce the death of a resident of the nursing home and a registered nurse employed by a hospital may pronounce the death of a patient of the hospital. The nurse shall have access to the medical history of the case and view the deceased at or after death, and the

individual who completes the medical certification shall not be required to view the deceased at or after death. The death shall be pronounced pursuant to procedures or facility protocols prescribed by the hospital for patients or by the physician who is the medical director of the nursing home for residents. The procedures or facility protocols shall ensure that the medical certification of death is completed in accordance with the provisions of Subsection C of this section.

E. For purposes of this section:

(1) "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities; and

(2) "hospital" means a public hospital, profit or nonprofit private hospital or a general or special hospital that is licensed as a hospital by the department of health.

F. When death occurs without medical attendance as set forth in Subsection C or D of this section or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

G. An amended death certificate based on an anatomical observation shall be filed within thirty days of the completion of an autopsy."

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SENATE BILL 116, AS AMENDED

# CHAPTER 84

**CHAPTER 84, LAWS 2001**

AN ACT

RELATING TO THANATOPRACTICE; REMOVING CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN LICENSEES AND EXTENDING THE GRACE PERIOD FOR LICENSE RENEWALS.

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

## Section 1. Section 61-32-21 NMSA 1978 (being Laws 1993, Chapter 204, Section 21, as amended) is amended to read:

"61-32-21. LICENSE RENEWAL.--

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal; provided that a licensee who is age sixty-five or above and who has been licensed by the board for at least twenty consecutive years shall not be required to meet continuing education requirements.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be expired and invalid. A holder of an expired license shall be required to apply as a new applicant."

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SENATE BILL 117, AS AMENDED

# CHAPTER 85

**CHAPTER 85, LAWS 2001**

AN ACT

RELATING TO PUBLIC BUILDINGS; REQUIRING ACKNOWLEDGMENT OF NEW MEXICO TAXPAYERS TO BE PLACED ON CERTAIN PUBLIC BUILDINGS FUNDED BY PUBLIC MONEY.

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

**Section 1. PUBLIC BUILDINGS--ACKNOWLEDGMENT OF TAXPAYERS WHEN ELECTED OFFICIALS ACKNOWLEDGED.--On every new public building plaque that lists, acknowledges or thanks the elected officials who were in office at the time the building was funded, constructed or renovated, there shall be included a statement of equal size and visibility that thanks the taxpayers of New Mexico for their contribution in funding the construction or renovation.**

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SENATE BILL 189, AS AMENDED

# CHAPTER 86

**CHAPTER 86, LAWS 2001**

AN ACT

RELATING TO STATE AGENCIES; CLARIFYING THE POWERS AND DUTIES OF THE ALCOHOL AND GAMING DIVISION OF THE REGULATION AND LICENSING DEPARTMENT AND THE DIRECTOR OF THAT DIVISION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "regulation and licensing department". The department shall not be a cabinet department. The department shall consist of but not be limited to six divisions as follows:

A. the administrative services division;

B. the construction industries division;

C. the financial institutions division;

D. the securities division;

E. the manufactured housing division; and

F. the alcohol and gaming division."

## Section 2. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended) is amended to read:

"60-3A-3. DEFINITIONS.--As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented

beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

C. "brewer" means a person who owns or operates a business for the manufacture of beer;

D. "club" means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars ($5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) the proposed licensee has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier that maintains or operates a clubroom at an international airport terminal. For the purposes of this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the civil aeronautics board;

E. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

F. "department" means the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "director" means the director of the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "dispenser" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises;

I. "distiller" means a person engaged in manufacturing spirituous liquors;

J. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens, driving ranges, recreational facilities, patios, pro shops, cart paths and public and private roads that are located within the tract of land;

K. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

L. "hotel" means an establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five sleeping rooms;

M. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, hotel, golf course or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack;

N. "local option district" means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

O. "manufacturer" means a distiller, rectifier, brewer or winer;

P. "minor" means a person under twenty-one years of age;

Q. "package" means an immediate container of alcoholic beverages that is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

R. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

S. "rectifier" means a person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

T. "restaurant" means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

U. "retailer" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises;

V. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and ale;

W. "wholesaler" means a person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale any alcoholic beverages for resale by the purchaser;

X. "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

Y. "wine bottler" means a New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale;

Z. "winegrower" means a person who owns or operates a business for the manufacture of wine; and

AA. "winer" means a winegrower."

## Section 3. Section 60-3A-6 NMSA 1978 (being Laws 1987, Chapter 254, Section 24) is amended to read:

"60-3A-6. AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY.--The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department."

## Section 4. Section 60-3A-7 NMSA 1978 (being Laws 1987, Chapter 254, Section 25) is amended to read:

"60-3A-7. AUTHORITY OF THE ALCOHOL AND GAMING DIVISION.--The alcohol and gaming division of the regulation and licensing department has the authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The director of the alcohol and gaming division of the regulation and licensing department may request the department of public safety to provide investigatory and enforcement support as deemed necessary."

## Section 5. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"POWERS AND DUTIES OF THE DIRECTOR OF THE ALCOHOL AND GAMING DIVISION.--The director of the alcohol and gaming division of the regulation and licensing department is responsible for the operation of the division. It is his duty to supervise all operations of the division and to:

A. administer the laws that the division administers, including the Liquor Control Act. The director shall request the department of public safety to enforce the provisions of the Liquor Control Act as deemed necessary;

B. exercise general supervisory authority over all employees of the division;

C. organize the division into units to enable it to function most effectively;

D. confer authority and delegate responsibility as is necessary and appropriate;

E. employ, within the limitations of current appropriations and personnel laws, persons as are required to discharge his duties;

F. undertake studies and conduct courses of instruction for division employees that will improve the operations of the division and advance its purposes; and

G. require compliance by employees of the division with his verbal and written instructions by whatever disciplinary means appropriate."

## Section 6. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"ADMINISTRATIVE AUTHORITY AND POWERS.--

A. For the purpose of administering the licensing provisions of the Liquor Control Act, the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the alcohol and gaming division of the regulation and licensing department, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the legal counsel for the alcohol and gaming division of the regulation and licensing department shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The alcohol and gaming division of the regulation and licensing department shall require criminal history background checks for purposes of administering the licensing provisions of the Liquor Control Act. For purposes of conducting the criminal history background check, the alcohol and gaming division shall require the fingerprinting of applicants for liquor licenses as required by the Liquor Control Act. Fingerprint cards shall be submitted by the director to the department of public safety records bureau for processing through the federal bureau of investigation. The director shall establish procedures within the alcohol and gaming division to

maintain the confidentiality of information received from the department of public safety and the federal bureau of investigation."

## Section 7. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"ADMINISTRATIVE RULES AND ORDERS--PRESUMPTION OF CORRECTNESS.--

A. The director shall issue and file as required by law all rules and orders necessary to administer the licensing provisions of the Liquor Control Act.

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

(1) rules are written statements of the director, of general application to licensees, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and

(3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, a rule shall first be issued as a proposed rule and filed for public inspection in the office of the director. Distribution of the rule shall be made to interested persons and their comments shall be invited. After the proposed rule has been on file for thirty days and a public hearing has been held, the director may issue it as a final rule by filing as required by law.

D. The director shall furnish a copy of the rules to all licensees and other interested persons at a nominal cost.

E. A rule or order issued by the director is presumed to be a proper implementation of the licensing provisions of the Liquor Control Act.

F. All rules and orders shall be applied prospectively only."

## Section 8. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"WRITTEN DECISIONS BY DIRECTOR.--Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license, or other disposition of a charge against a licensee, shall be

accompanied by a written order containing findings of fact and the specific grounds relied upon for the decision."

## Section 9. REPEAL.--Sections 60-4B-5 and 60-4B-6 NMSA 1978 (being Laws 1981, Chapter 39, Sections 8 and 9) are repealed.

## Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 223, AS AMENDED

# CHAPTER 87

**CHAPTER 87, LAWS 2001**

AN ACT

RELATING TO WORKERS' COMPENSATION; CHANGING THE BENEFITS COMPUTATION FOR PARTIAL DISABILITY; CHANGING PROVISIONS RELATING TO ALCOHOL OR DRUG USE INVOLVEMENT IN AN INJURY; CHANGING THE VENUE OF HEARINGS; MAKING CERTAIN WORKERS' COMPENSATION ADMINISTRATION RECORDS OPEN TO THE PUBLIC; 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 52-1-12.1 NMSA 1978 is enacted to read:

"52-1-12.1. REDUCTION IN COMPENSATION WHEN ALCOHOL OR DRUGS CONTRIBUTE TO INJURY OR DEATH.--The compensation otherwise payable a worker pursuant to the Workers' Compensation Act shall be reduced ten percent in cases in which the injury to or death of a worker is not occasioned by the intoxication of the worker as stated in Section 52-1-11 NMSA 1978 or occasioned solely by drug influence as described in Section 52-1-12 NMSA 1978, but voluntary intoxication or being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act or under the influence of a narcotic drug as defined in the Controlled Substances Act, unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug, is a contributing cause to the injury or death. Test results used as evidence of intoxication or drug influence shall not be considered in making a

determination of intoxication or drug influence unless the test and testing procedures conform to the federal department of transportation "procedures for transportation workplace drug and alcohol testing programs" and the test is performed by a laboratory certified to do the testing by the federal department of transportation."

## Section 2. Section 52-1-26.2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 13) is amended to read:

"52-1-26.2. PARTIAL DISABILITY DETERMINATION--AGE MODIFICATION.--

A. The range of the age modification is one to five. The modification is based upon the worker's age at the time of the disability rating.

B. For a worker who is:

(1) forty-four years old or younger, one point shall be awarded;

(2) forty-five to forty-nine years old, two points shall be awarded;

(3) fifty to fifty-four years old, three points shall be awarded;

(4) fifty-five to fifty-nine years old, four points shall be awarded; and

(5) sixty years old or older, five points shall be awarded."

## Section 3. Section 52-1-26.3 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 14) is amended to read:

"52-1-26.3. PARTIAL DISABILITY DETERMINATION--EDUCATION MODIFICATION.--

A. The range of the education modification is one to eight. The modification shall be based upon the worker's formal education, skills and training at the time of the disability rating.

B. A worker shall be awarded points based on the formal education he has received. A worker who:

(1) has completed no higher than the fifth grade shall be awarded three points;

(2) has completed the sixth grade but has completed no higher than the eleventh grade shall be awarded two points;

(3) has completed the twelfth grade or has obtained a GED certificate but has not completed a college degree shall be awarded one point; and

(4) has completed a college degree or more shall receive zero points.

C. A worker shall be awarded points based upon his skills. Skills shall be measured by reviewing the jobs he has successfully performed during the ten years preceding the date of disability determination. For the purposes of this section, "successfully performed" means having remained on the job the length of time necessary to meet the specific vocational preparation (SVP) time requirement for that job as established in the dictionary of occupational titles published by the United States department of labor. The appropriate award of points shall be based upon the highest SVPlevel demonstrated by the worker in the performance of the jobs he has successfully performed in the ten-year period preceding the date of disability determination, as follows:

(1) a worker with an SVPof one to two shall be awarded four points;

(2) a worker with an SVPof three to four shall be awarded three points;

(3) a worker with an SVPof five to six shall be awarded two points; and

(4) a worker with an SVPof seven to nine shall be awarded one point.

D. A worker shall be awarded points based upon the training he has received. A worker who cannot competently perform a specific vocational pursuit shall be awarded one point. A worker who can perform a specific vocational pursuit shall not receive any points.

E. The sum of the points awarded the worker in Subsections B, C and D of this section shall constitute the education modification."

## Section 4. Section 52-5-6 NMSA 1978 (being Laws 1986, Chapter 22, Section 32, as amended) is amended to read:

"52-5-6. AUTHORITY OF THE DIRECTOR TO CONDUCT HEARINGS.--

A. Hearings shall be held in the county in which the injury or disablement occurred for which the claim is being made unless the parties agree otherwise. Upon motion of a party, or upon his own motion, if he finds that good cause exists, the workers' compensation judge may order the hearing to be held in the workers' compensation administration regional office located nearest to the county in which the

injury or disablement occurred or in the county identified as being in the best interests of the parties, taking into consideration cost-effectiveness, judicial efficiency, the health and mobility of the employee and the convenience of parties and witnesses.

B. The workers' compensation judge shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; enter noncriminal sanctions for misconduct; and do all things conformable to law which may be necessary to enable him to discharge the duties of his office effectively.

C. In addition to the noncriminal sanctions that may be ordered by the workers' compensation judge, any person committing any of the following acts in a proceeding before a workers' compensation judge may be held accountable for his conduct in accordance with the provisions of Subsection D of this section:

(1) disobedience of or resistance to any lawful order or process;

(2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;

(3) failure to produce any pertinent book, paper or document after having been ordered to do so;

(4) refusal to appear after having been subpoenaed;

(5) refusal to take the oath or affirmation as a witness; or

(6) refusal to be examined according to law.

D. The director may certify to the district court of the district in which the acts were committed the facts constituting any of the acts specified in Paragraphs (1) through (6) of Subsection C of this section. The court shall hold a hearing and if the evidence so warrants may punish the offending person in the same manner and to the same extent as for contempt committed before the court, or it may commit the person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court."

## Section 5. Section 52-5-21 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 65) is amended to read:

"52-5-21. ADMINISTRATION RECORDS CONFIDENTIALITY--AUTHORIZED USE.--Except as otherwise provided in this section, unless introduced as evidence in an administrative or judicial proceeding or filed with the clerk of the court as part of an enforcement or compliance proceeding, all records of the administration shall be

confidential. Once an accident or disablement occurs, any person who is a party to a claim upon that accident or disablement is entitled to access to all files relating to that accident or disablement and to all files relating to any prior accident, injury or disablement of the worker. Upon the filing of a rejection of a recommended resolution, all records filed with the clerk of the court as part of the judicial proceeding shall be open to the public."

## Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 234, AS AMENDED

# CHAPTER 88

**CHAPTER 88, LAWS 2001**

AN ACT

RELATING TO INSURANCE; ASSIGNING PRIMARY LIABILITY AMONG MOTOR VEHICLE INSURERS AND SELF-INSUREDS; PROVIDING FOR AGREEMENTS AND NOTICE.

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

## Section 1. A new section of Chapter 59A, Article 32 NMSA 1978 is enacted to read:

"VEHICLE INSURANCE--PRIMARY LIABILITY--ASSIGNMENT--NOTICE.--

A. Except as provided in Subsection B or C of this section, a motor vehicle insurance policy or self-insurance agreement of the owner or long-term lessee of a motor vehicle shall provide primary coverage for bodily injury or property damage claims, subject to the terms, conditions, limits and types of coverage included in the policy or agreement.

B. When a vehicle owned by a licensed automobile dealer is loaned without a fee to a person for demonstration purposes, as a temporary substitute for that person's vehicle while it is being serviced or repaired, as a promotional courtesy vehicle or as a courtesy vehicle, primary insurance or self-insurance coverage shall be provided by the motor vehicle insurer providing coverage to the person using the demonstration vehicle, temporary substitute vehicle, promotional courtesy vehicle or a courtesy vehicle, and coverage provided by the dealer or the dealer's insurer applies only as excess coverage.

C. A person proposing to operate a motor vehicle for the purposes identified in Subsection B of this section may assume primary responsibility for the operator's vehicle insurance by signing the following statement:

"PRIMARY LIABILITY ASSIGNMENT

In consideration of the vehicle owner entrusting the motor vehicle elsewhere described to me, I agree that my vehicle insurance or self-insurance coverage shall be primarily responsible for any loss or damage caused by or to the motor vehicle.".

D. The agreement set forth in Subsection C of this section shall be binding on all insurers and self-insurers transacting insurance in the state as a condition of doing the business of transacting insurance."

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 237, AS AMENDED

# CHAPTER 89

**CHAPTER 89, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; AMENDING THE DEFINITION OF FELON FOR THE PURPOSES OF A SECTION OF LAW THAT MAKES IT UNLAWFUL FOR A FELON TO RECEIVE, TRANSPORT OR POSSESS A FIREARM OR DESTRUCTIVE DEVICE; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 30-7-16 NMSA 1978 (being Laws 1981, Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT, TRANSPORTATION OR POSSESSION BY A FELON--PENALTY.--

A. It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state.

B. Any person violating the provisions of this section shall be guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act.

C. As used in this section:

(1) "destructive device" means:

(a) any explosive, incendiary or poison gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge of more than four ounces; 4) missile having an explosive or incendiary charge of more than one-fourth ounce; 5) mine; or 6) similar device;

(b) any type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell that is generally recognized as particularly suitable for sporting purposes; and

(c) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in this paragraph and from which a destructive device may be readily assembled.

The term "destructive device" does not include any device that is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

(2) "felon" means a person convicted of a felony offense by a court of the United States or of any state or political subdivision thereof and:

(a) less than ten years have passed since the person completed serving his sentence or period of probation for the felony conviction, whichever is later;

(b) the person has not been pardoned for the felony conviction by the proper authority; and

(c) the person has not received a deferred sentence; and

(3) "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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 272, AS AMENDED

# CHAPTER 90

**CHAPTER 90, LAWS 2001**

AN ACT

RELATING TO INSURANCE; CHANGING PROVISIONS OF THE NEW MEXICO INSURANCE CODE PERTAINING TO SUBSIDIARIES AND AFFILIATES OF INSURERS; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 59A-9-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 145) is amended to read:

"59A-9-12. INVESTMENTS IN SUBSIDIARIES.--

A. An insurer either by itself or in cooperation with one or more other business entities, may organize or acquire one or more subsidiaries engaged or to be engaged in any of the following businesses:

(1) an insurance business authorized by the jurisdiction in which the subsidiary is incorporated;

(2) acting as insurance broker or insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent or any affiliate or subsidiary;

(4) management of any investment company registered pursuant to the federal Investment Company Act of l940, as amended, including related sales and services;

(5) acting as a broker-dealer registered pursuant to the federal Securities Exchange Act of l934, as amended;

(6) rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) rendering other services related to operations of an insurance business;

(8) owning and managing assets that the parent corporation could itself own or manage;

(9) acting as administrative agent for a government instrumentality that is performing an insurance function; or

(10) financing insurance premiums, agents and other forms of consumer financing; and

(11) any other business activity determined by the superintendent to be reasonably ancillary to an insurance business.

B. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of Chapter 59A, Article 9 NMSA 1978 an insurer may also:

(1) invest, in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which unless otherwise approved by the superintendent do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, if, after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there shall be included:

(a) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or the issuance of other securities; and

(b) all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities and all contributions to the capital and surplus of a subsidiary subsequent to its acquisition or formation;

(2) if the insurer's total liabilities, as calculated for annual statement purposes, are less than ten percent of assets, invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, if, after the investment, the insurer's surplus as regards policyholders, considering the investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(3) invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) of this subsection or in Chapter 59A, Article 9 NMSA 1978, applicable

to the insurer. For the purpose of this paragraph "the total investment of the insurer" includes:

(a) any direct investment by the insurer in an asset; and

(b) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of the subsidiary;

(4) with the approval of the superintendent, invest any amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries, if, after the investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; and

(5) invest any amount in the common stock, preferred stock, debt obligations or other securities of any subsidiary exclusively engaged in holding title to, or holding title to and managing or developing, real or personal property, if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if, following such investment, all voting securities of such subsidiary would be owned by the insurer.

C. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this article applicable to the investments of the insurer.

D. Whether any investment made pursuant to Subsection B of this section meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then outstanding balance on all previous investments in debt obligations and the value of all previous equity securities as of the date they were made.

E. If an insurer ceases to control a subsidiary, it shall dispose of any investment made in it pursuant to this section within three years from time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after the investment is made, the investments meet the requirements for investment under any other section of the Insurance Code, and the insurer has so notified the superintendent."

## Section 2. Section 59A-37-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 72) is amended to read:

"59A-37-3. SUBSIDIARIES OF INSURERS.--

A. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) an insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the federal Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the federal Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) rendering other services relating to the operations of an insurance business;

(8) owning and managing assets that the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality that is performing an insurance function;

(10) financing of insurance premiums, agents and other forms of consumer financing;

(11) any other business activity determined by the superintendent to be reasonably ancillary to an insurance business; and

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

B. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted pursuant to the federal Insurance Holding Company Law, a domestic insurer may also:

(1) invest, in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of the insurer's surplus as regards policyholders, provided that after the investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(a) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(b) all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) of this subsection or in Chapter 59A, Article 9 NMSA 1978 applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" includes:

(a) any direct investment by the insurer in an asset; and

(b) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary; or

(3) with the approval of the superintendent, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Insurance Code applicable to the investments of the insurer.

D. Whether any investment pursuant to Subsection B of this section meets the applicable requirements of that subsection shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested and not including dividends.

E. If an insurer ceases to control a subsidiary, it shall dispose of any investment made in it pursuant to this section within three years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after the investment is made, the investment meets the requirements for investment under any other section of the Insurance Code, and the insurer has so notified the superintendent."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 274, AS AMENDED

# CHAPTER 91

**CHAPTER 91, LAWS 2001**

AN ACT

RELATING TO GAMING; ELIMINATING THE LOTTERY OVERSIGHT COMMITTEE; PROVIDING FOR LEGISLATIVE OVERSIGHT OF THE LOTTERY BY THE LEGISLATIVE FINANCE COMMITTEE; DECLARING AN EMERGENCY.

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

## Section 1. Section 6-24-9 NMSA 1978 (being Laws 1995, Chapter 155, Section 9) is amended to read:

"6-24-9. LEGISLATIVE OVERSIGHT--LEGISLATIVE FINANCE COMMITTEE--DUTIES.--

A. The legislative finance committee shall oversee the operations of the authority, as well as periodically review and evaluate the success with which the authority is accomplishing its duties and operating the lottery pursuant to the New Mexico Lottery Act. The committee may conduct an independent audit or investigation of the lottery or the authority.

B. The legislative finance committee shall report annually its findings and recommendations on the lottery and the operation of the authority to each regular session of the legislature."

## Section 2. Section 6-24-10 NMSA 1978 (being Laws 1995, Chapter 155, Section 10) is amended to read:

"6-24-10. CHIEF EXECUTIVE OFFICER--COMPENSATION--APPOINTMENT--DUTIES.--

A. The board shall appoint and set the compensation of a "chief executive officer", who shall serve at the pleasure of the board.

B. The chief executive officer, who shall be an employee of the authority, shall:

(1) manage and direct the operation of the lottery and all administrative and technical activities of the authority in accordance with the provisions of the New Mexico Lottery Act and pursuant to rules, policies and procedures adopted by the board pursuant to that act;

(2) employ and supervise such personnel as deemed necessary;

(3) with the approval of the board and pursuant to rules, policies and procedures adopted by the board, enter into contracts for materials, equipment and supplies to be used in the operation of the lottery, for the design and installation of lottery games, for consultant services and for promotion of the lottery;

(4) contract with lottery retailers pursuant to the New Mexico Lottery Act and board rules;

(5) promote or provide for promotion of the lottery and any functions related to the authority;

(6) hire an executive vice president for security and an internal auditor and take all necessary measures to provide for the security and integrity of the lottery;

(7) prepare an annual budget for the approval of the board;

(8) provide quarterly to the board, the governor and the legislative finance committee a full and complete report of lottery revenues and expenses for the preceding quarter; and

(9) perform such other duties as are necessary to implement and administer the lottery.

C. The chief executive officer may refuse to renew a lottery contract in accordance with the provisions of the New Mexico Lottery Act or the rules, policies and procedures of the board.

D. The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by lottery vendors and lottery retailers."

## Section 3. Section 6-24-27 NMSA 1978 (being Laws 1995, Chapter 155, Section 27) is amended to read:

"6-24-27. REVENUE AND BUDGET REPORTS--RECORDS--INDEPENDENT AUDITS.--

A. The board shall:

(l) submit quarterly and annual reports to the governor and the legislative finance committee disclosing the total lottery revenue, prizes, commissions, ticket costs, operating expenses and net revenues of the authority during the reporting period and, in the annual report, describe the organizational structure of the authority and summarize the functions performed by each organizational division within the authority;

(2) maintain weekly or more frequent records of lottery transactions, including the distribution of lottery tickets to retailers, revenue received, claims for prizes, prizes paid, prizes forfeited and other financial transactions of the authority; and

(3) use the state government fiscal year.

B. The board shall provide, for informational purposes, to the department of finance and administration and the legislative finance committee, by December 1 of each year, a copy of the annual proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net revenues to be deposited in the public school capital outlay fund and the lottery tuition fund for the current and succeeding fiscal years.

C. The board shall contract with an independent certified public accountant or firm for an annual financial audit of the authority. The certified public accountant or firm shall have no financial interest in any lottery contractor. The certified public accountant or firm shall present an audit report no later than March 1 for the prior fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this financial audit shall be an operating expense of the authority. The legislative finance committee may, at any time, order an audit of any phase of the operations of the authority, at the expense of the authority, and shall receive a copy of the annual independent financial audit. A copy of

any audit performed by the certified public accountant or ordered by the legislative finance committee shall be transmitted to the governor, the speaker of the house of representatives, the president pro tempore of the senate and the legislative finance committee."

## Section 4. Section 6-24-28 NMSA 1978 (being Laws 1995, Chapter 155, Section 28) is amended to read:

"6-24-28. INTERNAL AUDITOR--APPOINTMENT--DUTIES.--

A. The board, with the recommendation and assistance of the chief executive officer, shall employ an internal auditor. The internal auditor, who shall be an employee of the authority, shall be qualified by training and experience as an auditor and management analyst and have at least five years of auditing experience. The internal auditor shall take direction as needed from the chief executive officer and be accountable to the board.

B. The internal auditor shall conduct and coordinate comprehensive audits for all aspects of the lottery, provide management analysis expertise and carry out any other duties specified by the board and by law. The internal auditor shall specifically:

(1) conduct, or provide for through a competitive bid process, an annual financial audit and observation audits of drawings;

(2) create an annual audit plan to be approved by the board;

(3) search for means of better efficiency and cost savings and waste prevention;

(4) examine the policy and procedure needs of the lottery and determine compliance;

(5) ensure that proper internal controls exist;

(6) perform audits that meet or exceed governmental audit standards; and

(7) submit audit reports on a quarterly basis to the board, the chief executive officer, the state auditor and the legislative finance committee.

C. The internal auditor shall conduct audits as needed in the areas of:

(1) personnel security;

(2) lottery retailer security;

(3) lottery contractor security;

(4) security of manufacturing operations of lottery contractors;

(5) security against lottery ticket counterfeiting and alteration and other means of fraudulently winning;

(6) security of drawings among entries or finalists;

(7) computer security;

(8) data communications security;

(9) database security;

(10) systems security;

(11) lottery premises and warehouse security;

(12) security in distribution;

(13) security involving validation and payment procedures;

(14) security involving unclaimed prizes;

(15) security aspects applicable to each particular lottery game;

(16) security of drawings in games whenever winners are determined by drawings;

(17) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration or sales; and

(18) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

D. Specific audit findings related to security invasion techniques are confidential and may be reported only to the chief executive officer or his designee, the board, the governor and the attorney general."

## Section 5. Section 6-24-33 NMSA 1978 (being Laws 1995, Chapter 155, Section 33) is amended to read:

"6-24-33. UNLAWFUL PURCHASE OF LOTTERY TICKET--PENALTY.--

A. It is unlawful for the following persons to purchase a lottery ticket or to share knowingly in the lottery winnings of another person:

(1) the chief executive officer, a board member or an employee of the authority; or

(2) an owner, officer or employee of a lottery vendor or, in the case of a corporation, an owner of five percent or more of the corporate stock of a lottery vendor.

B. Notwithstanding the provisions of Subsection A of this section, the chief executive officer may authorize in writing any employee of the authority and any employee of a lottery contractor to purchase a lottery ticket for the purposes of verifying the proper operation of the lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the authority and shall be added to the prize pools of subsequent lottery games.

C. Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets or from being paid a prize for a winning ticket.

D. Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of the lottery, may be prohibited, in accordance with rules adopted by the board, from participating in any lottery in which such supplies or services are used.

E. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section

31-19-1 NMSA 1978.

F. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

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

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SENATE BILL 292, WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 92

**CHAPTER 92, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; CREATING CRIMINAL OFFENSES FOR ASSAULT OR BATTERY UPON A SPORTS OFFICIAL; PRESCRIBING PENALTIES; ENACTING A NEW SECTION OF THE CRIMINAL CODE.

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

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

"ASSAULT--BATTERY--SPORTS OFFICIALS.--

A. As used in this section:

(1) "in the lawful discharge of his duties" means engaged in the performance of the duties of a sports official;

(2) "sports official" means a person who:

(a) serves as a referee, umpire linesman, timer or scorer, or who serves in a similar capacity, while working, supervising or administering a sports event; and

(b) is registered as a member of a local, state, regional or national organization that is engaged in providing education and training to sports officials.

B. Assault upon a sports official consists of:

(1) an attempt to commit a battery upon the person of a sports official while he is in the lawful discharge of his duties; or

(2) any unlawful act, threat or menacing conduct that causes a sports official while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

C. Whoever commits assault upon a sports official is guilty of a misdemeanor.

D. Aggravated assault upon a sports official consists of unlawfully assaulting or striking at a sports official with a deadly weapon while he is in the lawful discharge of his duties.

E. Whoever commits aggravated assault upon a sports official is guilty of a third degree felony.

F. Battery upon a sports official is the unlawful, intentional touching or application of force to the person of a sports official while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

G. Whoever commits battery upon a sports official is guilty of a misdemeanor.

H. Aggravated battery upon a sports official consists of the unlawful touching or application of force to the person of a sports official with intent to injure that sports official while he is in the lawful discharge of his duties.

I. Whoever commits aggravated battery upon a sports official, inflicting an injury to the sports official that is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a fourth degree felony.

J. Whoever commits aggravated battery upon a sports official, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 400, AS AMENDED

# CHAPTER 93

**CHAPTER 93, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; AUTHORIZING A POLLUTION PREVENTION PROGRAM; PROVIDING FOR CERTAIN BUSINESS SENSITIVE INFORMATION TO BE CONFIDENTIAL AND NOT SUBJECT TO THE PUBLIC RECORDS ACT; PROVIDING FOR A PENALTY.

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:

"GREEN ZIA PROGRAM--BUSINESS SENSITIVE INFORMATION CONFIDENTIAL.--

A. The department may develop and administer a pollution prevention program to be known as the "green zia program". The department may enter into contracts with the federal government, promulgate rules and take other actions appropriate and necessary to produce an efficient and effective program.

B. Information provided to the department in accordance with the green zia program may be subject to confidentiality if the person furnishing the information demonstrates to the department that the information would divulge confidential methods or processes entitled to protection as trade secrets. If the department determines that the information is subject to confidentiality, the secretary shall promulgate a determination of confidentiality with an order of confidentiality. Confidential information may be disclosed to employees or authorized representatives of the department, but they shall not disclose the information to any other person.

C. A person who violates an order of confidentiality by disclosing confidential information pursuant to this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one

thousand dollars ($1,000) per violation or by imprisonment

for a definite term of one year or both."

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SENATE BILL 446, AS AMENDED

# CHAPTER 94

**CHAPTER 94, LAWS 2001**

AN ACT

RELATING TO INSURANCE; ENACTING THE RENTAL CAR INSURANCE LIMITED PRODUCER LICENSE ACT.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Rental Car Insurance Limited Producer License Act".

## Section 2. DEFINITIONS.--As used in the Rental Car Insurance Limited Producer License Act:

A. "rental agreement" means a written master, corporate, group or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company;

B. "rental car" means a motor vehicle that is intended to be rented or leased for a period of ninety consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is one of the following:

(1) a private passenger motor vehicle, including a passenger van, minivan or sports utility vehicle; or

(2) a cargo vehicle, including a cargo van, pickup truck or truck with a gross vehicle weight of less than twenty-six thousand pounds;

C. "rental car agent" means a rental car company that is licensed to offer, sell, bind, effect, solicit or negotiate rental car insurance;

D. "rental car company" means a person or entity in the business of renting rental cars to the public, including a franchisee;

E. "rental car insurance" means insurance sold in connection with and incidental to the rental of vehicles, whether at the rental office or by a preselection of coverage in master, corporate, group or individual agreements, that is nontransferable, does not apply to any vehicle other than the rental car that is the subject of the rental agreement and is limited to the following kinds of insurance:

(1) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(2) liability insurance that, at the exclusive option of the rental car company, may include uninsured and underinsured motorist coverage, whether offered separately or in combination with other liability insurance, and that provides protection to renters and other authorized drivers of rental cars for liability arising from the operation of the rental car during the rental period;

(3) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

(4) roadside assistance and emergency sickness insurance; and

(5) any other travel or vehicle-related insurance coverage that a rental car company may offer in connection with and incidental to the rental of a rental car, as may be approved by the superintendent of insurance;

F. "rental car endorsee" means a rental car agent employee who offers, sells, binds, effects, solicits or negotiates rental car insurance; and

G. "renter" means a person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement.

## Section 3. GENERAL RULES.--

A. No rental car company and no officer, director, employee or agent of a rental car company shall offer, sell, bind, effect, solicit or negotiate the purchase of rental car insurance unless that company is licensed as an insurance producer pursuant to the New Mexico Insurance Code or has complied with the requirements of the Rental Car Insurance Limited Producer License Act.

B. The superintendent of insurance may issue to a rental car company that has complied with the requirements of the Rental Car Insurance Limited Producer License Act, a license that authorizes the rental car company to act as a rental car agent in accordance with the provisions of that act, in connection with and incidental to rental agreements, on behalf of any insurer authorized to write such insurance in this state.

## Section 4. LICENSING RENTAL CAR COMPANIES AS RENTAL CAR AGENTS.--A rental car company may apply to be licensed as a rental car agent under the terms of the Rental Car Insurance Limited Producer License Act if it satisfies all of the requirements of that act and if it files the following documents with the superintendent of insurance:

A. a written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the superintendent of insurance that includes a listing of all locations at which the rental car company intends to offer, sell, bind, effect, solicit or negotiate rental car insurance; and

B. a certificate filed by the insurer for the applicant stating that the insurer has satisfied itself that the applicant is trustworthy and competent to act as its insurance agent limited to this purpose; that the insurer has reviewed the employee training program required by Subsection D of Section 5 of the Rental Car Insurance Limited Producer License Act and believes that it satisfies the statutory requirements; and that the insurer will appoint the applicant to act as its agent to transact the kinds of insurance that are permitted by the Rental Car Insurance Limited Producer License Act if the license for which the applicant is applying is issued by the superintendent of insurance.

The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the superintendent of insurance.

## Section 5. RENTAL CAR ENDORSEES.--

A. An employee of a rental car agent may be a rental car endorsee authorized to offer, sell, bind, effect, solicit or negotiate rental car insurance under the authority of the rental car agent licensee if all of the following conditions have been satisfied:

(1) the employee is eighteen years of age or older;

(2) the employee has completed the training described in Subsection D of Section 5 of the Rental Car Insurance Limited Producer License Act; and

(3) the rental car agent, at the time it submits its rental car agent license application pursuant to Section 3 of the Rental Car Insurance Limited Producer License Act, also establishes a list of the names of all of its rental car endorsees. The list shall be maintained by the rental car agent in a form prescribed by the superintendent of insurance and updated quarterly. Each list shall be retained by the rental car agent for three years and shall be made available to the superintendent of insurance for review and inspection upon request.

B. A rental car endorsee shall act on behalf of its rental car agent in the offering, sale, binding, effectuation, solicitation or negotiation of rental car insurance. A rental car agent is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, binding, effectuation, solicitation or negotiation of rental car insurance. The conduct of a rental car endorsee acting within the scope of his employment or agency shall be deemed the conduct of the rental car agent for purposes of the Rental Car Insurance Limited Producer License Act.

C. The manager at each location of a rental car agent or the direct supervisor of the rental car agent's endorsees at each location shall be responsible for the supervision of each rental car endorsee at the location. A rental car agent shall identify the manager or direct supervisor at each location in the list that it maintains in compliance with Paragraph (3) of Subsection A of this section.

D. A rental car agent shall provide training for each rental car endorsee prior to allowing him to offer, sell, bind, effect, solicit or negotiate rental car insurance. The training program shall be submitted to the superintendent of insurance for approval prior to use and shall meet the following minimum standards:

(1) instruction about the kinds of insurance specified in the Rental Car Insurance Limited Producer License Act that are offered for sale to prospective renters; and

(2) disclosures to be given to prospective renters that are required under the Rental Car Insurance Limited Producer License Act, including:

(a) that the purchase of the rental car insurance is not required in order for the renter to rent a rental car; and

(b) that the renter may have insurance policies in place that already provide the coverage being offered by the rental car company.

E. A rental car endorsee's authorization to offer, sell, bind, effect, solicit or negotiate rental car insurance shall expire when the endorsee's employment with the rental car agent has terminated.

## Section 6. RENTAL CAR AGENT AND ENDORSEE RESTRICTIONS.--No insurance may be issued, offered, sold, solicited or negotiated pursuant to this section unless:

A. the rental period of the rental agreement is ninety consecutive days or less;

B. at every location where rental agreements are executed, brochures or other written materials are readily available to the prospective renter that:

(1) summarize, clearly and correctly, the material terms and conditions of coverage offered to renters, including the identify of the insurer;

(2) describe the process for filing a claim in the event the renter elects to purchase coverage, including a toll-free telephone number to report a claim;

(3) provide the rental car agent's name, address, telephone number and license number, as well as the consumer hotline number for the superintendent of insurance;

(4) state that the rental car insurance offered by the rental car agent or endorsee may provide a duplication of coverage already provided by a renter's personal automobile policy or by another source of coverage;

(5) state that the purchase by the renter of the rental car insurance is not required in order to rent a rental car;

(6) state that neither the rental car agent nor its endorsees are qualified to evaluate the adequacy of the renter's existing insurance coverages;

(7) set forth the costs for the rental car insurance in the rental agreement; and

(8) contain any additional information as the superintendent of insurance may prescribe; and

C. evidence of the rental car insurance purchased is disclosed on the face of the rental agreement.

## Section 7. RENTAL CAR AGENT AND ENDORSEE PROHIBITIONS.--A rental car agent or endorsee shall not:

A. offer, sell, bind, effect, solicit or negotiate the purchase of rental car insurance except in conjunction with and incidental to rental agreements;

B. advertise, represent or otherwise portray itself or any of its employees or agents as licensed insurers, insurance agents or insurance brokers; or

C. pay any person, including a rental car endorsee, any compensation, fee or commission that is dependent solely on the placement of insurance under the license issued pursuant to the Rental Car Insurance Limited Producer License Act. Nothing in this section shall prohibit production payments or incentive payments to a person that are not dependent solely upon the sale of insurance.

## Section 8. ENFORCEMENT.--

A. In the event a provision of the Rental Car Insurance Limited Producer License Act is violated by a rental car agent or endorsee, the superintendent of insurance may:

(1) after notice and hearing, revoke or suspend the license issued under the Rental Car Insurance Limited Producer License Act; or

(2) after notice and hearing, impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of the Rental Car Insurance Limited Producer License Act have occurred.

B. If a person offers or sells insurance in connection with, or incidental to, rental agreements or holds himself or a company out as a rental car agent without satisfying the requirements of the Rental Car Insurance Limited Producer License Act, the superintendent of insurance shall be authorized to issue a cease and desist order.

## Section 9. TRUST ACCOUNTS.--Notwithstanding any provision of the Rental Car Insurance Limited Producer License Act or any other rule or statute, a licensee pursuant to that act shall not be required to treat money collected from renters purchasing rental car

**insurance when renting rental cars as funds received in a fiduciary capacity or to hold the funds in separate trust accounts.**

**Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 489, AS AMENDED

# CHAPTER 95

**CHAPTER 95, LAWS 2001**

AN ACT

RELATING TO THE BERNALILLO COUNTY METROPOLITAN COURT; TRANSFERRING THE TITLE OF THE EXISTING FACILITY TO THE GENERAL SERVICES DEPARTMENT; AMENDING CERTAIN SECTIONS OF LAW RELATING TO NEW MEXICO FINANCE AUTHORITY REVENUE BONDS.

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

## Section 1. Section 34-9-15 NMSA 1978 (being Laws 1998 (1st S.S.), Chapter 6, Section 8) is amended to read:

"34-9-15. USE OF BERNALILLO COUNTY METROPOLITAN COURT FACILITIES.--The administrative office of the courts, as holder of record title to the existing Bernalillo county metropolitan court building located on the northwest corner of Fourth street and Roma avenue northwest in Albuquerque, shall administer and manage the building in accordance with the following provisions:

A. after completion of a new Bernalillo county metropolitan court facility with proceeds of bonds issued by the New Mexico finance authority, the entire operations, judges, staff and personnel associated with the Bernalillo county metropolitan court shall be relocated to the new facility and the existing facility shall be vacated; and

B. after completion of a new Bernalillo county metropolitan court facility, the administrative office of the courts shall then transfer the record title of the vacated facility to the general services department for the express purpose of housing the district public defender or other state agencies."

## Section 2. Section 34-9-16 NMSA 1978 (being Laws 1998 (1st S.S.), Chapter 6, Section 9) is amended to read:

"34-9-16. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--APPROPRIATION.--

A. If the fourteen dollar ($14.00) metropolitan court facilities fees and the ten dollar ($10.00) magistrate court facilities fees provided in Sections 35-6-1 and 66-8-116.3 NMSA 1978 are imposed by law, 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) 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 3. Laws 2000, Chapter 5, Section 2 is amended to read:

"Section 2. NEW MEXICO FINANCE AUTHORITY REVENUE

BONDS--PURPOSE--APPROPRIATION.--

A. If the twenty-four-dollar ($24.00) court facilities fees provided in Sections 35-6-1 and 66-8-116.3 NMSA 1978 are imposed by law and all distributions to the court facilities fund provided in this act become law, 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 eleven million four hundred thousand dollars ($11,400,000) for the purpose of financing the acquisition of real property for and the design, construction, furnishing and equipping of a parking facility adjacent to the new Bernalillo county metropolitan court building.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the chief metropolitan 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 deposited in a special bond fund or account and 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 by Section 34-9-16 NMSA 1978 are issued, an amount shall be transferred annually to the magistrate and metropolitan court capital fund equal to the 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 all bonds coming due in that fiscal year.

E. After all bonds authorized by this section and by Section 34-9-16 NMSA 1978 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 by Section 34-9-16 NMSA 1978 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.

F. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the New Mexico finance 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 New Mexico finance authority and to transfer the money from the court facilities fund to the magistrate and metropolitan court capital fund.

G. Any law imposing court facilities fees, authorizing the collection of court facilities fees or directing deposits of parking fees and charges, lease and rental revenues, or other money 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.

H. 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 New Mexico finance authority."

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SENATE BILL 542, AS AMENDED

# CHAPTER 96

**CHAPTER 96, LAWS 2001**

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING AND ENACTING CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; DECLARING AN EMERGENCY.

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

## Section 1. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6 NMSA 1978:

A. "acting in good faith" means acting without malice as the primary motive or without knowledge or belief that one is in error in taking a particular action;

B. "board" means the New Mexico board of medical examiners;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

D. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

E. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

F. "person" means an individual or any legal entity of any kind whatever;

G. "physician assistant" means a skilled person licensed by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the licensed physician who is responsible for the performance of that assistant;

H. "postgraduate year one" or "intern" means a first year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing;

I. "postgraduate year two through eight" or "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "assistant resident" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this state;

(2) offering or undertaking to administer, dispense or prescribe any drug or medicine for the use of any other person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe any drug or medicine for the use of any other person, except as directed by a licensed physician;

(4) offering or undertaking to perform any operation or procedure upon any person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of any person in doing any of the things listed in Paragraphs (1) through (6) of this subsection;

K. "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 2. Section 61-6-11 NMSA 1978 (being Laws 1923, Chapter 44, Section 3, as amended) is amended to read:

"61-6-11. LICENSURE.--

A. The board may admit to examination for license any person who is of good moral character and is a graduate of a medical college or school in good standing as defined in Subsection D of Section 61-6-6 NMSA 1978 and who has completed two years of postgraduate training.

B. One year of postgraduate medical training may be accepted by the board if the applicant was an intern in a board-approved program from July 1, 1993 through June 30, 1994 and if the applicant applies to the board for licensure before July 1, 1995. All postgraduate training shall be approved by the board.

C. An applicant who has not completed two years of postgraduate medical training, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of postgraduate medical training. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required postgraduate medical training.

D. The board may administer a board-approved licensing examination. The board shall determine a grade constituting successful completion of the exam.

E. Alternatively, the board may issue a license to any applicant of good moral character and after successfully completing an examination accepted by the board as administered in this or another state.

F. A graduate of a medical college located outside the United States may be granted a license to practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and is in compliance with the United States immigration laws and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in a board-approved program.

G. All applicants for licensure by examination shall personally appear before the board or a designated member of the board for an interview.

H. No applicant for licensure by examination shall 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.

I. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978."

## Section 3. 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 has been a licensed physician outside of New Mexico, but in the United States, and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of the examining board with jurisdiction.

B. The board may grant a license without examination and by endorsement to any applicant who has been a licensed physician in Canada and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of either the Canadian medical council or an examining board with jurisdiction within the United States.

C. The board may grant a license without examination and by endorsement to any applicant who has graduated from a medical college located outside the United States or Canada and who is of good moral character, who is in compliance with the United States immigration laws and who 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 and who otherwise meets the requirements set forth in the Medical Practice Act, provided that the applicant is properly endorsed by the officers of the examining board within the United States or Canada that has jurisdiction.

D. 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 any requirement imposing time limits for examination completion that are different from those of the state where the applicant is licensed.

E. All applicants for licensure under this section shall personally appear before the board or a designated board member for an interview.

F. All applicants for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978."

## Section 4. Section 61-6-15 NMSA 1978 (being Laws 1969, Chapter 46, Section 6, as amended) is amended to read:

"61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND EXPENSES--NOTICE OF CLAIM.--

A. The board may refuse to license and may revoke or suspend any license that has been issued by the board or any previous board and may fine, censure or reprimand any licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice medicine, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act or the Impaired Health Care Provider Act.

B. The board may, in its discretion and for good cause shown, place the licensee on probation on such terms and conditions as it deems proper for protection of the public or for the purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the physician is competent to practice medicine, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that he has not complied with the terms of probation, the board may revoke or suspend the license forthwith. If a license to practice medicine in this state is suspended, the holder of the license may not practice during the term of suspension. Any person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice medicine in New Mexico, unless the period of suspension has expired or been modified by the board or the physician's license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means among other things, but not limited to because of enumeration:

(1) procuring, aiding or abetting a criminal abortion;

(2) employing any person to solicit patients for the physician;

(3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(4) obtaining any fee by fraud or misrepresentation;

(5) willfully or negligently divulging a professional confidence;

(6) conviction of any offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of medicine. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(7) habitual or excessive use of intoxicants or drugs;

(8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;

(9) making false or misleading statements regarding the physician's skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the physician or at the physician's direction in the treatment of any disease or other condition of the human body or mind;

(10) impersonating another person licensed to practice medicine, permitting or allowing any person to use the physician's license or certificate of registration or practicing medicine under a false or assumed name;

(11) aiding or abetting the practice of medicine by a person not licensed by the board;

(12) gross negligence in the practice of medicine;

(13) manifest incapacity or incompetence to practice medicine;

(14) discipline imposed on a licensee to practice medicine by another state, including probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;

(15) the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine;

(16) fee splitting;

(17) the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;

(18) conduct likely to deceive, defraud or harm the public;

(19) repeated similar negligent acts;

(20) employing abusive billing practices;

(21) failure to report to the board any adverse action taken against the physician by:

(a) another licensing jurisdiction;

(b) any peer review body;

(c) any health care entity;

(d) any professional or medical society or association;

(e) any governmental agency;

(f) any law enforcement agency; or

(g) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to report to the board surrender of a license or other authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing, administering or dispensing of any drug or medicine;

(27) failure to adequately supervise, as provided by board regulation, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) intentionally engaging in sexual contact or sexual penetration with a patient other than one's spouse after representing or inferring that such activity is a legitimate part of the patient's treatment;

(29) conduct unbecoming in a person licensed to practice medicine or detrimental to the best interests of the public; and

(30) the surrender of a license to practice medicine or withdrawal of an application for a license to practice medicine before another state licensing board while disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action as provided for in this section.

E. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom the patients, clients or customers are referred.

F. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

G. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids are included as a condition of probation.

H. For the purpose of investigating the competence of medical practitioners covered by the Medical Practice Act who practice medicine in the state of New Mexico, any entity issuing professional liability insurance to physicians or indemnifying physicians for professional liability in New Mexico shall report to the board all settlements or judgments against licensed physicians, whether they are tried in court or settled out of court."

## Section 5. 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. any act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

(1) the assistant is registered and has biennially renewed his registration with the board as one qualified by training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules promulgated by the board; and

(3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising licensed physician and the acts are within the scope of the assistant's training;

H. any act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

(1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or

(2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not hold himself out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;

J. the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state;

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 any 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 regulation by the board."

## Section 6. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended by Laws 1997, Chapter 187, Section 9 and also by Laws 1997, Chapter 221, Section 4) is amended to read:

"61-6-19. FEES.--

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars ($400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars ($400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

(3) an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost;

(4) a triennial renewal fee not to exceed four hundred fifty dollars ($450);

(5) a fee of twenty-five dollars ($25.00) for placing a physician's license or a physician assistant's license on inactive status;

(6) a late fee not to exceed one hundred dollars ($100) for physicians who renew their license within forty-five days after the required renewal date;

(7) 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;

(8) a reinstatement fee not to exceed the current application fee for reinstatement of a revoked, suspended or inactive license;

(9) a reasonable administrative fee for verification and duplication of license or registration and copying of records;

(10) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;

(11) an impaired physician fee not to exceed one hundred fifty dollars ($150) for a three-year period;

(12) an interim license fee not to exceed one hundred dollars ($100);

(13) a temporary license fee not to exceed one hundred dollars ($100);

(14) a postgraduate training license fee not to exceed fifty dollars ($50.00) annually;

(15) an application fee not to exceed one hundred fifty dollars ($150) for physician assistants applying for initial licensure;

(16) a licensure fee not to exceed one hundred fifty dollars ($150) for physician assistants biennial licensing and registration of supervising physician;

(17) a late fee not to exceed fifty dollars ($50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;

(18) 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;

(19) a fee not to exceed three hundred dollars ($300) annually for a physician supervising a clinical pharmacist; and

(20) 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 7. Section 61-6-20 NMSA 1978 (being Laws 1923, Chapter 44, Section 9, as amended) is amended to read:

"61-6-20. PRACTICING WITHOUT LICENSE--PENALTY.--

A. Any person who practices medicine or who attempts to practice medicine without first complying with the provisions of the Medical Practice Act and

without being the holder of a license entitling him to practice medicine in New Mexico is guilty of a fourth degree felony.

B. Any person who practices medicine across state lines or who attempts to practice medicine across state lines without first complying with the provisions of the Medical Practice Act and without being the holder of a telemedicine license entitling him to practice medicine across state lines is guilty of a fourth degree felony.

C. Any person convicted pursuant to Subsection A or B of this section shall be sentenced under 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 medicine or attempting to practice medicine without complying with the Medical Practice Act shall be a separate violation."

## Section 8. Section 61-6-26 NMSA 1978 (being Laws 1989, Chapter 269, Section 22) is amended to read:

"61-6-26. TRIENNIAL RENEWAL FEES--PENALTY FOR FAILURE TO RENEW LICENSE.--

A. Before July 1 of every third year, every licensed practitioner of medicine in this state shall have applied for a certificate of triennial renewal of license for the ensuing three years. The board may establish a method to provide for staggered triennial renewal terms and may prorate triennial renewal fees and impaired physicians fees until staggered triennial renewal is established. The fact that a practitioner has not received a renewal form from the board shall not relieve him of the duty to renew his license nor shall such omission on the part of the board operate to exempt him from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed practitioners shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and all practitioners shall return the completed renewal form together with the renewal fee and proof of continuing medical education.

C. Each application for triennial renewal of license shall state the practitioner's full name, business address, the date and number of his license and all other information requested by the board.

D. A practitioner who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal within

forty-five days thereafter shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. A practitioner who submits the application for triennial renewal between forty-five and ninety days of the July 1 deadline shall be assessed a cumulative late fee as provided in Paragraph (7) of Subsection A of Section 61-6-19 NMSA 1978.

F. The board may, in its discretion, summarily suspend for nonpayment of fees the license of a practitioner who has failed to renew his license within ninety days of July 1."

## Section 9. Section 61-6-33 NMSA 1978 (being Laws 1989, Chapter 269, Section 29) is amended to read:

"61-6-33. LICENSURE STATUS.--Upon a verified written request, any practitioner licensed under the Medical Practice Act may request his license be put in retirement 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 10. A new section of the Medical Practice Act is enacted to read:

"TELEMEDICINE LICENSE.--

A. The board shall issue a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States. The board shall establish by rule the requirements for licensure; provided the requirements shall not be more restrictive than those required for licensure by endorsement.

B. A telemedicine license shall be issued for a period not to exceed three years and may be renewed upon application, payment of fees as provided in Section 61-6-19 NMSA 1978 and compliance with other requirements established by rule of the board."

## Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 566, WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 97

**CHAPTER 97, LAWS 2001**

AN ACT

RELATING TO PUBLIC ACCOUNTANCY; PROVIDING FOR AN EXCEPTION TO THE CHARGING OF FEES FOR CERTAIN WORK; AMENDING THE 1999 PUBLIC ACCOUNTANCY ACT; DECLARING AN EMERGENCY.

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

## Section 1. Section 61-28B-17 NMSA 1978 (being Laws 1999, Chapter 179, Section 17, as amended) is amended to read:

"61-28B-17. ENFORCEMENT--UNLAWFUL ACTS.--

A. Except as provided in Subsection C of this section and Section 61-28B-18 NMSA 1978, it is unlawful for a person to engage in practice in New Mexico unless he is a licensee.

B. Except as provided in Subsection C of this section and Section 61-28B-18 NMSA 1978, no person or accountant shall issue a report or financial statement of a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless he holds a current license or permit. The state auditor and his auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section 61-28B-18 NMSA 1978, a person or accountant who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited nor reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.".

D. No person or accountant shall indicate by title, designation, abbreviation, sign, card or device that he is a certified public accountant or a registered public accountant unless he is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted by the board pursuant to that act. Unless he is a holder of a current certificate or permit, no person or accountant shall use any title, initials or designation intended to or substantially likely to indicate to the public that he is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

(1) he holds a valid certificate or current permit; or

(2) he is an employee and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit nor shall he fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee or his firm shall not receive a commission to recommend or refer a product or service to a client or to recommend to anyone else a product or service to be supplied by a client during the period the licensee or his firm is engaged to perform the following services for that client and during the period covered by any historical financial statements involved in the services:

(1) an audit or review of a financial statement;

(2) a compilation of a financial statement when the licensee expects or might reasonably expect that a third party will use the financial statement, and the compilation report does not disclose the lack of independence by the licensee; or

(3) an examination of prospective financial information.

I. A licensee or his firm that is not prohibited from receiving a commission by Subsection H of this section and that is paid or expects to be paid a commission shall disclose that fact in writing to the person for whom the licensee or his firm performs a service or refers or recommends a product or service. A licensee or firm that accepts or pays a referral fee for a service or to obtain a client shall disclose such acceptance or payment to the client in writing.

J. A licensee or his firm shall not charge or receive a contingent fee for a client for whom the licensee or his firm performs the following services:

(1) an audit or review of a financial statement;

(2) a compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence;

(3) an examination of prospective financial information; or

(4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

K. No licensee shall sign or certify any financial statements if he knows the same to be materially false or fraudulent."

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

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SENATE BILL 677, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 98

**CHAPTER 98, LAWS 2001**

AN ACT

RELATING TO GRAND JURIES; AMENDING PROVISIONS REGARDING ASSISTANCE PROVIDED TO A GRAND JURY BY A DISTRICT ATTORNEY OR THE ATTORNEY GENERAL; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. 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 shall conduct himself in a fair and impartial manner at all times when assisting the grand jury.

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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 796, AS AMENDED

# CHAPTER 99

**CHAPTER 99, LAWS 2001N**

AN ACT

RELATING TO MARRIAGE; ALLOWING FEDERAL JUDGES TO SOLEMNIZE MARRIAGES IN NEW MEXICO.

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

## Section 1. Section 40-1-2 NMSA 1978 (being Laws 1859-1860, p. 120, as amended) is amended to read:

"40-1-2. CLERGYMEN OR CIVIL MAGISTRATES MAY SOLEMNIZE--FEES.--

A. A person may solemnize the contract of matrimony by means of an ordained clergyman or authorized representative of a federally recognized Indian tribe, without regard to the sect to which he may belong or the rites and customs he may practice.

B. Judges, justices and magistrates of any of the courts established by the constitution of New Mexico, United States constitution, laws of the state or laws of the United States are civil magistrates having authority to solemnize contracts of matrimony.

C. Civil magistrates solemnizing contracts of matrimony shall charge no fee therefor."

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HOUSE BILL 13

# CHAPTER 100

**CHAPTER 100, LAWS 2001**

AN ACT

RELATING TO BARBERS AND COSMETOLOGISTS; EXTENDING THE LIFE OF THE BOARD OF BARBERS AND COSMETOLOGISTS.

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

## Section 1. Section 61-17A-25 NMSA 1978 (being Laws 1993, Chapter 171, Section 27, as amended) is amended to read:

"61-17A-25. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of barbers and cosmetologists is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 2006. Effective July 1, 2006, the Barbers and Cosmetologists Act is repealed."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 32

# CHAPTER 101

**CHAPTER 101, LAWS 2001**

AN ACT

RELATING TO ANIMALS; ENACTING THE WILDLIFE VIOLATOR COMPACT.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Wildlife Violator Compact".

## Section 2. ADOPTION AND TEXT OF COMPACT.--

A. The participating states find that:

(1) wildlife resources are managed in trust by the respective states for the benefit of all of their residents and visitors;

(2) the protection of the wildlife resources of a state is materially affected by the degree of compliance with its statutes, laws, ordinances and administrative rules relating to the management of those resources;

(3) the preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of the natural resources of a state;

(4) wildlife resources are valuable without regard to political boundaries; therefore, a person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules of a participating state as a condition precedent to the continuance or issuance of a license to hunt, fish, trap or possess wildlife;

(5) violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property;

(6) the mobility of many wildlife violators necessitates the maintenance of channels of communication among the various states;

(7) usually, a person who is cited for a wildlife violation in a state other than his home state:

(a) is required to post collateral or bond to secure appearance for a trial at a later date;

(b) is taken directly into custody until collateral or bond is posted; or

(c) is taken directly to court for an immediate appearance;

(8) the purpose of the enforcement practices set forth in Paragraph (7) of this subsection is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation;

(9) in most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the wildlife officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation;

(10) the practices described in Paragraph (7) of this subsection cause unnecessary inconvenience and, at times, hardship for a person who is unable to post collateral, furnish a bond, stand trial or pay a fine at that time and is therefore compelled to remain in custody until some alternative arrangement is made; and

(11) the enforcement practices described in Paragraph (7) of this subsection consume an undue amount of enforcement time.

B. It is the policy of the participating states to:

(1) promote compliance with the statutes, laws, ordinances and administrative rules relating to the management of wildlife resources in the respective states;

(2) recognize the suspension of wildlife license privileges of a person whose license privileges have been suspended by another participating state and treat the suspension as if it had occurred in the home state;

(3) allow a person, except as provided in Subsection B of Section 4 of the Wildlife Violator Compact, to accept a citation and, without delay, proceed on his way, whether or not the person is a resident of the state in which the citation was issued; provided that the person's home state is a participating state in the Wildlife Violator Compact;

(4) report to the appropriate participating state, as provided in the compact manual, a conviction recorded against a person whose home state was not the issuing state;

(5) allow a home state to recognize and treat convictions recorded against its residents, which convictions occurred in another participating state, as though they had occurred in the home state;

(6) cooperate to the fullest extent with other participating states in enforcing compliance with the terms of citations issued by one participating state to residents of another participating state;

(7) maximize effective use of law enforcement personnel and information; and

(8) assist court systems in the efficient disposition of wildlife violations.

## Section 3. DEFINITIONS.--As used in the Wildlife Violator Compact:

A. "citation" means a summons, complaint, summons and complaint, ticket, penalty assessment or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation, which contains an order requiring the person to respond;

B. "collateral" means cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation;

C. "compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal or through the payment of fines, costs and surcharges;

D. "conviction" means a conviction, including a court conviction, for an offense related to the preservation, protection, management or restoration of wildlife, that is prohibited by state statute, law, ordinance or administrative rule. "Conviction" also includes the forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed the offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court;

E. "court" means a court of law, including a magistrate court;

F. "home state" means the state of primary residence of a person;

G. "issuing state" means the participating state that issues a citation to the violator;

H. "license" means a license, permit or other public document that conveys to a person to whom it was issued the privilege of pursuing, possessing or taking wildlife regulated by statute, law, ordinance or administrative rule of a participating state;

I. "licensing authority" means the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap or possess wildlife;

J. "participating state" means a state that enacts legislation to become a member of the Wildlife Violator Compact;

K. "personal recognizance" means an agreement by a person made at the time of issuance of a citation that the person will comply with the terms of the citation;

L. "state" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada and other countries;

M. "suspension" means a revocation, denial or withdrawal of license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by a license;

N. "wildlife" means species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are protected or otherwise regulated by statute, law, ordinance or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of the Wildlife Violator Compact shall be based on local law;

O. "wildlife law" means a statute, law, ordinance or administrative rule developed and enacted for the management and use of wildlife resources;

P. "wildlife officer" means an individual authorized by a participating state to issue a citation; and

Q. "wildlife violation" means a cited violation of a statute, law, ordinance or administrative rule developed and enacted for the management and use of wildlife resources.

## Section 4. PROCEDURES FOR ISSUING STATE CITATIONS.--

A. When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to a person whose home state is another participating state in the same manner as if the person were a resident of the issuing state and shall not require the person to post collateral to secure appearance, subject to the exceptions set forth in Subsection B of this section; provided that the wildlife officer receives the personal recognizance of the person that he will comply with the terms of the citation.

B. Personal recognizance is acceptable:

(1) if not prohibited by local law or the compact manual; and

(2) if the violator provides adequate proof of identification to the wildlife officer.

C. Upon conviction or failure of a person to comply with the terms of a citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the issuing state. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

D. Upon receipt of the report of a conviction or noncompliance pursuant to Subsection C of this section, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and with the content as prescribed in the compact manual.

## Section 5. PROCEDURE FOR HOME STATE.--

A. Upon receipt of a report from the licensing authority of an issuing state reporting the failure of a person to comply with the terms of a citation, the licensing authority of the home state shall:

(1) notify the person;

(2) initiate a suspension action in accordance with the home state's suspension procedures; and

(3) suspend the person's license privileges until satisfactory evidence of compliance with the terms of the citation has been furnished by the issuing state to the home state licensing authority.

B. Due process safeguards shall be accorded to alleged violators.

C. Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter the conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

D. The licensing authority of the home state shall:

(1) maintain a record of actions taken; and

(2) make reports to issuing states as provided in the compact manual.

## Section 6. RECIPROCAL RECOGNITION OF SUSPENSION.--

A. A participating state shall recognize the suspension of license privileges of a person by another participating state as though the violation resulting in the suspension:

(1) had occurred in the home state; and

(2) could have been the basis of the suspension of license privileges in the home state.

B. A participating state shall communicate suspension information to other participating states in the form and with the content as contained in the compact manual.

## Section 7. APPLICABILITY OF OTHER LAWS.--Except as expressly required by provisions of the Wildlife Violator Compact, nothing herein shall be construed to affect the right of a participating state to apply its laws relating to license privileges to a person or circumstance or to invalidate or prevent an agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

## Section 8. COMPACT ADMINISTRATOR PROCEDURES.--

A. A board of compact administrators is established to:

(1) administer the provisions of this compact; and

(2) serve as a governing body for the resolution of all matters relating to the operation of the Wildlife Violator Compact.

B. The board shall be composed of one representative, to be known as the "compact administrator", from each of the participating states.

C. A compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents.

D. A compact administrator may provide for the discharge of his duties and the performance of his functions by an alternate.

E. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board of compact administrators.

F. Each member of the board of compact administrators shall be entitled to one vote.

G. An action of the board of compact administrators shall not be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof.

H. Action by the board of compact administrators shall be taken only at a meeting at which a majority of the participating states are represented.

I. The board of compact administrators shall elect annually from its membership a chairman and vice chairman.

J. The board of compact administrators shall adopt bylaws not inconsistent with the provisions of the Wildlife Violator Compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

K. The board of compact administrators may accept for its purposes and functions under the Wildlife Violator Compact donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or a governmental agency, and may receive, use and dispose of the donations and grants.

L. The board of compact administrators may contract with, or accept services or personnel from, a governmental or intergovernmental agency, individual, firm, corporation or a private nonprofit organization or institution.

M. The board of compact administrators shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of the Wildlife Violator Compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

## Section 9. ENTRY INTO WILDLIFE VIOLATOR COMPACT AND WITHDRAWAL.--

A. The Wildlife Violator Compact shall become effective at the time it is adopted in substantially similar form by two or more states.

B. Entry into the Wildlife Violator Compact shall be made by resolution of ratification by the authorized officials of the applying state and submitted to the chairman of the board of compact administrators.

C. The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(1) a citation of the authority from which the state is empowered to become a party to the Wildlife Violator Compact;

(2) an agreement of compliance with the terms and provisions of this compact; and

(3) an agreement that compact entry is with all states participating in the Wildlife Violator Compact and with all additional states that legally become a party to the Wildlife Violator Compact.

D. The effective date of entry shall be specified by the applying state but shall not be less than sixty days after notice has been given to each participating state that the resolution from the applying state has been received:

(1) by the chairman of the board of compact administrators; or

(2) by the secretary of the board of compact administrators.

E. A participating state may withdraw from participation in the Wildlife Violator Compact by official written notice to each participating state, but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. No withdrawal of any state shall affect the validity of the Wildlife Violator Compact as to the remaining participating states.

## Section 10. AMENDMENTS TO THE WILDLIFE VIOLATOR COMPACT.--

A. The Wildlife Violator Compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

B. Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

C. Failure of a participating state to respond to the chairman of the board of compact administrators within one hundred twenty days after receipt of a proposed amendment shall constitute endorsement thereof.

## Section 11. LICENSING AUTHORITY--ADMINISTRATOR--EXPENSES.--

A. The department of game and fish is designated as the licensing authority in New Mexico for the purposes of the Wildlife Violator Compact.

B. The director of the department of game and fish shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the Wildlife Violator Compact.

C. The compact administrator shall not be entitled to any additional compensation for his service as the compact administrator, but shall be entitled to

expenses incurred in connection with his duties and responsibilities as compact administrator in the same manner as for expenses incurred in connection with other duties or responsibilities of his office or employment.

## Section 12. CONSTRUCTION AND SEVERABILITY.--

A. The Wildlife Violator Compact shall be liberally construed so as to effectuate the purposes stated herein.

B. The provisions of the Wildlife Violator Compact shall be severable and if a phrase, clause, sentence or provision of that compact is declared to be contrary to the constitution of a participating state or of the United States, or the applicability thereof to a government, agency, individual or circumstance is held invalid, the validity of the remainder of the compact shall not be affected thereby.

C. If the Wildlife Violator Compact is held contrary to the constitution of a participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected regarding all severable matters.

## Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 174

# CHAPTER 102

**CHAPTER 102, LAWS 2001**

AN ACT

RELATING TO COURT FEES; AMENDING AND REPEALING CERTAIN SECTIONS OF THE LAW TO PROVIDE FOR CONTINUED COLLECTION OF THE COURT AUTOMATION FEE.

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

## Section 1. Laws 1998, Chapter 103, Section 2, is amended to read:

"Section 2. Laws 1994, Chapter 69, Section 4 is amended to read:

"Section 4. EFFECTIVE DATE.--

The effective date of the provisions of Sections 1 and 3 of this act is July 1, 1994.

## Section 2. REPEAL.--Laws 1994, Chapter 69, Section 2 is repealed.

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HOUSE BILL 221

# CHAPTER 103

**CHAPTER 103, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; CHANGING THE MEMBERSHIPOF THE RADIOACTIVE CONSULTATION TASK FORCE.

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

## Section 1. Section 74-4A-6 NMSA 1978 (being Laws 1979, Chapter 380, Section 5, as amended) is amended to read:

"74-4A-6. TASK FORCE.--There is created the "radioactive waste consultation task force". The task force shall consist of the secretaries of energy, minerals and natural resources; health; environment; public safety; and highway and transportation or their designees. The chairman and vice chairman, or their designees from the committee, shall be advisory members of the task force. The state fire marshal or his designee shall serve as a non-voting member of the task force.

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HOUSE BILL 228

# CHAPTER 104

**CHAPTER 104, LAWS 2001**

AN ACT

RELATING TO MAGISTRATE RETIREMENT; AMENDING SECTION 10-12C-16 NMSA 1978 (BEING LAWS 1992, CHAPTER 118, SECTION 16) TO PROVIDE AN EXCEPTION TO SUSPENSION OF RETIREMENT BENEFITS IN CERTAIN CIRCUMSTANCES.

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

## Section 1. Section 10-12C-16 NMSA 1978 (being Laws 1992, Chapter 118, Section 16) is amended to read:

"10-12C-16. SUSPENSION OR FORFEITURE OF BENEFITS.--

A. If a member retires and is subsequently employed by any employer covered by any state system or the educational retirement system, the retired member's pension shall be suspended effective the first day of the month following the month in which the subsequent employment begins. The suspended pension of a previously retired member shall resume and be effective the first day of the month following the month in which the member leaves office or terminates the subsequent employment.

B. The right to receive a pension pursuant to the provisions of the Magistrate Retirement Act shall be forfeited if the member is removed from office pursuant to the provisions of Article 6, Section 32 of the constitution of New Mexico and the member's only entitlement from the fund shall be the refund of the member's own contributions.

C. The provisions of Subsection A of this section shall not apply to a retired member who is elected to serve a term as an elected official if the retired member files an irrevocable exemption from membership in any state system with the association within thirty days of taking office. Filing of an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from the membership."

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HOUSE BILL 236

# CHAPTER 105

**CHAPTER 105, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; REQUIRING COUNTY AND MUNICIPAL CLERKS TO MAKE AVAILABLE FOR PUBLIC INSPECTION MONDAY THROUGH FRIDAY AN UPDATED ABSENTEE BALLOT REGISTER.

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

## Section 1. 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 citizen voter; and

(7) 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. Such 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 2. Section 3-9-5 NMSA 1978 (being Laws 1973, Chapter 375, Section 6, as amended) is amended to read:

"3-9-5. ABSENTEE BALLOT REGISTER.--

A. For each election, the municipal clerk shall keep an "absentee ballot register" in which he shall enter:

(1) in numerical sequence, the name and municipal 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 delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;

(5) the applicant's precinct and district number, if applicable;

(6) whether the applicant is a voter, a federal voter or a federal qualified elector;

(7) affidavits of voters who did not receive absentee ballots; and

(8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election. The municipal clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

C. For the purposes of recordkeeping, the absentee register may be combined with the early voting register, provided that the method of balloting shall be labeled either "absentee ballot" or "early voter"."

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HOUSE BILL 250

# CHAPTER 106

**CHAPTER 106, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; PROVIDING EMPLOYEES WITH TIME TO VOTE IN TRIBAL OR PUEBLO ELECTIONS.

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

## Section 1. Section 1-12-42 NMSA 1978 (being Laws 1969, Chapter 240, Section 302) is amended to read:

"1-12-42. CONDUCT OF ELECTION--EMPLOYEES--TIME TO VOTE.--

A. On election day a voter may absent himself from employment in which he is engaged for two hours for the purpose of voting between the time of opening and the time of closing the polls. The voter shall not be liable to any penalty for such absence; however, the employer may specify the hours during this period in which the voter may be absent.

B. The provisions of Subsection A of this section do not apply to an employee whose work day begins more than two hours subsequent to the time of opening the polls, or ends more than three hours prior to the time of closing the polls.

C. The provisions of Subsection A of this section apply to elections of Indian nations, tribes or pueblos for a voter who is enrolled as a member of the Indian nation, tribe or pueblo and is qualified to vote in the election.

D. A person who refuses the right granted in this section to an employee is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($l00)."

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HOUSE BILL 260

# CHAPTER 107

**CHAPTER 107, LAWS 2001**

AN ACT

RELATING TO TELECOMMUNICATIONS; REMOVING CERTAIN PROVISIONS REGARDING THE ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE TO A PROVIDER OF TELECOMMUNICATIONS SERVICE; AMENDING A SECTION OF THE NMSA 1978.

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

**Section 1. Section 63-9A-6 NMSA 1978 (being Laws 1985, Chapter 242, Section 6, as amended) is amended to read:**

"63-9A-6. CERTIFICATE REQUIRED.--

A. No public telecommunications service shall be offered in this state except in accordance with the provisions of the New Mexico Telecommunications Act.

B. No public telecommunications service shall be offered within this state without the telecommunications company first having obtained from the commission a certificate declaring that the operation is in the present or future public convenience and necessity, unless the operation is otherwise authorized by the New Mexico Telecommunications Act.

C. The commission shall have full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of public telecommunications service; provided, however, that in keeping with the purposes of the New Mexico Telecommunications Act, the commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service. It shall be within the discretion of the commission to determine when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, by more than one person, and the commission may attach to the exercise of rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require or as otherwise authorized.

D. All certificates of public convenience and necessity shall:

(1) continue in force, notwithstanding the provisions of this section; and

(2) remain subject to all terms and conditions imposed by statute or commission order at the time of issuance or in connection with any subsequent amendment, notwithstanding the provisions of this section."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 262

# CHAPTER 108

**CHAPTER 108, LAWS 2001**

AN ACT

RELATING TO STATE BUILDINGS; PROVIDING FOR THE CARE AND MAINTENANCE OF STATE BUILDINGS BY THE BUILDING SERVICES DIVISION; MAKING AN APPROPRIATION.

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

## Section 1. BUILDING SERVICES DIVISION--POWERS AND DUTIES.--

A. The building services division of the general services department shall:

(1) maintain, clean and operate buildings and improvements and maintain and landscape the grounds and premises under the control of the property control division of the general services department that are located within the exterior boundaries of the city of Santa Fe, either with building services division staff or by contract;

(2) recommend annually to the secretary of general services any major repairs, renovations and equipment replacement needed in buildings serviced by the building services division; and

(3) develop and implement energy and water conservation measures in buildings serviced by the building services division.

B. The building services division of the general services department may maintain, clean, operate and otherwise care for buildings owned by the New Mexico finance authority that are leased to the property control division of the general services department in accordance with the provisions of the lease.

C. The building services division of the general services department may enter into agreements with state agencies housed in buildings under the control of the property control division of the general services department located outside the exterior boundaries of the city of Santa Fe to provide or administer contracts with private firms to provide maintenance, custodial or security services. The building services division may charge reasonable fees to cover costs of providing the services, and money from the fees shall be appropriated by the legislature for division operations.

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HOUSE BILL 319

# CHAPTER 109

**CHAPTER 109, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; REQUIRING DEPOSITS FOR CERTAIN RECOUNTS OR RECHECKS TO BE DEPOSITED WITH THE SECRETARY OF STATE.

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

## Section 1. Section 1-14-15 NMSA 1978 (being Laws 1978, Chapter 48, Section 1) is amended to read:

"1-14-15. RECOUNTS--RECHECKS--COST OF PROCEEDINGS.--

A. An applicant for a recount shall deposit with the proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state fifty dollars ($50.00) in cash, or a sufficient surety bond in an amount equal to fifty dollars ($50.00), for each precinct for which a recount is demanded. An applicant for a recheck shall deposit with the proper canvassing board or, in the case of an office for which the state canvassing board issues a certificate of nomination or election, with the secretary of state ten dollars ($10.00) in cash, or a sufficient surety bond in an amount equal to ten dollars ($10.00), for each voting machine to be rechecked.

B. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

C. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the state upon warrant issued by the secretary of finance and administration supported by a voucher of the secretary of state, or shall be paid by the county upon warrant of the county clerk from the general fund of the county, as the case may be.

D. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of the sheriff in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If error or fraud has been committed by a precinct board, they shall not be entitled to such mileage or fees."

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HOUSE BILL 327

# CHAPTER 110

**CHAPTER 110, LAWS 2001**

AN ACT

RELATING TO COMMUNICATIONS REVENUES; ESTABLISHING A WIRELESS ENHANCED 911 SURCHARGE; CREATING A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

## Section 1. Section 63-9D-3 NMSA 1978 (being Laws 1989, Chapter 25, Section 3, as amended) is amended to read:

"63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state;

B. "911 service area" means the area within a local governing body's jurisdiction that has been designated by the local governing body or the division to receive enhanced 911 service;

C. "911 system" means the basic 911 system or the enhanced 911 system;

D. "access line" means a telecommunications company's line that has the capability to reach local public safety agencies, but does not include a line used for the provision of interexchange services or commercial mobile radio service;

E. "basic 911 system" means a telephone service that automatically connects a person dialing the single three-digit number 911 to a designated public safety answering point;

F. "commercial mobile radio service" means service provided by a wireless real-time two-way voice communication device, including:

(1) radio-telephone communications used in cellular telephone service;

(2) the functional or competitive equivalent of radio-telephone communications used in cellular telephone service;

(3) a personal communications service; or

(4) a network radio access line;

G. "commercial mobile radio service provider" means a person who provides commercial mobile radio services, including a person who purchases commercial mobile radio service from a provider and resells that service;

H. "commission" means the public regulation commission;

I. "department" means the taxation and revenue department;

J. "division" means the local government division of the department of finance and administration;

K. "enhanced 911 system" means a system consisting of network, database and on-premises equipment that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling a caller to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area; and

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

L. "enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, cathode ray tubes and software associated with call detail recording;

M. "enhanced 911 wireless service" means the relay to a designated public safety answering point of:

(1) a 911 caller's number and base station or cell site location; and

(2) the latitude and longitude of the 911 caller's location in relation to a designated public safety answering point;

N. "equipment supplier" means a person who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

O. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code;

P. "network" means a system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data or both and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

Q. "network and database surcharge" means the monthly uniform charge assessed on each access line to pay the costs of developing and maintaining a network and database for a 911 emergency system;

R. "proprietary information" means customer lists, customer counts, technology descriptions or trade secrets, including the actual or development costs of individual components of enhanced 911 wireless service; provided that such information is designated as proprietary by the commercial mobile radio service provider; and provided further that "proprietary information" does not include individual payments made by the division or any list of names and identifying information of subscribers who have not paid the surcharge;

S. "public safety answering point" means a twenty-four-hour local jurisdiction communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency;

T. "subscriber" means a person who is a retail purchaser of telecommunications services that are capable of originating a 911 call;

U. "telecommunications company" means a person who provides wire telecommunications services that are capable of originating a 911 call; and

V. "wireless enhanced 911 surcharge" means the monthly uniform charge assessed on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico."

## Section 2. Section 63-9D-4 NMSA 1978 (being Laws 1989, Chapter 25, Section 4, as amended) is amended to read:

"63-9D-4. PROVISION FOR 911 SERVICES BY LOCAL GOVERNING BODIES--911 SYSTEM COSTS AND NETWORK AND DATABASE COSTS--PAYMENT OF

COSTS--JOINT POWERS AGREEMENTS--AID OUTSIDE JURISDICTIONAL BOUNDARIES.--

A. A local governing body may incur costs for the purchase, lease, installation or maintenance of equipment necessary for the establishment of a 911 system at public safety answering points and may pay such costs through disbursements from the enhanced 911 fund. Necessary network and database costs may:

(1) be recovered by a local governing body from the network and database surcharge fund in amounts approved by the state board of finance; or

(2) be disbursed from the network and database surcharge fund and paid directly to a vendor pursuant to a state price agreement or to a telecommunications company on behalf of a local governing body. The amount of the payment shall be approved by the state board of finance.

B. If the enhanced 911 system is to be provided for territory that is included in whole or in part in the jurisdiction of the local governing bodies of two or more public agencies that are the primary providers of emergency firefighting, law enforcement, ambulance, emergency medical or other emergency services, the agreement for the procurement of the necessary equipment for the enhanced 911 system shall be entered into by each local governing body, unless a local governing body expressly excludes itself from the agreement. An agreement shall provide that each local governing body not excluded from the agreement shall make payment for the enhanced 911 system from general revenues. Nothing in this subsection shall be construed to prevent two or more local governing bodies from entering into a joint powers agreement pursuant to the Joint Powers Agreements Act to establish a separate legal entity that can enter into an agreement as the enhanced 911 customer.

C. A public agency in a 911 system shall provide that, once an emergency unit is dispatched in response to a request for aid through the 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries."

## Section 3. Section 63-9D-5 NMSA 1978 (being Laws 1989, Chapter 25, Section 5, as amended) is amended to read:

"63-9D-5. IMPOSITION OF SURCHARGE--NOTIFICATION.-- There is imposed a 911 emergency surcharge in the amount of twenty-five cents ($.25) and a network and database surcharge in the amount of twenty-six cents ($.26) to be billed to each subscriber access line by a telecommunications company; provided, however, that the 911 emergency surcharge and the network and database surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act. The 911 emergency surcharge shall commence with the first billing period of each subscriber on or following ninety days after the effective

date of the Enhanced 911 Act. The network and database surcharge shall commence with the first billing period of each subscriber on or following ninety days after July 1, 1993. Each local governing body shall notify the division and the telecommunications company providing local exchange service to the 911 service area of the boundaries of the 911 service area and the costs to the local governing body of purchasing or leasing, installing and maintaining the equipment necessary to provide 911 emergency services in the 911 service area. A local governing body that seeks funding for its 911 system shall file an application with the division requesting approval of the state board of finance for disbursement from the enhanced 911 fund and the network and database surcharge fund."

## Section 4. Section 63-9D-6 NMSA 1978 (being Laws 1989, Chapter 25, Section 6, as amended) is amended to read:

"63-9D-6. PARTICIPATION IN FUNDS--LIABILITY OF SUBSCRIBER FOR SURCHARGE--COLLECTION--UNCOLLECTED AMOUNTS.--

A. The local governing body may, by ordinance or resolution, recover from the enhanced 911 fund and the network and database surcharge fund an amount necessary to recover the costs of purchasing, leasing, installing and maintaining equipment and the costs of developing and maintaining a network and database necessary to provide a 911 system in its designated 911 service area.

B. Telecommunications companies shall be required to bill and collect the 911 emergency surcharge and the network and database surcharge from their subscribers. The 911 emergency surcharge and the network and database surcharge required to be collected by the telecommunications company shall be added to and stated in the billings to the subscriber. The 911 emergency surcharge and the network and database surcharge collected shall not be considered revenues of the telecommunications company.

C. A billed subscriber is liable for payment of the 911 emergency surcharge and the network and database surcharge until they have been paid to a telecommunications company.

D. A telecommunications company has no obligation to take legal action to enforce the collection of the 911 emergency surcharge or the network and database surcharge. An action may be brought by or on behalf of the department. A telecommunications company, upon request and not more than once a year, shall provide the department a list of the amounts uncollected along with the names and addresses of subscribers who carry a balance that can be determined by the telecommunications company to be the nonpayment of the 911 emergency surcharge and the network and database surcharge. The telecommunications company shall not be liable for uncollected amounts."

## Section 5. Section 63-9D-7 NMSA 1978 (being Laws 1989, Chapter 25, Section 7, as amended) is amended to read:

"63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

A. The 911 emergency surcharge and the network and database surcharge collected shall be remitted monthly to the department, which shall administer and enforce collection of each surcharge in accordance with the Tax Administration Act. The 911 emergency surcharge and the network and database surcharge shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and telecommunications company shall agree upon. A telecommunications company required to file a return shall deliver the return together with a remittance of the amount of the 911 emergency surcharge and the network and database surcharge payable to the department. The telecommunications company shall maintain a record of the amount of each surcharge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the surcharges were collected.

B. From a remittance to the department made on or before the date it becomes due, a telecommunications company required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars ($50.00), whichever is greater, as the administrative cost for collecting the 911 emergency surcharge and the network and database surcharge."

## Section 6. Section 63-9D-8 NMSA 1978 (being Laws 1989, Chapter 25, Section 8, as amended) is amended to read:

"63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--

DISBURSEMENT--REPORTS TO LEGISLATURE.--

A. There is created in the state treasury a fund that shall be known as the "enhanced 911 fund". The enhanced 911 fund shall be administered by the division.

B. All 911 emergency surcharges collected and remitted to the department shall be deposited in the enhanced 911 fund.

C. Money deposited in the enhanced 911 fund and income earned by investment of the fund are appropriated for expenditure in accordance with the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the enhanced 911 fund to, or on behalf of, participating local governing bodies upon vouchers signed by the director of the division.

E. Money in the enhanced 911 fund may be used for the purchase, lease, installation or maintenance of equipment necessary for a 911 system, including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act. Annually, the division may expend no more than five percent of all money deposited annually in the enhanced 911 fund for administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. The division shall report to the legislature each session the status of the enhanced 911 fund and whether the current level of the 911 emergency surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year."

## Section 7. Section 63-9D-8.1 NMSA 1978 (being Laws 1990, Chapter 87, Section 3, as amended) is amended to read:

"63-9D-8.1. DIVISION POWERS.--

A. The division may adopt reasonable rules necessary to carry out the provisions of the Enhanced 911 Act.

B. The division may fund basic 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. The division and the local governing body may establish 911 service areas.

D. Unless otherwise provided by law, no rule affecting any person, agency, local governing body, commercial mobile radio service provider or telecommunications company shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies, telecommunications companies and commercial mobile radio service providers.

E. All rules shall be filed in accordance with the State Rules Act."

## Section 8. Section 63-9D-8.2 NMSA 1978 (being Laws 1993, Chapter 48, Section 11) is amended to read:

"63-9D-8.2. NETWORK AND DATABASE SURCHARGE FUND--CREATION--ADMINISTRATION--DISBURSEMENT--REPORT.--

A. There is created in the state treasury the "network and database surcharge fund". The network and database surcharge fund shall be administered by the division.

B. Network and database surcharges collected and remitted to the department shall be deposited in the network and database surcharge fund.

C. Money deposited in the network and database surcharge fund and income earned by investment of the network and database surcharge fund are appropriated for expenditure in accordance with the provisions of the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the network and database surcharge fund to, or on behalf of, participating local governing bodies upon vouchers signed by the director of the division.

E. Annually, the division may expend no more than two and one-half percent of all money deposited annually in the network and database surcharge fund for administering and coordinating activities associated with implementation of the network and database surcharge fund.

F. Money in the network and database surcharge fund may be awarded as grant assistance upon application of local governing bodies to the division and approval by the state board of finance. If it is anticipated that the funds available will not be sufficient to pay all requests for grants, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such a reduction, the state board of finance may award supplemental grants to local governing bodies that demonstrate financial hardship.

G. The division shall report to the legislature each session the status of the network and database surcharge fund and whether the current level of the network and database surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year."

## Section 9. Section 63-9D-9 NMSA 1978 (being Laws 1989, Chapter 25, Section 9, as amended) is amended to read:

"63-9D-9. USE OF FUNDS COLLECTED.--Money received by a local governing body from the enhanced 911 fund shall be spent solely to pay for 911 equipment costs, associated installation costs and maintenance costs necessary to provide enhanced 911 services. Money from the network and database surcharge fund shall be spent solely to pay for the network capability and databases for an enhanced 911 system."

## Section 10. Section 63-9D-10 NMSA 1978 (being Laws 1989, Chapter 25, Section 10) is amended to read:

"63-9D-10. IMMUNITY.--911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of a 911 system, except for willful or wanton negligence or intentional acts, the local governing body, public agency, equipment supplier, telecommunications company, commercial mobile radio service provider, and their employees and agents are not liable for damages resulting from installing, maintaining or providing 911 systems or transmitting 911 calls."

## Section 11. Section 63-9D-11 NMSA 1978 (being Laws 1989, Chapter 25, Section 11) is amended to read:

"63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

A. Private listing subscribers waive the privacy afforded by nonlisted or nonpublished numbers only to the extent that the name and address associated with the telephone number may be furnished to the enhanced 911 system for call routing or for automatic retrieval of location information in response to a call initiated to 911.

B. Information regarding the identity of private listing subscribers, including names, addresses, telephone numbers or other identifying information, is not a public record and is not available for inspection.

C. Proprietary information provided by a commercial mobile radio service provider is not public information and may not be released to any person without the express permission of the submitting provider, except that information may be released or published as aggregated data that does not identify the number of subscribers or identify enhanced 911 system costs attributable to an individual commercial mobile radio service provider."

## Section 12. A new section of the Enhanced 911 Act is enacted to read:

"WIRELESS ENHANCED 911 FUND--CREATION--ADMINISTRATION--DISBURSEMENT--NOTIFICATION.--

A. There is created in the state treasury the "wireless enhanced 911 fund". The wireless enhanced 911 fund shall be administered by the division.

B. Wireless 911 enhanced surcharges remitted to the department shall be deposited in the wireless enhanced 911 fund.

C. Money deposited in the wireless enhanced 911 fund and income earned by investment of the wireless enhanced 911 fund are appropriated for expenditure on enhanced 911 wireless service in accordance with the provisions of the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the wireless enhanced 911 fund to, or on behalf of, participating local governing bodies upon vouchers signed by the director of the division solely for the purpose of reimbursing local governing bodies and commercial mobile radio service providers for their costs of providing enhanced 911 wireless service. A person who purchases commercial mobile radio services from a commercial mobile radio service provider for the purpose of reselling that service is not eligible for reimbursement from the wireless enhanced 911 fund.

E. The division may expend no more than five percent of the money deposited annually in the wireless enhanced 911 fund for administering and coordinating activities associated with implementation of the wireless enhanced 911 fund.

F. Money in the wireless enhanced 911 fund may be awarded as grant assistance to provide enhanced 911 wireless service upon application of local governing bodies to the division and upon approval by the state board of finance. If it is anticipated that the funds available to pay all requests for grants will be insufficient, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such reduction, the state board of finance may award supplemental grants to local governing bodies that demonstrate financial hardship.

G. A local governing body shall notify the division and the commercial mobile radio service provider providing enhanced 911 wireless service to the 911 service area of the boundaries of the 911 service area and the costs to the local governing body for providing enhanced 911 wireless service to the 911 service area.

H. After requesting enhanced 911 wireless service from a commercial mobile radio service provider, a local governing body may, by ordinance or resolution, recover from the wireless enhanced 911 fund an amount necessary to recover the costs of purchasing, leasing, installing and maintaining 911 voice call reception and recording equipment; hardware and software for automatic number identification processing; hardware and software for automatic location identification processing; and developing and maintaining a network and database necessary to provide enhanced 911 wireless service in its designated 911 service area. The division, on behalf of local governing bodies, shall directly pay or reimburse commercial mobile radio service providers for their costs of providing enhanced 911 wireless service. If a commercial mobile radio service provider does not receive payment or reimbursement for the costs of providing enhanced 911 wireless service, the provider is not obligated to provide that service.

I. The division shall report to the legislature each session the status of the wireless enhanced 911 fund and whether the current level of the wireless enhanced 911

surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year."

## Section 13. A new section of the Enhanced 911 Act is enacted to read:

"IMPOSITION OF SURCHARGE--LIABILITY OF USER FOR SURCHARGE--COLLECTION--UNCOLLECTED AMOUNTS.--

A. There is imposed a wireless enhanced 911 surcharge in the amount of fifty-one cents ($.51) that shall commence with the first billing period of each subscriber on or following ninety days after July 1, 2001.

B. Commercial mobile radio service providers shall be required to bill and collect the wireless enhanced 911 surcharge from their subscribers whose billing addresses are in New Mexico. The wireless enhanced 911 surcharge required to be collected by the commercial mobile radio service provider shall be added to and stated clearly and separately in the billings to the subscriber. The wireless enhanced 911 surcharge collected by the commercial mobile radio service provider shall not be considered revenue of the commercial mobile radio service provider.

C. A billed subscriber is liable for payment of the wireless enhanced 911 surcharge until it has been paid to the commercial mobile radio service provider.

D. A commercial mobile radio service provider has no obligation to take legal action to enforce the collection of the wireless enhanced 911 surcharge. An action may be brought by or on behalf of the department. A commercial mobile radio service provider, upon request and not more than once a year, shall provide the department a list of the wireless enhanced 911 surcharge amounts uncollected along with the names and addresses of subscribers who carry a balance that can be determined by the commercial mobile radio service provider to be the nonpayment of the wireless enhanced 911 surcharge. The commercial mobile radio service provider shall not be held liable for uncollected wireless enhanced 911 surcharge amounts."

## Section 14. A new section of the Enhanced 911 Act is enacted to read:

"REMITTANCE OF SURCHARGES--ADMINISTRATIVE FEE--AUDITS.--

A. Wireless enhanced 911 surcharges collected shall be remitted monthly to the department, which shall administer and enforce collection of each surcharge in accordance with the Tax Administration Act. The wireless enhanced 911 surcharges collected shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return

for the preceding month shall be filed with the department in such form as the department and the commercial mobile radio service provider shall agree upon. The commercial mobile radio service provider required to file the return shall deliver the return together with a remittance of the amount of the wireless enhanced 911 surcharge payable to the department. The commercial mobile radio service provider shall maintain a record of the amount of each surcharge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the surcharges are collected.

B. From every remittance to the department made on or before the date it becomes due, the commercial mobile radio service provider required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars ($50.00), whichever is greater, as the cost of administration for collecting the wireless enhanced 911 surcharge."

## Section 15. Section 63-9D-13 NMSA 1978 (being Laws 1990, Chapter 61, Section 2, as amended) is amended to read:

"63-9D-13. DEFINITIONS.--As used in the Enhanced 911 Bond Act:

A. "board" means the state board of finance;

B. "division" means the local government division of the department of finance and administration;

C. "enhanced 911 bonds" means the bonds authorized in the Enhanced 911 Bond Act;

D. "enhanced 911 project" means actions authorized under Section 63-9D-14 NMSA 1978 that pertain to a specific component of the 911 system;

E. "enhanced 911 revenue" means the revenue to and the income of the enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act;

F. "network and database surcharge revenue" means the revenue to and the income of the network and database surcharge fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act; and

G. "wireless enhanced 911 revenue" means the revenue to and the income of the wireless enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act."

## Section 16. Section 63-9D-14 NMSA 1978 (being Laws 1990, Chapter 61, Section 3, as amended) is amended to read:

"63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON ISSUANCE.--

A. In addition to any other law authorizing the board to issue revenue bonds, the board may issue enhanced 911 bonds pursuant to the Enhanced 911 Bond Act for the purposes specified in this section.

B. Enhanced 911 bonds may be issued for:

(1) acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues or network and database surcharge revenues;

(2) reimbursing a commercial mobile radio service provider for its reasonable costs of providing enhanced wireless 911 service, the payment of which shall be secured by wireless enhanced 911 revenues; or

(3) reimbursing a local governing body for its reasonable costs of providing enhanced wireless 911 service, the payment of which shall be secured by wireless enhanced 911 revenues.

C. The board may pledge irrevocably enhanced 911 revenues, network and database surcharge revenues and wireless enhanced 911 revenues in the manner set forth in Subsection B of this section, to the payment of the interest on and principal of enhanced 911 bonds. Any general determination by the board that any facilities or equipment are reasonably related to and shall constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds."

## Section 17. Section 63-9D-17 NMSA 1978 (being Laws 1990, Chapter 61, Section 6) is amended to read:

"63-9D-17. BOND AUTHORIZATION.--The board may issue and sell enhanced 911 bonds in compliance with the Enhanced 911 Bond Act. The board shall schedule the issuance and sale of the bonds in the most expeditious and economical manner upon a finding by the board that the division has certified that the need exists for the issuance of bonds and upon an action by the board designating the enhanced 911 fund, the network and database surcharge fund or the wireless enhanced 911 fund to be the source of pledged revenues."

## Section 18. Section 63-9D-18 NMSA 1978 (being Laws 1990, Chapter 61, Section 7, as amended) is amended to read:

"63-9D-18. AUTHORITY TO REFUND BONDS.--

A. The board may issue and sell at public or private sale enhanced 911 bonds to refund outstanding enhanced 911 bonds and other bonds payable from the enhanced 911 fund 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.

B. No enhanced 911 bonds that are secured by enhanced 911 revenues or network and database surcharge revenues shall be refunded by enhanced 911 bonds that are secured by wireless enhanced 911 revenues. No enhanced 911 bonds that are secured by wireless enhanced 911 revenues shall be refunded by enhanced 911 bonds that are secured by enhanced 911 revenues or network and database surcharge revenues."

## Section 19. Section 63-9D-20 NMSA 1978 (being Laws 1992, Chapter 102, Section 5) is amended to read:

"63-9D-20. AMOUNT OF SURCHARGES--SECURITY FOR BONDS.--

A. The legislature shall provide for the continued imposition, collection and deposit of the 911 emergency surcharge, the network and database surcharge and the wireless enhanced 911 surcharge into the enhanced 911 fund, the network and database surcharge fund and the wireless enhanced 911 fund, as applicable, in amounts that, together with other amounts deposited into the funds, will be sufficient to produce an amount necessary to meet annual debt service charges on all respective outstanding enhanced 911 bonds.

B. The legislature shall not repeal, amend or otherwise modify any law that affects the 911 emergency surcharge, the network and database surcharge or the wireless enhanced 911 surcharge in a manner that impairs any outstanding enhanced 911 bonds secured by a pledge of the 911 emergency surcharge, the network and database surcharge or the wireless enhanced 911 surcharge unless:

(1) the outstanding enhanced 911 bonds to which the revenues from such surcharges are pledged have been discharged in full; or

(2) provision has been made to discharge fully the outstanding enhanced 911 bonds to which the revenues from such surcharges are pledged.

C. Nothing in this section shall require any increase in the 911 emergency surcharge, the network and database surcharge or the wireless enhanced 911 surcharge."

## Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 339

# CHAPTER 111

**CHAPTER 111, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLE REGISTRATION; INCLUDING CERTAIN GOVERNMENTS IN THE DISTRIBUTION OF GOVERNMENT LICENSE PLATES; DECLARING AN EMERGENCY.

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

## Section 1. Section 66-6-15 NMSA 1978 (being Laws 1978, Chapter 35, Section 350) is amended to read:

"66-6-15. VEHICLES OF THE STATE, COUNTY OR MUNICIPALITY.--

A. Vehicles or trailers owned by and used in the service of this state, an Indian nation, tribe or pueblo located wholly or partly in this state or of any county or municipality of this state need not be registered but must continually display plates furnished by the division.

B. Vehicles on loan from dealers and used in an approved driver-training program by the public schools need not be registered but must continually display plates furnished by the division.

C. Each state department or agency, each Indian nation, tribe or pueblo, each county and each municipality shall apply to the division for a plate for each vehicle or trailer in its service and shall provide identifying information concerning each vehicle or trailer for which a plate is applied for.

D. The division shall issue plates for vehicles and trailers in the service of this state, an Indian nation, tribe or pueblo located wholly or partly in this state or of any county or municipality of this state and keep a record of plates issued and plates returned. The plates shall be permanent and need not be renewed from year to year. The plates shall be numbered to identify the state department or agency, the Indian nation, tribe or pueblo, the county or the municipality to which the plates are issued. The plates shall be the same size as registration plates issued to private vehicles but shall be different in color from the registration plates issued to private vehicles."

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

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HOUSE BILL 41, WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 112

**CHAPTER 112, LAWS 2001**

AN ACT

RELATING TO TAXATION; EXPANDING AND MAKING PERMANENT THE DISTRIBUTION OF LIQUOR EXCISE TAX REVENUES TO THE LOCAL DWI GRANT FUND FOR ALCOHOL DETOXIFICATION AND TREATMENT FACILITIES IN CERTAIN COUNTIES; MAKING AN APPROPRIATION.

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

## Section 1. Section 7-1-6.40 NMSA 1978 (being Laws 1997, Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION--LOCAL DWI GRANT FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local DWI grant fund in an amount equal to thirty-four and fifty-seven hundredths percent of the net receipts attributable to the liquor excise tax.

## Section 2. 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 new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for distribution pursuant to Subsection C 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. An amount equal to the liquor excise tax revenues distributed annually to the fund less four million eight hundred thousand dollars ($4,800,000) 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 one hundred thousand dollars ($100,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

C. 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 classified in 2000 as class B 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.

D. In awarding DWI grants to local communities, the council:

(1) may fund new or existing innovative or model programs, services or activities of any kind designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse;

(2) may fund existing community-based programs, services or facilities for prevention, screening and treatment of alcoholism and alcohol abuse;

(3) 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

(4) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved pursuant to Chapter 43, Article 3 NMSA 1978 and only for programs, services or activities consistent with that plan.

E. The council shall use the criteria in Subsection D of this section to approve DWI programs, services or activities for funding through the county DWI program distribution."

## 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 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 four million eight hundred thousand dollars ($4,800,000) shall be available for distribution in accordance with the formula in Subsection B of this section to each county for council-approved DWI programs, services or activities; provided that each county shall receive a minimum distribution of at least one-half of one percent of the money available for distribution.

B. Each county shall be eligible for a DWI program distribution in an amount derived by multiplying the total amount of money available for distribution by a percentage that is the average of the following two percentages:

(1) a percentage equal to a fraction, the numerator of which is the retail trade gross receipts in the county and the denominator of which is the total retail trade gross receipts in the state; and

(2) a percentage equal to a fraction, the numerator of which is the number of alcohol-related injury crashes in the county and the denominator of which is the total alcohol-related injury crashes in the state.

C. A county shall be eligible to receive the distribution determined pursuant to Subsection B of this section if the board of county commissioners has submitted to the council a request to use the distribution for the operation of one or more DWI programs, services or activities in the county and the request has been approved by the council.

D. No later than August 1 each year, each board of county commissioners seeking approval for the DWI program distribution pursuant to this section shall make application to the division for review and approval by the council for one or more local DWI programs, services or activities in the county. Application shall be made on a form and in a manner determined by the division. The council shall approve the programs eligible for a distribution no later than September 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each October 10, January 10, April 10 and July 10, beginning in October 1997. The amount available for distribution quarterly to each county shall be the amount determined by applying the formula in Subsection B of this section to the amount of liquor excise tax revenues in the local DWI grant fund at the end of the month prior to the quarterly installment due date and after five hundred thousand dollars ($500,000) has been set aside for the DWI grant program and after the appropriation and distribution pursuant to Subsection C of Section 11-6A-3 NMSA 1978.

E. If a county has no council-approved DWI program, service or activity or does not need the full amount of the available distribution, the unused money shall revert to the local DWI grant fund and may be used by the council for the local DWI grant program.

F. As used in this section:

(1) "alcohol-related injury crashes" means the average annual number of alcohol-related injury crashes during the period from January 1, 1993 through December 31, 1995, as determined by the traffic safety bureau of the state highway and transportation department; and

(2) "retail trade gross receipts" means the total reported gross receipts attributable to taxpayers reporting under the retail trade industry sector of the state for the most recent fiscal year as determined by the taxation and revenue department."

## Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 103, AS AMENDED

# CHAPTER 113

**CHAPTER 113, LAWS 2001**

AN ACT

RELATING TO FINANCE; ENACTING THE UNIFORM PRINCIPAL AND INCOME ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

ARTICLE 1

DEFINITIONS AND FIDUCIARY DUTIES

## Section 101. SHORT TITLE.--This act may be cited as the "Uniform Principal and Income Act".

## Section 102. DEFINITIONS.--As used in the Uniform Principal and Income Act:

(1) "accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends;

(2) "beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary;

(3) "fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function;

(4) "income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in Article 4;

(5) "income beneficiary" means a person to whom net income of a trust is or may be payable;

(6) "income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion;

(7) "mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

(8) "net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period,

plus or minus transfers under the Uniform Principal and Income Act to or from income during the period;

(9) "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;

(10) "principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates;

(11) "remainder beneficiary" means a person entitled to receive principal when an income interest ends;

(12) "terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct; and

(13) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

## Section 103. FIDUCIARY DUTIES--GENERAL PRINCIPLES.--

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in the Uniform Principal and Income Act;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by the Uniform Principal and Income Act;

(3) shall administer a trust or estate in accordance with the Uniform Principal and Income Act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and the Uniform Principal and Income Act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under Section 104(a) or a discretionary power of administration regarding a matter within the scope of the Uniform

Principal and Income Act, whether granted by the terms of a trust, a will, or the Uniform Principal and Income Act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with the Uniform Principal and Income Act is presumed to be fair and reasonable to all of the beneficiaries.

## Section 104. TRUSTEE'S POWER TO ADJUST.--

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Section 103(a), that the trustee is unable to comply with Section 103(b).

(b) In deciding whether and to what extent to exercise the power conferred by Subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of the Uniform Principal and Income Act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If Subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or

exercising the power will cause a result described in Subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (a).

ARTICLE 2

DECEDENT'S ESTATE OR

TERMINATING INCOME INTEREST

## Section 201. DETERMINATION AND DISTRIBUTION OF NET INCOME.--After a decedent dies, in the case of an estate or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 which apply to trustees and the rules in Paragraph (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under Paragraph (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by Paragraph (3) in the manner described in Section 202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in Paragraph (1) because of a payment described in Section 501 or 502 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

## Section 202. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES.--

(a) Each beneficiary described in Section 201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

ARTICLE 3

APPORTIONMENT AT BEGINNING

AND END OF INCOME INTEREST

## Section 301. WHEN RIGHT TO INCOME BEGINS AND ENDS.--

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under Subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

## Section 302. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS.--

(a) A trustee shall allocate an income receipt or disbursement other than one to which Section 201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of the Uniform Principal and Income Act. Distributions to shareholders or other owners from an entity to which Section 401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

## Section 303. APPORTIONMENT WHEN INCOME INTEREST ENDS.--

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust

unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

ARTICLE 4

ALLOCATION OF RECEIPTS DURING

ADMINISTRATION OF TRUST

PART 1

RECEIPTS FROM ENTITIES

## Section 401. CHARACTER OF RECEIPTS.--

(a) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which Section 402 applies, a business or activity to which Section 403 applies or an asset-backed security to which Section 415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under Subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

## Section 402. DISTRIBUTION FROM TRUST OR ESTATE.--A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 401 or 415 applies to a receipt from the trust.

## Section 403. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE.--

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of

the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which Section 414 applies.

PART 2

RECEIPTS NOT NORMALLY APPORTIONED

## Section 404. PRINCIPAL RECEIPTS.--A trustee shall allocate to principal:

(1) to the extent not allocated to income under the Uniform Principal and Income Act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;

(2) money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to

Article 4;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in Section 502(a)(7) or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in Part 3.

**Section 405. RENTAL PROPERTY.--To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.**

## Section 406. OBLIGATION TO PAY MONEY.--

(a) An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which Section 409, 410, 411, 412, 414 or 415 applies.

## Section 407. INSURANCE POLICIES AND SIMILAR CONTRACTS.--

(a) Except as otherwise provided in Subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to Section 403, loss of profits from a business.

(c) This section does not apply to a contract to which Section 409 applies.

PART 3

RECEIPTS NORMALLY APPORTIONED

## Section 408. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED.--If a trustee determines that an allocation between principal and income required by Section 409, 410, 411, 412 or 415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Section 104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Section 104(d) and may be released for the reasons and in the manner described in Section 104(e). An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

## Section 409. DEFERRED COMPENSATION, ANNUITIES AND SIMILAR PAYMENTS.--

(a) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which Section 410 applies.

## Section 410. LIQUIDATING ASSET.--

(a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 409, resources subject to Section 411, timber subject to Section 412, an activity subject to Section 414, an asset subject to Section 415 or any asset for which the trustee establishes a reserve for depreciation under Section 503.

(b) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

## Section 411. MINERALS, WATER AND OTHER NATURAL RESOURCES.--

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount is received from a working interest, royalty payment, shut-in well payment, take-or-pay payment, bonus or delay rental or any other interest not provided for in Paragraph (1) or (2) of this subsection, the amount that is allowed as a deduction from gross income for depletion purposes under the federal income tax law in effect at the time of severance shall be allocated to principal and the balance to income. If the amount that is allowed as a deduction is less than fifteen percent of gross income for depletion purposes, or if depletion is not allowed, then the amount to be allocated to principal and the amount to be allocated to income shall be determined in accordance with Section 104.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(c) The Uniform Principal and Income Act applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water or other natural resources on the effective date of the Uniform Principal and Income Act, the trustee may allocate receipts from the interest as provided in that act or in the manner used by the trustee before the effective date of that act. If the trust acquires an interest in minerals, water or other natural resources after the effective date of the Uniform Principal and Income Act, the trustee shall allocate receipts from the interest as provided in that act.

## Section 412. TIMBER.--

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in Paragraphs (1) and (2); or

(4) to principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to Paragraph (1), (2) or (3).

(b) In determining net receipts to be allocated pursuant to Subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) The Uniform Principal and Income Act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on the effective date of the Uniform Principal and Income Act, the trustee may allocate net receipts from the sale of timber and related products as provided in that act or in the manner used by the trustee before the effective date of that act. If the trust acquires an interest in timberland after the effective date of the Uniform Principal and Income Act, the trustee shall allocate net receipts from the sale of timber and related products as provided in that act.

## Section 413. PROPERTY NOT PRODUCTIVE OF INCOME.--

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by Section 104(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by Subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

## Section 414. DERIVATIVES AND OPTIONS.--

(a) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under Section 403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of

the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

## Section 415. ASSET-BACKED SECURITIES.--

(a) As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 401 or 409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

ARTICLE 5

ALLOCATION OF DISBURSEMENTS DURING

ADMINISTRATION OF TRUST

## Section 501. DISBURSEMENTS FROM INCOME.--A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 201(2)(B) or (C) applies:

(1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) one-half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

## Section 502. DISBURSEMENTS FROM PRINCIPAL.--

(a) A trustee shall make the following disbursements from principal:

(1) the remaining one-half of the disbursements described in Section 501(1) and (2);

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in Section 501(4) of which the trust is the owner and beneficiary;

(6) estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

## Section 503. TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION.--

(a) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under Section 403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

## Section 504. TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL.--

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which Subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in Section 502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in Subsection (a).

## Section 505. INCOME TAXES.--

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in Paragraphs (1) and (2)(A).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

## Section 506. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES.--

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in Subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

ARTICLE 6

MISCELLANEOUS PROVISIONS

**Section 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Principal and Income Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

**Section 602. SEVERABILITY CLAUSE.--If any provision of the Uniform Principal and Income Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.**

**Section 603. APPLICATION OF THE UNIFORM PRINCIPAL AND INCOME ACT TO EXISTING TRUSTS AND ESTATES.--The Uniform Principal and Income Act applies to every trust or decedent's estate existing on the effective date of that act, except as otherwise expressly provided in the will or terms of the trust or in that act.**

**Section 604. REPEAL.--Sections 46-3-1 through 46-3-15 NMSA 1978 (being Laws 1969, Chapter 239, Sections 1 through 15) are repealed.**

**Section 605. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 109, AS AMENDED

# CHAPTER 114

**CHAPTER 114, LAWS 2001**

AN ACT

RELATING TO CHILD CUSTODY; ENACTING THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

ARTICLE 1

GENERAL PROVISIONS

**Section 101. SHORT TITLE.--This act may be cited as the "Uniform Child-Custody Jurisdiction and Enforcement Act".**

**Section 102. DEFINITIONS.--As used in the Uniform Child-Custody Jurisdiction and Enforcement Act:**

(1) "abandoned" means left without provision for reasonable and necessary care or supervision;

(2) "child" means an individual who has not attained eighteen years of age;

(3) "child-custody determination" means a judgment, decree or other order of a court providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial or modification order. The term does not include an order relating to child support or other monetary obligation of an individual;

(4) "child-custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, custody of a child when dissolution of a marriage is not an issue, neglect, abuse, dependency, guardianship, paternity, termination of parental rights whether filed alone or with an adoption proceeding and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(5) "commencement" means the filing of the first pleading in a proceeding;

(6) "court" means an entity authorized under the law of a state to establish, enforce or modify a child-custody determination;

(7) "home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

(8) "initial determination" means the first child-custody determination concerning a particular child;

(9) "issuing court" means the court that makes a child-custody determination for which enforcement is sought under the Uniform Child-Custody Jurisdiction and Enforcement Act;

(10) "issuing state" means the state in which a child-custody determination is made;

(11) "modification" means a child-custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(12) "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;

(13) "person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(14) "physical custody" means the physical care and supervision of a child;

(15) "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;

(16) "tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

(17) "warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

## Section 103. PROCEEDINGS GOVERNED BY OTHER LAW.--The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

## Section 104. APPLICATION TO INDIAN TRIBES.--

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to the Uniform Child-Custody Jurisdiction and Enforcement Act to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.

## Section 105. INTERNATIONAL APPLICATION OF THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.--

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.

(c) A court of this state need not apply the Uniform Child-Custody Jurisdiction and Enforcement Act if the child custody law of a foreign country violates fundamental principles of human rights.

**Section 106. EFFECT OF CHILD-CUSTODY DETERMINATION.--A child-custody determination made by a court of this state that had jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.**

**Section 107. PRIORITY.--If a question of existence or exercise of jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.**

**Section 108. NOTICE TO PERSONS OUTSIDE STATE.--**

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

## Section 109. APPEARANCE AND LIMITED IMMUNITY.--

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act committed by an individual while present in this state.

## Section 110. COMMUNICATION BETWEEN COURTS.--

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "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.

## Section 111. TAKING TESTIMONY IN ANOTHER STATE.--

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable

in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

## Section 112. COOPERATION BETWEEN COURTS--PRESERVATION OF RECORDS.--

(a) A court of this state may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate

request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

ARTICLE 2

JURISDICTION

## Section 201. INITIAL CHILD-CUSTODY JURISDICTION.--

(a) Except as otherwise provided in Section 204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 207 or 208 and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

## Section 202. EXCLUSIVE, CONTINUING JURISDICTION.--

(a) Except as otherwise provided in Section 204, a court of this state which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that the child, or the child and one parent, or the child and a person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.

## Section 203. JURISDICTION TO MODIFY DETERMINATION.--Except as otherwise provided in Section 204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this state would be a more convenient forum under Section 207; or

(2) a court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

## Section 204. TEMPORARY EMERGENCY JURISDICTION.--

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been

or is not commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides, and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under Sections 201 through 203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 201 through 203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

## Section 205. NOTICE--OPPORTUNITY TO BE HEARD-- JOINDER.--

(a) Before a child-custody determination is made under the Uniform Child-Custody Jurisdiction and Enforcement Act, notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act are governed by the law of this state as in child-custody proceedings between residents of this state.

## Section 206. SIMULTANEOUS PROCEEDINGS.--

(a) Except as otherwise provided in Section 204, a court of this state may not exercise its jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and

Enforcement Act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

## Section 207. INCONVENIENT FORUM.--

(a) A court of this state which has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child's home state is or recently was another state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties with respect to travel arrangements;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending custody litigation, including testimony of the child;

(7) the ability of the court of each state to decide the custody issue expeditiously and the procedures necessary to present the evidence; and

(8) whether another state has a closer connection with the child or with the child and one or more of the parties, including whether the court of the other state is more familiar with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

## Section 208. JURISDICTION DECLINED BY REASON OF CONDUCT.--

(a) Except as otherwise provided in Section 204 or by other law of this state, if a court of this state has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under Sections 201 through 203 determines that this state is a more appropriate forum under Section 207; or

(3) no court of any other state would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

## Section 209. INFORMATION TO BE SUBMITTED TO COURT.--

(a) Subject to local law providing for the confidentiality of procedures, addresses and other identifying information in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or

physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

## Section 210. APPEARANCE OF PARTIES AND CHILD.--

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

ARTICLE 3

ENFORCEMENT

## Section 301. DEFINITIONS.--As used in Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act:

(1) "petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination; and

(2) "respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

## Section 302. ENFORCEMENT UNDER HAGUE CONVENTION.--Under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

## Section 303. DUTY TO ENFORCE.--

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act or if the determination was made under factual circumstances meeting the jurisdictional standards of that act and the determination has not been modified in accordance with that act.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

(c) A court of this state may enforce a custody determination made pursuant to Sections 201 and 203 until it is modified by a court having jurisdiction pursuant to Sections 201 and 203.

## Section 304. TEMPORARY VISITATION.--

(a) A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act. The order remains in effect until an order is obtained from the other court or the period expires.

## Section 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION.--

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(2) the child-custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

## Section 306. ENFORCEMENT OF REGISTERED DETERMINATION.--

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a registered child-custody determination of a court of another state.

## Section 307. SIMULTANEOUS PROCEEDINGS.--If a proceeding for enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act is commenced in a court of this state and the court determines that a proceeding to modify the

**determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.**

## Section 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.--

(a) A petition under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and, if so, identify the court, the case number and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be

held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under Section 312 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; and

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

## Section 309. SERVICE OF PETITION AND ORDER.--Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

## Section 310. HEARING AND ORDER.--

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) The court shall award the fees, costs and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

## Section 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.--

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

## Section 312. COSTS, FEES AND EXPENSES.--

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

## Section 313. RECOGNITION AND ENFORCEMENT.--A court of this state shall accord full faith and credit to an order issued by another state and consistent with the Uniform Child-Custody Jurisdiction and Enforcement Act which enforces a child-custody determination by a court of another state, unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of that act.

**Section 314. APPEALS.--An appeal may be taken from a final order in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.**

**Section 315. ROLE OF PROSECUTOR OR PUBLIC OFFICIAL.--**

(a) In a case arising under the Uniform Child-Custody Jurisdiction and Enforcement Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

**Section 316. ROLE OF LAW ENFORCEMENT.--At the request of a prosecutor or other appropriate public official acting under Section 315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 315.**

**Section 317. COSTS AND EXPENSES.--If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other**

**appropriate public official and law enforcement officers under Section 315 or 316.**

ARTICLE 4

MISCELLANEOUS PROVISIONS

**Section 401. APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Child-Custody Jurisdiction and Enforcement Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

**Section 402. SEVERABILITY CLAUSE.--If any provision of the Uniform Child-Custody Jurisdiction and Enforcement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application and to this end the provisions of the act are severable.**

**Section 403. TRANSITIONAL PROVISION.--A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of the Uniform Child-Custody Jurisdiction and Enforcement Act is governed by the law in effect at the time the motion or other request was made.**

**Section 404. REPEAL.--Sections 40-10-1 through 40-10-24 NMSA 1978 (being Laws 1981, Chapter 119, Sections 1 through 23 and 25, as amended) are repealed.**

**Section 405. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 110, AS AMENDED

# CHAPTER 115

**CHAPTER 115, LAWS 2001**

AN ACT

RELATING TO CORRECTIONS; PLACING CONDITIONS ON CONTRACTS TO PROVIDE INMATES WITH ACCESS TO TELECOMMUNICATIONS SERVICES IN A CORRECTIONAL FACILITY OR JAIL.

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

## Section 1. CONTRACT TO PROVIDE INMATES WITH ACCESS TO TELECOMMUNICATIONS SERVICES IN A CORRECTIONAL FACILITY OR JAIL--CONDITIONS.--

A. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall be negotiated and awarded to an entity that meets the correctional facility's or jail's technical and functional requirements for services, and that provides the lowest cost of service to inmates or any person who pays for inmate telecommunication services.

B. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail.

C. As used in this section:

(1) "correctional facility" means a state correctional facility or a privately operated correctional facility; and

(2) "jail" means a county jail, a municipal jail or a privately operated jail.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 133

# CHAPTER 116

**CHAPTER 116, LAWS 2001**

AN ACT

RELATING TO THE DRINKING WATER STATE REVOLVING LOAN FUND ACT; AMENDING THE ACT TO ALLOW PRIVATE COMMUNITY WATER SYSTEMS TO QUALIFY FOR FUNDING UNDER THE ACT; ELIMINATING A RESTRICTION ON REFINANCING OUTSTANDING DEBT; DECLARING AN EMERGENCY.

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

## Section 1. Section 6-21A-3 NMSA 1978 (being Laws 1997, Chapter 144, Section 3) is amended to read:

"6-21A-3. DEFINITIONS.--As used in the Drinking Water State Revolving Loan Fund Act:

A. "authority" means the New Mexico finance authority;

B. "department" means the department of environment;

C. "drinking water facility construction project" means the acquisition, design, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility or equipment necessary for a drinking water system or water supply system;

D. "drinking water supply facility" means any structure, facility or equipment necessary for a drinking water system or water supply system;

E. "financial assistance" means loans, the purchase or refinancing of debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993, loan guarantees, bond insurance or security for revenue bonds issued by the authority;

F. "fund" means the drinking water state revolving loan fund;

G. "local authority" means any municipality, county, incorporated county, sanitation district, water and sanitation district or any similar district, public or private water cooperative or association or any similar organization, public or private community water system or nonprofit noncommunity water system or any other agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection with a publicly owned drinking water system or water supply system that qualifies as a community water system or nonprofit noncommunity system as defined by the Safe Drinking Water Act. "Local authority" does not include systems owned by federal agencies;

H. "operate and maintain" means to perform all necessary activities, including the replacement of equipment or appurtenances, to assure the dependable and economical function of a drinking water facility in accordance with its intended purpose; and

I. "Safe Drinking Water Act" means the federal Safe Drinking Water Act as amended in 1996 and its subsequent amendments or successor provisions."

## Section 2. Section 6-21A-4 NMSA 1978 (being Laws 1997, Chapter 144, Section 4) is amended to read:

"6-21A-4. FUND CREATED--ADMINISTRATION.--

A. There is created in the authority a revolving loan fund to be known as the "drinking water state revolving loan fund", which shall be administered by the authority. The authority is authorized to establish procedures required to administer the fund in accordance with the Safe Drinking Water Act and state laws. The authority and the department shall, whenever possible, coordinate application procedures and funding cycles with the New Mexico Community Assistance Act.

B. The following shall be deposited directly in the fund:

(1) grants from the federal government or its agencies allotted to the state for capitalization of the fund;

(2) funds as appropriated by the legislature to implement the provisions of the Drinking Water State Revolving Loan Fund Act or to provide state matching funds that are required by the terms of any federal grant under the Safe Drinking Water Act;

(3) loan principal, interest and penalty payments if required by the terms of any federal grant under the Safe Drinking Water Act;

(4) any other public or private money dedicated to the fund; and

(5) revenue transferred from other state revolving funds.

C. Money in the fund is appropriated for expenditure by the authority in a manner consistent with the terms and conditions of the federal capitalization grants and the Safe Drinking Water Act and may be used:

(1) to provide loans for the construction or rehabilitation of drinking water facilities;

(2) to buy or refinance the debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee or purchase insurance for obligations of local authorities to improve credit market access or reduce interest rates;

(4) to provide loan guarantees for similar revolving funds established by local authorities; and

(5) to provide a source of revenue or security for the repayment of principal and interest on bonds issued by the authority if the proceeds of the bonds are deposited in the fund or if the proceeds of the bonds are used to make loans to local authorities to the extent provided in the terms of the federal grant.

D. If needed to cover administrative expenses, pursuant to procedures established by the authority, the authority may impose and collect a fee from each local authority that receives financial assistance from the fund, which fee shall be used solely for the costs of administering the fund and which fee shall be kept outside the fund.

E. Money not currently needed for the operation of the fund or otherwise dedicated may be invested pursuant to the New Mexico Finance Authority Act and all interest earned on such investments shall be credited to the fund. Money remaining in the fund at the end of the fiscal year shall not revert to the general fund but shall accrue to the credit of the fund.

F. The authority shall maintain full authority for the operation of the fund in accordance with applicable federal and state law, including, in cooperation with the department, ensuring the loan recipients are on the state priority list or otherwise satisfy the Safe Drinking Water Act requirements.

G. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for fund payments, disbursements and balances and shall provide, in cooperation with the department, a biannual report and an annual independent audit on the fund to the governor and to the United States environmental protection agency as required by the Safe Drinking Water Act."

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

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HOUSE BILL 159 WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 117

**CHAPTER 117, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; REVISING PROCEDURES FOR PROVIDING NOTICE OF PROPOSED RULEMAKING BY THE COMMISSION; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 8-8-15 NMSA 1978 (being Laws 1998, Chapter 108, Section 15) is amended to read:

"8-8-15. COMMISSION RULES--PROCEDURES FOR ADOPTION.--

A. Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except after public notice and public hearing before the commission or a hearing examiner designated by the commission.

B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. Additional notice may be made by posting on the internet or by using other alternative methods of informing interested persons.

C. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.

D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.

E. All rules shall be filed in accordance with the State Rules Act. Emergency rules shall be effective on the date the rules are filed with the state records center. All other rules shall be effective fifteen days after filing, unless a later date is provided by the rule."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 191, AS AMENDED

# CHAPTER 118

**CHAPTER 118, LAWS 2001**

AN ACT

RELATING TO POST-SECONDARY EDUCATION; CHANGING THE DEFINITION OF RESIDENT STUDENT.

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

**Section 1. Section 21-1-3 NMSA 1978 (being Laws 1970, Chapter 47, Section 1, as amended) is amended to read:**

"21-1-3. STATE EDUCATIONAL INSTITUTIONS--RESIDENT STUDENTS.--

A. For the purpose of tuition payment at the resident student rates at state educational institutions, as defined in Article 12, Section 11 of the constitution of New Mexico, "resident student" includes:

(1) any person not otherwise entitled to claim residence who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty within the exterior boundaries of this state; and

(2) the spouse or dependent child of any person who qualifies under Paragraph (1) of this subsection.

B. Assignment to active duty within the exterior boundaries of this state may be established by a certificate of assignment from the commanding officer of the person so assigned.

C. For the purpose of tuition payment at resident student rates at New Mexico highlands university, "resident student" may include any person who is a Native American and a citizen of the United States.

D. For the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico, may determine

that "resident student" includes any Texas resident who resides within a one hundred thirty-five mile radius of that institution.

E. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes any student receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the constitution of New Mexico."

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HOUSE BILL 375

# CHAPTER 119

**CHAPTER 119, LAWS 2001**

AN ACT

RELATING TO THE DEPARTMENT OF HEALTH; PROVIDING FOR MEDICAL AND CLINICAL RECORDS ACCESS FOR DEPARTMENTAL QUALITY ASSURANCE AND QUALITY IMPROVEMENT ACTIVITIES; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 9-7-6 NMSA 1978 (being Laws 1977, Chapter 253, Section 7, as amended) is amended to read:

"9-7-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Health Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) conduct quality assurance and quality improvement activities;

(8) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(9) prepare an annual budget of the department;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars ($25,000) and require directors to each give bond in the penal sum of ten thousand dollars ($10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of those bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary shall be responsible for providing appropriate educational programs for all school-age persons, as defined in Section 22-1-2 NMSA 1978, who are clients, as defined in Section 43-1-3 NMSA 1978, of institutions under his authority as follows:

(1) he shall arrange with school districts for the enrollment of all school-age residents of institutions under his authority who have been evaluated and recommended for placement in a public school according to the provisions of the Department of Health Education Act. He shall notify the superintendent of public instruction prior to public school enrollment of any school-age resident under his authority; and

(2) he shall provide educational programs, in accordance with the special education rules of the state board of education, for school-age persons who are clients of institutions under his authority but who are enrolled in a public school by:

(a) using the facilities and personnel of the department;

(b) contracting with a school district for the provision of educational services; or

(c) using a combination of Subparagraphs (a) and (b) of this paragraph.

E. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. 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 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 shall be filed in accordance with the State Rules Act."

## Section 2. Section 24-1-3 NMSA 1978 (being Laws 1973, Chapter 359, Section 3, as amended) is amended to read:

"24-1-3. POWERS AND AUTHORITY OF DEPARTMENT.--The department has authority to:

A. receive such grants, subsidies, donations, allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;

B. supervise the health and hygiene of the people of the state;

C. investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;

D. establish, maintain and enforce isolation and quarantine;

E. close any public place and forbid gatherings of people when necessary for the protection of the public health;

F. establish programs and adopt rules to prevent infant mortality, birth defects and morbidity;

G. prescribe the duties of public health nurses and school nurses;

H. provide educational programs and disseminate information on public health;

I. maintain and enforce rules for the licensure of health facilities;

J. bring action in court for the enforcement of health laws and rules and orders issued by the department;

K. enter into agreements with other states to carry out the powers and duties of the department;

L. cooperate and enter into contracts or agreements with the federal government or any other person to carry out the powers and duties of the department;

M. maintain and enforce rules for the control of communicable diseases deemed to be dangerous to public health;

N. maintain and enforce rules for immunization against diseases deemed to be dangerous to the public health;

O. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;

P. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;

Q. sue and, with the consent of the legislature, be sued;

R. regulate the practice of midwifery;

S. administer legislation enacted pursuant to Title VI of the Public Health Service Act, as amended and supplemented;

T. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;

U. request and inspect, while maintaining federal and state confidentiality requirements, copies of:

(1) medical and clinical records reasonably required for the department's quality assurance and quality improvement activities; and

(2) all medical and clinical records pertaining to the individual whose death is the subject of inquiry by the department's mortality review activities; and

V. do all other things necessary to carry out its duties."

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HOUSE BILL 377

# CHAPTER 120

**CHAPTER 120, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING AN EXCEPTION TO THE OPEN CONTAINER LAW.

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

## Section 1. Section 66-8-138 NMSA 1978 (being Laws 1989, Chapter 316, Section 2, as amended) is amended to read:

"66-8-138. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN A MOTOR VEHICLE PROHIBITED--EXCEPTIONS.--

A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any public highway within this state.

B. No person shall knowingly have in his possession on his person, while in a motor vehicle upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed.

C. It is unlawful for the registered owner of any motor vehicle to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:

(1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;

(2) the living quarters of a motor home or recreational vehicle;

(3) a truck camper; or

(4) the bed of a pick-up truck when the bed is not occupied by passengers.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act or proper legal authority.

D. The provisions of this section do not apply to:

(1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes; or

(2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or agent's motor vehicle."

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HOUSE BILL 380

# CHAPTER 121

**CHAPTER 121, LAWS 2001**

AN ACT

RELATING TO MASSAGE THERAPY; PROVIDING EXEMPTIONS TO THE MASSAGE THERAPY PRACTICE ACT.

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

## Section 1. A new section of the Massage Therapy Practice Act is enacted to read:

"EXEMPTIONS.--Nothing in the Massage Therapy Practice Act shall be construed to prevent:

A. qualified members of other recognized professions that are licensed or regulated under New Mexico law from rendering services within the scope of their license or regulation; provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of an approved massage therapy school and under the supervision of a licensed massage therapy instructor;

C. visiting massage therapy instructors from another state or territory of the United States, the District of Columbia or any foreign nation from teaching massage therapy; provided the instructor is duly licensed or registered, if required, and is qualified in his place of residence for the practice of massage therapy. The board shall establish by rule the duration of stay for a visiting massage therapy instructor; and

D. sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; or other healers who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. Healers who use these practices and who apply for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act."

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HOUSE BILL 393

# CHAPTER 122

**CHAPTER 122, LAWS 2001**

AN ACT

RELATING TO PUBLIC PROPERTY; REQUIRING STATE BOARD OF FINANCE APPROVAL ON CERTAIN SALES, TRADES AND LEASES.

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

## Section 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1) 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 highway commission."

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HOUSE BILL 404

# CHAPTER 123

**CHAPTER 123, LAWS 2001**

AN ACT

RELATING TO AUTOMOBILES; CHANGING PROVISIONS OF THE MOTOR VEHICLE SALES FINANCE ACT TO COMPLY WITH FEDERAL REQUIREMENTS REGARDING DISCLOSURE OF NEGATIVE EQUITY.

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

## Section 1. Section 58-19-1 NMSA 1978 (being Laws 1959, Chapter 204, Section 1) is amended to read:

"58-19-1. SHORT TITLE.--Chapter 58, Article 19 NMSA 1978 may be cited as the "Motor Vehicle Sales Finance Act"."

## Section 2. Section 58-19-2 NMSA 1978 (being Laws 1959, Chapter 204, Section 2, as amended) is amended to read:

"58-19-2. DEFINITIONS.--As used in the Motor Vehicle Sales Finance Act:

A. "motor vehicles" means automobiles, recreational vehicles, recreational travel trailers, trailers, motorcycles, trucks, semi-trailers, truck tractors and buses designed and used primarily to transport persons or property on a public highway, farm machinery and all vehicles new or used, with any power other than muscular power except boat trailers, aircraft or any vehicle that runs only on rails or tracks, but does not

include any motor vehicle having a gross vehicle weight of ten thousand pounds or more purchased primarily for business or commercial purposes;

B. "retail buyer" or "buyer" means a person who buys a motor vehicle primarily for personal, family or household purposes from a retail seller and who executes a retail installment contract in connection therewith;

C. "retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer or subject to a retail installment contract;

D. "holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee;

E. "retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge together constitute the time price;

F. "retail installment contract" or "contract" means an agreement, entered into in this state or made subject to the laws of this state, pursuant to which the title to or a lien upon the motor vehicle that is the subject matter of a retail installment transaction is retained or taken by a retail seller from a retail buyer as security for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become or has the option of becoming the owner of the motor vehicle upon full compliance with the provisions of the contract;

G. "cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle that is the subject matter of the retail installment contract, if the sale had been a sale for cash instead of a retail installment transaction. Cash sale price may include any taxes, registration fee, certificate of title fee, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle;

H. "official fees" means the fee prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract;

I. "finance charge" means the amount agreed upon between the buyer and the seller to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price;

J. "person" means an individual, partnership, corporation, association and any other group however organized;

K. "sales finance company" means a person engaged in whole or in part in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, small loan licensee, industrial bank or investment company, if so engaged; the term also includes a retail seller engaged in whole or in part in the business of creating and holding retail installment contracts that exceed a total aggregate outstanding indebtedness of one hundred thousand dollars ($100,000);

L. "director" means the director of the financial institutions division of the regulation and licensing department; and

M. "year" means a period of three hundred sixty-five days; "month" means one-twelfth of a year; and "day" means one three-hundred-sixty-fifth of a year."

## Section 3. Section 58-19-7 NMSA 1978 (being Laws 1959, Chapter 204, Section 7, as amended) is amended to read:

"58-19-7. RETAIL INSTALLMENT CONTRACTS--REQUIREMENTS--PROHIBITIONS.--

A.

(1) A retail installment contract shall be in writing and shall be signed by both the buyer and the seller; it shall be completed as to all essential provisions prior to its signing by the buyer.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain in a size equal to at least ten point bold type the following notice: "Notice to the Buyer: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.".

(3) The seller shall deliver to the buyer or mail to him at his address shown on the contract a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract; if such goods cannot be returned, the value thereof shall be paid by the seller. Any acknowledgment by the buyer or delivery of a copy of the contract shall be in a size

equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(4) Any such agreement shall contain immediately before the buyer's signature substantially the following notice printed or typed in a size equal to at least twelve point bold type as follows:

"NOTICE TO BUYER

LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE.".

B. The contract shall contain the following items:

(1) the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle, including its make, year model, model and identification numbers or marks;

(2) the cash sale price of the motor vehicle;

(3) the amount of the buyer's down payment and whether made in money or goods;

(4) the difference between items (2) and (3);

(5) the amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits, and if it is the case, including as a benefit amounts paid or to be paid by the seller pursuant to agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(6) the amount of official fees;

(7) the principal balance, which is the sum of items (4), (5) and (6);

(8) the amount of the finance charge; and

(9) the time balance, which is the sum of items (7) and (8), payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or term thereof.

The above items need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

C. The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance division of the public regulation commission. If dual interest insurance on the motor vehicle is purchased by the holder, it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, and in such case, the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

D. If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

E. The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days, in an amount not in excess of five percent of each installment or fifteen dollars ($15.00), whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of attorney fees not exceeding fifteen percent of the amount due and payable under such contract, where such contract is referred for collection to any attorney not a salaried employee of the holder of the contract, plus the court costs.

F. A buyer may transfer his equity in the motor vehicle at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee, which shall not exceed twenty-five dollars ($25.00).

G. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after execution, except that if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its

execution. The buyer's written acknowledgement, conforming to the requirements of Paragraph (3) of Subsection A of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided and of compliance with this section in any action or proceeding by or against the holder of the contract.

H. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

I. No provision in a retail installment contract relieving the seller from liability under any legal remedies, which the buyer may have against the seller under the contract, or any separate instrument of similar import executed in connection therewith, shall be enforceable.

J. In the event that the seller or the holder of the retail installment contract repossesses a motor vehicle, the buyer shall be responsible and liable for any deficiency in accordance with Section 55-9-504 NMSA 1978."

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HOUSE BILL 426

# CHAPTER 124

**CHAPTER 124, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR ENFORCEMENT ON PRIVATE PROPERTY OF RESTRICTIONS ON THE USE OF PARKING SPACES FOR THE DISABLED.

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

## Section 1. Section 66-7-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 372) is amended to read:

"66-7-2. REFERENCE TO VEHICLES UPON THE HIGHWAYS--EXCEPTIONS.--

A. The provisions of Chapter 66, Article 7 NMSA 1978 relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.

B. The provisions of Sections 66-7-201 through

66-7-215, 66-7-352.5, 66-8-102 and 66-8-113 NMSA 1978 apply upon highways and elsewhere throughout the state."

## Section 2. Section 66-7-352.1 NMSA 1978 (being Laws 1983, Chapter 45, Section 1, as amended) is amended to read:

"66-7-352.1. SHORT TITLE.--Sections 66-7-352.1 through 66-7-352.6 NMSA 1978 may be cited as the "Disabled Parking Standards and Enforcement Act"."

## Section 3. A new section of the Disabled Parking Standards and Enforcement Act, Section 66-7-352.6 NMSA 1978, is enacted to read:

"66-7-352.6. ENFORCEMENT.--State, county and municipal law enforcement personnel have the authority to issue citations for violations of Section 66-7-352.5 NMSA 1978 in their respective jurisdictions, whether the violation occurs on public property or private property."

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HOUSE BILL 450

# CHAPTER 125

**CHAPTER 125, LAWS 2001**

AN ACT

RELATING TO DOMESTIC AFFAIRS; PROVIDING AN EXCEPTION TO THE REQUIREMENT THAT AN APPLICATION FOR A NAME CHANGE BE PUBLISHED; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 40-8-2 NMSA 1978 (being Laws 1889, Chapter 3, Section 2, as amended) is amended to read:

"40-8-2. NOTICE OF PETITION--EXCEPTION.--

A. Before making application to the court for changing or establishing a name as provided in Section 40-8-1 NMSA 1978, the applicant shall cause a notice thereof, stating the nature of the application, the time and place, when and where the application will be made, to be published in the county where the application is to be made and where the applicant resides; the notice to be published at least once each week for two consecutive weeks in some newspaper printed in the county [~~and~~]. If there is no newspaper published in the county where the applicant resides, then the notice

shall be published in a newspaper printed in the county nearest to the residence of the person and having a circulation in the county where the person resides.

B. If the court finds that publication of an applicant's name change will jeopardize the applicant's personal safety, the court shall not require publication. The court shall order all records regarding the application to be sealed. The records shall only be opened by court order based upon a showing of good cause or at the applicant's request."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 478

# CHAPTER 126

**CHAPTER 126, LAWS 2001**

AN ACT

RELATING TO REVENUE BONDS; EXEMPTING CERTAIN BOND INCOME FROM TAXATION; ENACTING NEW SECTIONS OF THE NMSA 1978.

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

## Section 1. A new section of Chapter 3, Article 31 NMSA 1978 is enacted to read:

"EXEMPTION FROM TAXATION.--The bonds authorized by Chapter 3, Article 31 NMSA 1978 and the income from the bonds or any mortgages or other instruments executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state."

## Section 2. A new section of Chapter 4, Article 62 NMSA 1978 is enacted to read:

"EXEMPTION FROM TAXATION.--The bonds authorized by Chapter 4, Article 62 NMSA 1978 and the income from the bonds or any mortgages or other instruments executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state."

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HOUSE BILL 566

# CHAPTER 127

**CHAPTER 127, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CHANGING THE DEFINITIONS OF CAMPING TRAILER, RECREATIONAL TRAVEL TRAILER AND TRAVEL TRAILER; CHANGING THE DEFINITION OF AND PROVIDING AN EXCEPTION TO WIDTH AND LOAD RESTRICTIONS FOR RECREATIONAL VEHICLES; INCREASING THE LENGTH RESTRICTION FOR MOTOR HOMES; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. 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 motor vehicle used in commerce:

(1) if the vehicle has a declared gross vehicle weight rating of twenty-six thousand one or more pounds;

(2) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(3) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable 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 2. Section 66-1-4.15 NMSA 1978 (being Laws 1990, Chapter 120, Section 16) is amended to read:

"66-1-4.15. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "railroad" means a carrier of persons or property upon cars operated upon stationary rails;

B. "railroad sign or signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

C. "railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails;

D. "reconstructed vehicle" means any vehicle assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or which, if originally otherwise assembled or constructed, has been materially altered by the removal of essential parts, new or used;

E. "recreational travel trailer" means a camping body designed to be drawn by another vehicle;

F. "recreational vehicle" means a vehicle with a camping body that has its own motive power, is affixed to or is drawn by another vehicle and includes motor homes, travel trailers and truck campers;

G. "registration" means registration certificates and registration plates issued under the laws of New Mexico pertaining to the registration of vehicles;

H. "registration number" means the number assigned upon registration by the division to the owner of a vehicle or motor vehicle required to be registered by the Motor Vehicle Code;

I. "registration plate" means the plate, marker, sticker or tag assigned by the division for the identification of the registered vehicle;

J. "residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business;

K. "revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation;

L. "right of way" means the privilege of the immediate use of the roadway;

M. "road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any significant load thereon, either independently or as any part of the weight of a vehicle or load so drawn; and

N. "roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder, and in the event a highway includes two or more separate roadways, the term "roadway" refers to any such roadway separately but not to all such roadways collectively."

## 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, 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. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

M. "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

N. "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. Section 66-7-402 NMSA 1978 (being Laws 1978, Chapter 35, Section 473, as amended) is amended to read:

"66-7-402. WIDTH OF VEHICLES.--The total outside width of any vehicle or its load, excepting mirrors, shall not exceed eight feet six inches. Safety devices up to three inches on either side of the vehicle and recreational vehicle appurtenances, including retracting awnings, up to six inches on either side of the vehicle are also excepted."

## Section 5. Section 66-7-403 NMSA 1978 (being Laws 1955, Chapter 37, Section 3, as amended) is amended to read:

"66-7-403. PROJECTING LOADS ON PASSENGER VEHICLES.--No passenger-type vehicle, except a motorcycle or recreational vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle."

## Section 6. Section 66-7-404 NMSA 1978 (being Laws 1978, Chapter 35, Section 475, as amended) is amended to read:

"66-7-404. HEIGHT AND LENGTH OF VEHICLES AND LOADS.--

A. No vehicle shall exceed a height of fourteen feet.

B. No vehicle shall exceed a length of forty feet extreme overall dimension and no motor home shall exceed a length of forty-five feet extreme overall dimension, exclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in this section. No combination of vehicles, unless otherwise exempted in this section, shall exceed an overall length of sixty-five feet, exclusive of front and rear bumpers.

C. No combination of vehicles coupled together shall consist of more than two units, except:

(1) a truck tractor and semitrailer shall be permitted to pull one trailer;

(2) a vehicle shall be permitted to pull two units, provided that the middle unit is equipped with brakes and has a weight equal to or greater than the last

unit and the total combined gross weight of the towed units does not exceed the manufacturer's stated gross weight of the towing units;

(3) a double or triple saddle-mount or fifth wheel mount of vehicles in transit by driveaway-towaway methods shall be permitted;

(4) vehicles and trailers operated by or under contract for municipal refuse systems;

(5) farm trailers, implements of husbandry and fertilizer trailers operated by or under contract to a farmer or rancher in his farming or ranching operations; and

(6) as provided in Subsections D and E of this section.

D. Exclusive of safety and energy conservation devices, refrigeration units and other devices such as coupling devices, vehicles operating a truck tractor semitrailer or truck tractor semitrailer-trailer combinations on the interstate highway system and those qualifying federal aid primary system highways designated by the secretary of the United States department of transportation, pursuant to the United States Surface Transportation Assistance Act of 1982, Public Law 97-424, Section 411, and on those highways designated by the department by rule or regulation with the concurrence of the state highway and transportation department may exceed an overall length limitation of sixty-five feet, provided that the length of the semitrailer in a truck tractor semitrailer combination does not exceed fifty-seven feet six inches and the length of the semitrailer or trailer in a truck tractor semitrailer-trailer combination does not exceed twenty-eight feet six inches. The department shall adopt rules and regulations granting reasonable access to terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers to vehicles operating in combination pursuant to this subsection. As used in this subsection, "truck tractor" means a non-cargo carrying power unit designed to operate in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the truck tractor.

E. Notwithstanding any other subsection of this section, any trailer or semitrailer combination of such dimensions as those that were in actual and lawful use in this state on December 1, 1982 may be lawfully operated on the highways of this state."

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HOUSE BILL 590

# CHAPTER 128

**CHAPTER 128, LAWS 2001**

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; REQUIRING AN EXPLANATION BY THE COURT AT THE BEGINNING OF A SENTENCING HEARING FOR A CAPITAL FELONY CASE HEARD BY A JURY; ENACTING A NEW SECTION OF THE NMSA 1978.

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

## Section 1. A new section 31-18-14.1 NMSA 1978 is enacted to read:

"31-18-14.1. CAPITAL FELONY CASE HEARD BY A JURY--SENTENCING HEARING--EXPLANATION BY COURT TO THE JURY.--At the beginning of a sentencing hearing for a capital felony case, subsequent to a verdict by the jury that the defendant is guilty of a capital felony, the court shall explain to the jury that a sentence of life imprisonment means that the defendant shall serve thirty years of his sentence before he becomes eligible for a parole hearing, as provided in Section 31-21-10 NMSA 1978."

## Section 2. APPLICABILITY.--The provisions of Section 31-18-14.1 NMSA 1978 apply to persons convicted of a capital felony offense committed on or after July 1, 2001.

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 694

# CHAPTER 129

**CHAPTER 129, LAWS 2001**

AN ACT

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; ESTABLISHING DUTIES IN REGARD TO CHILD-CARE REIMBURSEMENT; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. 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 state services and resources arising out of state policy and local planning processes;

B. strengthen collaboration and coordination in state and local services for children, youth and families;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families;

D. develop and disseminate a readily accessible resource database;

E. develop and use community or regional councils to establish community priorities and service strategies in order to enhance community-level decision-making and creative solutions;

F. develop standards of service that focus on coordination, monitoring and accountability, including the development of a plan for both process and outcome assessment and evaluation;

G. review and comment on policies of other departments that affect children, youth and families, including assisting in the development of common contracting procedures and common service definitions;

H. develop a uniform system of access to services for children, youth and families;

I. 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 are developmentally disabled or mentally disordered, when in-state alternatives are available; and

J. 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."

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HOUSE BILL 736

# CHAPTER 130

**CHAPTER 130, LAWS 2001**

AN ACT

RELATING TO CIVIL ACTIONS; CHANGING THE DISTRIBUTION OF PROCEEDS FROM WRONGFUL DEATH JUDGMENTS.

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

## Section 1. Section 41-2-3 NMSA 1978 (being Laws 1882, Chapter 61, Section 3, as amended) is amended to read:

"41-2-3. PERSONAL REPRESENTATIVE TO BRING ACTION--DAMAGES--DISTRIBUTION OF PROCEEDS.--Every action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the personal representative of the deceased person, and the jury in every such action may give such damages, compensatory and exemplary, as they deem fair and just, taking into consideration the pecuniary injury resulting from the death to the surviving party entitled to the judgment, or any interest in the judgment, recovered in such action and also having regard to the mitigating or aggravating circumstances attending the wrongful act, neglect or default. The proceeds of any judgment obtained in any such action shall not be liable for any debt of the deceased; provided the decedent has left a spouse, child, father, mother, brother, sister or child or children of the deceased child, as defined in the New Mexico Probate Code, but shall be distributed as follows:

A. if there is a surviving spouse and no child, then to the spouse;

B. if there is a surviving spouse and a child or grandchild, then one-half to the surviving spouse and the remaining one-half to the children and grandchildren,

the grandchildren taking by right of representation;

C. if there is no husband or wife, but a child or grandchild, then to such child and grandchild by right of representation;

D. if the deceased is a minor, childless and unmarried, then to the father and mother who shall have an equal interest in the judgment, or if either of them is dead, then to the survivor;

E. if there is no father, mother, husband, wife, child or grandchild, then to a surviving brother or sister if there are any; and

F. if there is no kindred as named in Subsections A through E of this section, then the proceeds of the judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased

persons."

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HOUSE BILL 216, AS AMENDED

# CHAPTER 131

**CHAPTER 131, LAWS 2001**

AN ACT

RELATING TO ELECTRONIC TRANSACTIONS; ENACTING THE UNIFORM

ELECTRONIC TRANSACTIONS ACT; ESTABLISHING STANDARDS FOR THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN TRANSACTIONS.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Uniform Electronic Transactions Act".

## Section 2. DEFINITIONS.--As used in the Uniform Electronic Transactions Act:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction;

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law;

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;

(7) "electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;

(8) "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(9) "governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state;

(10) "information" means data, text, images, sounds, codes, computer programs, software, databases or the like;

(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity;

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

(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures;

(15) "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, an Indian band or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.

## Section 3. SCOPE.--

(a) Except as otherwise provided in Subsection (b), the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

(b) The Uniform Electronic Transactions Act does not apply to:

(1) a transaction to the extent it is governed by:

(i) a law governing the creation and execution of wills, codicils or testamentary trusts;

(ii) the Uniform Commercial Code, other than Sections 55-1-107 and 55-1-206 NMSA 1978 and Chapter 55, Articles 2 and 2A NMSA 1978;

(iii) the Uniform Anatomical Gift Act;

(iv) the Uniform Health-Care Decisions Act; or

(v) a statute, regulation or other rule of law that governs adoption, divorce or other family law matters;

(2) a notice concerning:

(i) the cancellation or termination of utility services, including water, heat or power services;

(ii) default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; or

(iii) the cancellation or termination of health insurance benefits or life insurance benefits, but not including annuities.

(c) The Uniform Electronic Transactions Act applies to an electronic record or electronic signature otherwise excluded from the application of that act under Subsection (b) to the extent it is governed by a law other than those specified in Subsection (b).

(d) A transaction subject to the Uniform Electronic Transactions Act is also subject to other applicable substantive law.

**Section 4. PROSPECTIVE APPLICATION.--The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of that act.**

## Section 5. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES--VARIATION BY AGREEMENT.--

(a) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) The Uniform Electronic Transactions Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in the Uniform Electronic Transactions Act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the Uniform Electronic Transactions Act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by the Uniform Electronic Transactions Act and other applicable law.

## Section 6. CONSTRUCTION AND APPLICATION.--The Uniform Electronic Transactions Act must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Electronic Transactions Act among states enacting it.

## Section 7. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES AND ELECTRONIC CONTRACTS.--

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

## Section 8. PROVISION OF INFORMATION IN WRITING--PRESENTATION OF RECORDS.--

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than the Uniform Electronic Transactions Act requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in Subsection (d)(2), the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than the Uniform Electronic Transactions Act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than the Uniform Electronic Transactions Act to send, communicate or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

## Section 9. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.--

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

## Section 10. EFFECT OF CHANGE OR ERROR.--If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither Paragraph (1) nor Paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

**Section 11. NOTARIZATION AND ACKNOWLEDGMENT.--If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.**

**Section 12. RETENTION OF ELECTRONIC RECORDS--ORIGINALS.--**

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of the Uniform Electronic Transactions Act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

## Section 13. ADMISSIBILITY IN EVIDENCE.--In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

## Section 14. AUTOMATED TRANSACTION.--In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

## Section 15. TIME AND PLACE OF SENDING AND RECEIPT.--

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

## Section 16. TRANSFERABLE RECORDS.--

(a) As used in this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in Paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 55-1-201 NMSA 1978, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Sections 55-3-302, 55-7-501 or 55-9-308 NMSA 1978 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that

the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

## Section 17. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS BY GOVERNMENTAL AGENCIES.--Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

## Section 18. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.--

(a) Except as otherwise provided in Section 12(f), each governmental agency of this state shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under Subsection (a), the governmental agency, giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 12(f), the Uniform Electronic Transactions Act does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

**Section 19. INTEROPERABILITY.--The governmental agency of this state which adopts standards pursuant to Section 18 may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.**

**Section 20. SEVERABILITY CLAUSE.--If any provision of the Uniform Electronic Transactions Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.**

**Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 232, AS AMENDED

# CHAPTER 132

**CHAPTER 132, LAWS 2001**

AN ACT

RELATING TO CHILD PROTECTION; ENACTING THE SAFE HAVEN FOR INFANTS ACT; PROVIDING PROTECTIONS FOR NEWBORN CHILDREN WHO MIGHT OTHERWISE BE ABANDONED; 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. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Safe Haven for Infants Act".**

## Section 2. DEFINITIONS.--As used in the Safe Haven For Infants Act:

A. "hospital" means an acute care general hospital or health care clinic licensed by the state;

B. "Indian child" means an infant who is the biological child of an enrolled member of an Indian nation, pueblo or tribe;

C. "infant" means a child no more than ninety days old, as determined within a reasonable degree of medical certainty; and

D. "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the hospital.

## Section 3. LEAVING AN INFANT.--

A. A person may leave an infant with the staff of a hospital without being subject to prosecution for abandonment or abuse if the infant was born within ninety days of being left at the hospital, as determined within a reasonable degree of medical certainty and if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to Section 30-6-1 NMSA 1978.

B. A hospital may ask the person leaving the infant for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the hospital.

C. The hospital is deemed to have received consent for medical services provided to an infant left at a hospital in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the hospital.

## Section 4. HOSPITAL PROCEDURES.--

A. A hospital shall accept an infant who is left at the hospital in accordance with the provisions of the Safe Haven For Infants Act.

B. In conjunction with the children, youth and families department, a hospital shall develop procedures for appropriate staff to accept and provide necessary medical services to an infant left at the hospital and to the person leaving the infant at the hospital, if necessary.

C. Upon receiving an infant who is left at a hospital in accordance with the provisions of the Safe Haven for Infants Act, the hospital may provide the person leaving the infant with:

(1) information about adoption services, including information about the availability of confidential adoption services;

(2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and

(3) written information regarding who to contact at the children, youth and families department if the parent decides to seek reunification with the infant.

D. No later than twenty-four hours after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a hospital shall inform the children, youth and families department that the infant has been left at the hospital.

## Section 5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The children, youth and families department shall be deemed to have immediate custody of an infant who has been left at a hospital according to the provisions of the Safe Haven for Infants Act.

B. Upon receiving a report of an infant left at a hospital pursuant to the provisions of the Safe Haven for Infants Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act.

C. When an infant is taken into custody by the children, youth and families department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child, pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of Section 32A-5-5 NMSA 1978 regarding Indian child placement preferences.

D. The children, youth and families department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and distributing it to hospitals.

E. An infant left at a hospital in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services.

## Section 6. CONFIDENTIALITY.--Information regarding a person leaving an infant at a hospital in compliance with the Safe Haven

**for Infants Act or information received during an abuse or neglect investigation by the children, youth and families department shall remain confidential, pursuant to the confidentiality section of the Abuse and Neglect Act.**

## Section 7. PROCEDURE IF REUNIFICATION IS SOUGHT.--

A. If a person seeks reunification with the infant previously left at the hospital and the person's DNA matches the infant's DNA, that person shall have standing to participate in all proceedings regarding the infant pursuant to the provisions of the Abuse and Neglect Act.

B. There shall be no presumption of abuse or neglect against a person seeking reunification pursuant to Subsection A of this section provided that the person seeks reunification within thirty days of the date the infant was left at a hospital in accordance with the provisions of the Safe Haven for Infants Act.

## Section 8. IMMUNITY.--A hospital and its staff are immune from criminal liability and civil liability for accepting an infant in compliance with the provisions of the Safe Haven for Infants Act but not for subsequent negligent medical care or treatment of the infant.

## Section 9. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a

misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm or death to the child, he is guilty of a first degree felony.

E. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital."

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

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HOUSE BILL 251, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 133

**CHAPTER 133, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT; CLARIFYING THE DEFINITION OF "POTENTIAL EMISSION RATE"; PROVIDING FOR LIMITATIONS ON CIVIL ACTIONS FOR VIOLATION OF THE ACT.

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

## Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967, Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS.--As used in the Air Quality Control Act:

A. "air contaminant" means a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof;

B. "air pollution" means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property;

C. "department" means the department of environment;

D. "director" means the administrative head of a local agency;

E. "emission limitation" or "emission standard" means a requirement established by the environmental improvement board or the local board, the department, the local authority or the local agency or pursuant to the federal act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction;

F. "federal act" means the federal Clean Air Act, its subsequent amendments and successor provisions;

G. "federal standard of performance" means a standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

H. "hazardous air pollutant" means an air contaminant that has been listed as a hazardous air pollutant pursuant to the federal act;

I. "local agency" means the administrative agency established by a local authority pursuant to Paragraph (2) of Subsection A of Section 74-2-4 NMSA 1978;

J. "local authority" means any of the following political subdivisions of the state that have, by following the procedure set forth in Subsection A of Section 74-2-4 NMSA 1978, assumed jurisdiction for local administration and enforcement of the Air Quality Control Act:

(1) a county that was a class A county as of January 1, 1980; or

(2) a municipality with a population greater than one hundred thousand located within a county that was a class A county as of January 1, 1980;

K. "local board" means a municipal, county or joint air quality control board created by a local authority;

L. "mandatory class I area" means any of the following areas in this state that were in existence on August 7, 1977:

(1) national wilderness areas that exceed five thousand acres in size; and

(2) national parks that exceed six thousand acres in size;

M. "modification" means a physical change in, or change in the method of operation of, a source that results in an increase in the potential emission rate of a regulated air contaminant emitted by the source or that results in the emission of a regulated air contaminant not previously emitted, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental improvement board or the local board or pursuant to the federal act; or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material or if use of an alternate fuel or raw material is caused by a natural gas curtailment or emergency allocation or an other lack of supply of natural gas;

N. "nonattainment area" means for an air contaminant an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the federal act;

O. "person" includes an individual, partnership, corporation, association, the state or political subdivision of the state and any agency, department or instrumentality of the United States and any of their officers, agents or employees;

P. "potential emission rate" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department or the local agency pursuant to the Air Quality Control Act or the federal act;

Q. "regulated air contaminant" means an air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the federal act;

R. "secretary" means the secretary of environment;

S. "significant deterioration" means an increase in the ambient concentrations of an air contaminant above the levels allowed by the federal act or federal regulations for that air contaminant in the area within which the increase occurs;

T. "source" means a structure, building, equipment, facility, installation or operation that emits or may emit an air contaminant;

U. "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction;

V. "state implementation plan" means a plan submitted by New Mexico to the federal environmental protection agency pursuant to 42 U.S.C. Section 7410; and

W. "toxic air pollutant" means an air contaminant, except a hazardous air pollutant, classified by the environmental improvement board or the local board as a toxic air pollutant."

## Section 2. 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. 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

74-2-16 NMSA 1978 if collected by a local agency pursuant to a permit regulation adopted by the local board pursuant to this section."

## Section 3. Section 74-2-12 NMSA 1978 (being Laws 1992, Chapter 20, Section 14) is amended to read:

"74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD CITATIONS.--

A. When, on the basis of any information, the secretary or the director determines that a person has violated or is violating a requirement or prohibition of the Air Quality Control Act, a regulation promulgated pursuant to that act or a condition of a permit issued under that act, the secretary or the director may:

(1) issue a compliance order within one year after the violation known by the department or the local agency 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; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit, or portion thereof, issued by the secretary or the director. Any penalty assessed in the order shall not exceed fifteen thousand dollars ($15,000) per day of noncompliance for each violation.

C. An order issued pursuant to Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named therein submits a written request to the secretary or the director for a public hearing. Upon such request, the secretary or the director shall promptly conduct a public hearing. The secretary or the director 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 his recommendation based thereon to the secretary or the director, who shall make the final decision.

D. The environmental improvement board or the local board may implement a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed one thousand dollars ($1,000) per day of violation may be issued by officers or employees of the department or the local agency as designated by the secretary or the director.

E. A person to whom a field citation is issued pursuant to Subsection D of this section may, within a reasonable time as prescribed by regulation by the environmental improvement board or the local board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

F. Payment of a civil penalty required by a field citation issued pursuant to Subsection D of this section shall not be a defense to further enforcement by the department or the local agency to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act if the violation continues.

G. In determining the amount of a penalty to be assessed pursuant to this section, the secretary, the director or the person issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

H. In connection with a proceeding under this section, the secretary or the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

I. Penalties collected pursuant to an administrative order or a field citation shall be deposited in the:

(1) municipal or county general fund, as applicable, if the administrative order or field citation was directed to a source located within a local authority; or

(2) state general fund if the administrative order or field citation was directed to any other source."

## Section 4. Section 74-2-12.1 NMSA 1978 (being Laws 1992, Chapter 20, Section 15) is amended to read:

"74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT OR LOCAL AUTHORITY--LIMITATION OF ACTIONS.--

A. A person who violates a provision of the Air Quality Control Act or a regulation, permit condition or emergency order adopted or issued pursuant to that act may be assessed a civil penalty not to exceed fifteen thousand dollars ($15,000) for each day during any portion of which a violation occurs.

B. In an action to enforce the provisions of the Air Quality Control Act or an ordinance, regulation, permit condition or emergency order, adopted, imposed or issued pursuant to that act:

(1) the department shall be represented by the attorney general;

(2) a local authority that is a municipality shall be represented by the attorney of the municipality; and

(3) a local authority that is a county shall be represented by the district attorney within whose judicial district the county lies.

C. No action for civil penalty shall be commenced more than five years from the date the violation was known by the department or the local agency."

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# CHAPTER 134

**CHAPTER 134, LAWS 2001**

AN ACT

RELATING TO TAXATION; PHASING IN A GROSS RECEIPTS TAX CREDIT FOR A PORTION OF NAVAJO NATION TAXES PAID ON RECEIPTS FROM SELLING COAL; ENACTING AN INTERGOVERNMENTAL TAX CREDIT FOR THE SEVERANCE OF COAL ON TRIBAL LAND; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO COOPERATIVE AGREEMENTS WITH THE NAVAJO NATION; 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 Gross Receipts and Compensating Tax Act, Section 7-9-88.2 NMSA 1978, is enacted to read:

"7-9-88.2. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO NAVAJO NATION ON RECEIPTS FROM SELLING COAL.--

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

(1) for the period from July 1, 2001 through June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half 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 same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts 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 same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation 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 Navajo Nation;

(3) is levied on the receipts from selling coal 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 Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half 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 same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land 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 same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation."

## Section 2. A new Section 7-29C-2 NMSA 1978 is enacted to read:

"7-29C-2. INTERGOVERNMENTAL TAX CREDIT--SEVERANCE TAX ON COAL.--

A. Any person who is liable pursuant to Section 7-26-6 NMSA 1978 for the payment of the severance tax on coal severed and saved from tribal land is entitled to a credit to be computed under this section and to be deducted from the payment of the indicated tax. The credit provided by this section may be referred to as the "intergovernmental coal severance tax credit".

B. For the purposes of this section, "tribal land" means all land in New Mexico that, on March 1, 2001, was within the exterior boundaries of the reservation or pueblo grant of an Indian nation, tribe or pueblo, was within a dependent Indian community of the Indian nation, tribe or pueblo or was held in trust by the United States for the Indian nation, tribe or pueblo.

C. The intergovernmental coal severance tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of tax due under one or more taxes in effect on March 1, 2001 imposed by the Indian nation, tribe or pueblo upon coal severed and saved from the tribal land of that Indian nation, tribe or pueblo, the value of coal severed and saved, the privilege of severing coal or the value of the leasehold interest; or

(2) the aggregate amount of severance tax and surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon coal severed and saved from the tribal land of the Indian nation, tribe or pueblo.

D. If, after March 1, 2001, an Indian nation, tribe or pueblo increases any severance, privilege, possessory interest or similar tax applicable to coal to which the tax credits provided by this section apply, the amount of the intergovernmental coal severance tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 2001. The expiration of a partial or total waiver from the tribal tax granted prior to March 1, 2001 does not constitute an increase in the tribal tax.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of severance tax and the amount of surtax due.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

G. The taxation and revenue department is authorized to promulgate rules or instructions prescribing the method by which a taxpayer may allocate credit for a tax imposed by the Indian nation, tribe or pueblo on a basis other than monthly against the monthly amounts of severance tax and surtax due."

## Section 3. A new section of the Taxation and Revenue Department Act, Section 9-11-12.2 NMSA 1978, is enacted to read:

"9-11-12.2. COOPERATIVE AGREEMENTS WITH NAVAJO NATION.--

A. The secretary may enter into cooperative agreements with the Navajo Nation for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the Navajo Nation 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 the Navajo Nation and for the receipt of money collected by the Navajo Nation 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 Navajo Nation, 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 the Navajo Nation 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 Navajo Nation. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the Navajo Nation that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo."

## Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 293, AS AMENDED

# CHAPTER 135

**CHAPTER 135, LAWS 2001**

AN ACT

RELATING TO TAXATION; ENACTING A NEW SECTION OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO PROVIDE A COMPENSATING TAX DEDUCTION FOR CERTAIN CONTRIBUTIONS OF INVENTORY.

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--COMPENSATING TAX--CONTRIBUTIONS OF INVENTORY TO CERTAIN ORGANIZATIONS AND GOVERNMENTAL AGENCIES.--

A. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, may be deducted in computing the compensating tax due, provided that the contribution is deductible for federal income tax purposes by the person from whose inventory the property was withdrawn or, if the person from whose inventory the property was withdrawn is a pass-through entity as that term is defined in Section 7-3-2 NMSA 1978, the contribution is deductible by the owner or owners of the pass-through entity.

B. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted in computing the compensating tax due.

C. Except as provided otherwise in Subsection D of this section, the value of tangible personal property that is removed from inventory and contributed to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on that Indian reservation or pueblo grant may be deducted in computing the compensating tax due.

D. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) a contribution of metalliferous mineral ore;

(2) a contribution of tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) a contribution of tangible personal property that will become an ingredient or component part of a construction project; or

(4) a contribution of tangible personal property utilized or produced in the performance of a service.

E. For purposes of this section:

(1) "inventory" means tangible personal property held for sale or lease in the ordinary course of business; and

(2) "contributed" or "contribution" means a transfer of ownership without consideration. Public acknowledgment of the contribution does not constitute consideration for the purpose of this section."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 307, AS AMENDED

# CHAPTER 136

**CHAPTER 136, LAWS 2001**

AN ACT

RELATING TO HEALTH; PERMITTING MANDATORY TESTING FOR VIRAL HEPATITIS IN CERTAIN CIRCUMSTANCES; LIMITING DISCLOSURE; PROVIDING PENALTIES.

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

## Section 1. TESTING OF PERSONS FOR HEPATITIS--CONSENT NOT REQUIRED.--

A. As used in this section:

(1) "exposed individual" means a health care provider or first responder, including an employee, volunteer or independent contracted agent of a health care provider or law enforcement agency, while acting within the scope of his employment, who is significantly exposed to the blood or other potentially infectious material of another person, when the exposure is proximately the result of the activity of the exposed individual acting within the scope of his employment;

(2) "significantly exposed" means direct contact with blood or other potentially infectious material of a source individual in a manner that is capable of transmitting viral hepatitis; and

(3) "source individual" means a person identified as at-risk for or believed to have viral hepatitis, whose blood or other potentially infectious material may have been or has been the source of a significant exposure.

B. A test designed to identify the viral hepatitis, its antigens or antibodies may be performed without the consent of a source individual when an exposed individual is significantly exposed.

C. If consent to perform a test on a source individual cannot be obtained on a voluntary basis, the exposed individual may petition the court to order that a test be performed on the source individual; provided that the same test shall first be performed on the exposed individual. The test may be performed on the source individual regardless of the result of the test performed on the exposed individual. If the exposed individual is a minor or incompetent, the parent or guardian may petition the court to order that a test be performed on the source individual.

D. The court may issue an order based on a finding of good cause after a hearing at which both the source individual and the exposed individual have the right to be present. The hearing shall be conducted within twenty-four hours after the petition is filed. The petition and all proceedings in connection with the petition shall be under seal. The test shall be administered on the source individual within twenty-four hours after the order for testing is entered.

E. Pursuant to rules adopted by the department of health, the results of the test shall be disclosed only to the source individual, to the exposed individual or, in the case of a minor, to the exposed individual's parent or guardian and to the infectious disease bureau of the public health division of the department of health.

**Section 2. CONFIDENTIALITY.--No person or the person's agents or employees who require or administer a test for viral hepatitis shall disclose the identity of any person upon whom a test is performed**

**or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons:**

A. the subject of the test or the subject's legally authorized representative, guardian or legal custodian;

B. any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

C. an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;

D. the department of health in accordance with reporting requirements established by rule;

E. a health facility or health care provider that procures, processes, distributes or uses:

(1) a human body part from a deceased person, with respect to medical information regarding that person;

(2) semen provided prior to the effective date of this 2001 act for the purpose of artificial insemination;

(3) blood or blood products for transfusion or injection; or

(4) human body parts for transplant with respect to medical information regarding the donor or recipient;

F. health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, so long as any identity remains confidential;

G. authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and

H. for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.

**Section 3. PENALTIES.--No person to whom the results of a viral hepatitis test have been disclosed may disclose the test results to**

**another person except as authorized in this 2001 act. A person who makes an unauthorized disclosure of this information is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars ($500) or both.".**

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 335

# CHAPTER 137

**CHAPTER 137, LAWS 2001**

AN ACT

RELATING TO NURSING; EXPANDING THE PRACTICE OF CERTIFIED NURSE PRACTITIONERS AND CERTIFIED REGISTERED NURSE ANESTHETISTS; INCREASING CAPS ON THE FEES FOR REVIEW AND APPROVAL OF HEMODIALYSIS TECHNICIAN TRAINING PROGRAMS AND CERTIFIED MEDICATION AIDES PROGRAMS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS; PROVIDING FOR TEMPORARY LICENSING OF NURSES; PROVIDING FOR CONSENT OF DIVERSION PROGRAM PARTICIPANTS FOR USE OF FILE INFORMATION; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

## Section 1. Section 61-3-2 NMSA 1978 (being Laws 1968, Chapter 44, Section 2, as amended) is amended to read:

"61-3-2. PURPOSE.--The purpose of the Nursing Practice Act is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians and medication aides in the state."

## Section 2. 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;

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. "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;

K. "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;

L. "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;

M. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board; and

N. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise."

## Section 3. 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. 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. 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. 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 4. 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; and

(5) conduct hearings on charges relating to discipline of a hemodialysis technician and may deny certification, place a technician on probation or suspend or revoke a certificate in accordance with the Uniform Licensing Act.

D. Every applicant for certification as a hemodialysis technician shall pay the required application fee, submit written evidence of having completed a training program and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. A certificate shall be renewed every two years by the last day of the hemodialysis technician's 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 5. Section 61-3-10.2 NMSA 1978 (being Laws 1991, Chapter 209, Section 1, as amended) is amended to read:

"61-3-10.2. MEDICATION AIDES.--

A. This section shall permit the operation of a program for certification of medication aides and medication aide training programs in licensed intermediate care facilities for the mentally retarded. The purpose of the program is to effectuate a cost-containment and efficient program for the administration of the medicaid program. It is the intention of the legislature that costs of continuing the program shall be provided through appropriate agreements between the board and licensed intermediate care facilities for the mentally retarded.

B. For the purposes of this section, "medication aide" means a person who, under the supervision of a licensed nurse in a licensed intermediate care facility for the mentally retarded, is permitted to administer oral medications according to the standards adopted by the board.

C. Unless certified as a medication aide under the Nursing Practice Act, no person shall:

(1) practice as a medication aide; or

(2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

D. The board shall:

(1) maintain a permanent register of all persons to whom certification to practice as a certified medication aide is provided;

(2) adopt rules and regulations that set reasonable requirements for medication aide educational or training programs and certification that protect the health and well-being of the mentally retarded while facilitating low-cost access to medication services;

(3) adopt rules and regulations governing the supervision of medication aides by licensed nurses, which shall include but not be limited to standards for medication aides and performance evaluations of medication aides; and

(4) conduct hearings upon charges relating to discipline of a certified medication aide or the denial, suspension or revocation of a medication aide certificate in accordance with the Uniform Licensing Act.

E. Every applicant for certification as a medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of medication aides and successfully complete a board-approved examination.

F. The board shall issue a certificate enabling a person to function as a medication aide to any person who fulfills the requirements for medication aides set by law.

G. Every certificate issued by the board to practice as a medication aide shall be renewed every two years by the last day of the medication aide's birth month and upon payment of the required fee. The medication aide seeking renewal shall submit proof of employment as a medication aide and proof of having met any continuing education requirements adopted by the board.

H. Applicants for certification or renewal of certification as certified medication aides shall pay the following fees:

(1) for initial certification by examination or certification after a failure to renew timely an initial certification, the fee shall be set by the board not to exceed thirty dollars ($30.00); and

(2) for renewal of certification, the fee shall be set by the board not to exceed thirty dollars ($30.00).

I. The board shall:

(1) prescribe standards and approve curricula for educational or training programs preparing persons as medication aides;

(2) set a reasonable fee for the review and approval of educational or training programs for certification as certified medication aides not to exceed 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 6. Section 61-3-13 NMSA 1978 (being Laws 1968, Chapter 44, Section 10, as amended) is amended to read:

"61-3-13. QUALIFICATIONS FOR LICENSURE AS A REGISTERED NURSE.--Before being considered for licensure as a registered nurse, either by endorsement or examination, under Section 61-3-14 NMSA 1978, an applicant shall:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation; 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 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 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 61-3-23.2 NMSA 1978 (being Laws 1991, Chapter 190, Section 14, as amended) is amended to read:

"61-3-23.2. CERTIFIED NURSE PRACTITIONER--QUALIFICATIONS--PRACTICE--EXAMINATION--ENDORSEMENT.--

A. The board may license for advanced practice as a certified nurse practitioner an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a program for the education and preparation of nurse practitioners; provided that if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at the master's level or higher;

(3) has successfully completed the national certifying examination in the applicant's specialty area; and

(4) is certified by a national nursing organization.

B. Certified nurse practitioners may:

(1) perform an advanced practice that is beyond the scope of practice of professional registered nursing;

(2) practice independently and make decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription and distribution of dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act; and

(3) serve as a primary acute, chronic long-term and end of life health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, regulations, guidelines and formularies for individual certified nurse practitioners promulgated by the board.

D. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may distribute to their patients dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act.

E. Certified nurse practitioners licensed by the board on and after December 2, 1985 shall successfully complete a national certifying examination and shall maintain national professional certification in their specialty area. Certified nurse practitioners licensed by a board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization."

## Section 9. Section 61-3-23.3 NMSA 1978 (being Laws 1991, Chapter 190, Section 15, as amended) is amended to read:

"61-3-23.3. CERTIFIED REGISTERED NURSE ANESTHETIST--

QUALIFICATIONS--LICENSURE--PRACTICE--ENDORSEMENT.--

A. The board may license for advanced practice as a certified registered nurse anesthetist an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a nurse anesthesia education program accredited by the council on accreditation of nurse anesthesia education programs; provided that if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at a master's level or higher; and

(3) is certified by the council on certification of nurse anesthetists.

B. A certified registered nurse anesthetist may provide pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current American association of nurse anesthetists' guidelines for nurse anesthesia practice.

C. Certified registered nurse anesthetists shall function in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978. The certified registered nurse anesthetist shall collaborate with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. As used in this subsection, "collaboration" means the process in which each health care provider contributes his respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

D. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice is authorized to prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the emergency procedures, perioperative care or perinatal care environments. Dangerous drugs and controlled substances, pursuant to the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act may be prescribed and administered.

E. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice may prescribe in accordance with rules, regulations and guidelines. The board shall adopt rules concerning a prescriptive authority formulary for certified registered nurse anesthetists that shall be based on the scope of practice of certified registered nurse anesthetists. The board, in collaboration with the New Mexico board of medical examiners, shall develop the formulary. Certified registered nurse anesthetists who prescribe shall do so in accordance with the prescriptive authority formulary.

F. A health care facility may adopt policies relating to the providing of anesthesia care.

G. A certified registered nurse anesthetist licensed by the board shall maintain this certification with the American association of nurse anesthetists' council on certification."

## Section 10. 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. Applicants for renewal who have not been actually engaged in nursing for two years or more shall furnish the board evidence of having completed refresher courses of continuing education as required by regulations adopted by the board.

E. Any person who allows his license to lapse by failure to secure renewal as provided in this section shall be reinstated by the board on payment of the fee for the current two years plus a reinstatement fee to be set by the board in an amount that shall not exceed two hundred dollars ($200), provided that all requirements have been met."

## Section 11. Section 61-3-28 NMSA 1978 (being Laws 1968, Chapter 44, Section 24, as amended) is amended to read:

"6l-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 or reprimand or place a licensee on probation upon grounds that the licensee or applicant:

(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."

## Section 12. Section 61-3-29.1 NMSA 1978 (being Laws 1987, Chapter 285, Section 1, as amended) is amended to read:

"61-3-29.1. DIVERSION PROGRAM CREATED--ADVISORY COMMITTEE--RENEWAL FEE--REQUIREMENTS--IMMUNITY FROM CIVIL ACTIONS.--

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency. At least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or his designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

(1) establish criteria for continuance in the program;

(2) develop a written diversion program contract to be approved by the board that sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;

(3) recommend to the board in favor of or against each nurse's discharge from the diversion program;

(4) evaluate each nurse's progress in recovery and compliance with his diversion program contract;

(5) report violations to the board;

(6) submit an annual report to the board; and

(7) coordinate educational programs and research related to chemically dependent nurses.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars ($20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except when used to make a report to the board concerning a nurse who is not cooperating and complying with the diversion program

contract or, with written consent of a nurse, when used for research purposes as long as the nurse is not specifically identified. However, such files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. Any person making a report to the board or to a regional advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action resulting from such reports if the reports are made in good faith and with some reasonable basis in fact.

G. Any person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section or with the rules and regulations adopted by the board pursuant to this section or with the written diversion program contract or with any amendments to the written diversion program contract may be subject to disciplinary action in accordance with Section 61-3-28 NMSA 1978."

## Section 13. Section 61-3-30 NMSA 1978 (being Laws 1968, Chapter 44, Section 26, as amended) is amended to read:

"61-3-30. VIOLATIONS--PENALTIES.--It is a misdemeanor for a person, firm, association or corporation to:

A. sell, fraudulently obtain or furnish a nursing diploma, license, examination or record or to aid or abet therein;

B. practice professional nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so under the provisions of that act;

C. practice licensed practical nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so under the provisions of that act;

D. use in connection with his name a designation tending to imply that such person is a registered nurse or a licensed practical nurse unless duly licensed under the provisions of the Nursing Practice Act;

E. conduct a school of nursing or a course for the education of professional or licensed practical nurses for licensing unless the school or course has been approved by the board;

F. practice nursing after his license has lapsed or been suspended or revoked. Such person shall be considered an illegal practitioner;

G. employ unlicensed persons to practice as registered nurses or as licensed practical nurses;

H. practice or employ a person to practice as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist unless endorsed as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist pursuant to the Nursing Practice Act; or

I. otherwise violate a provision of the Nursing Practice Act.

The board shall assist the proper legal authorities in the prosecution of all persons who violate a provision of the Nursing Practice Act. In prosecutions under the Nursing Practice Act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt constitutes a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars ($1,000) or both."

## Section 14. A new section of the Nursing Practice Act is enacted to read:

"TEMPORARY LICENSURE.--An applicant for nurse licensure pursuant to the Nursing Practice Act may be issued a temporary license for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met the licensure requirements set out in that act, whichever is less."

## Section 15. REPEAL.--Sections 61-3-15 and 61-3-20 NMSA 1978 (being Laws 1968, Chapter 44, Section 12 and Laws 1968, Chapter 44, Section 17, as amended) are repealed.

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HOUSE BILL 337, AS AMENDED

# CHAPTER 138

**CHAPTER 138, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE KNOWN AS THEFT OF IDENTITY; PRESCRIBING PENALTIES; ENACTING A NEW SECTION OF THE CRIMINAL CODE.

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

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

"THEFT OF IDENTITY.--

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another.

B. As used in this section, "personal identifying information" means information that alone or in conjunction with other information identifies a person, including the person's name, address, telephone number, driver's license number, social security number, place of employment, maiden name of the person's mother, demand deposit account number, checking or savings account number, credit card or debit card number, personal identification number, passwords or any other numbers or information that can be used to access a person's financial resources.

C. Whoever commits theft of identity is guilty of a misdemeanor.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

E. In a prosecution brought pursuant to this section, the theft of identity shall be considered to have been committed in the county where the person whose identifying information was appropriated resided at the time of the offense, or in which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

F. A person found guilty of theft of identity shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the theft of identity. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing his credit history or credit rating or costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the theft of identity.

G. The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct a public record that contains false information as a result of the theft of identity."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 317 & HOUSE CONSUMER AND

PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR HOUSE BILL 347, AS AMENDED

# CHAPTER 139

**CHAPTER 139, LAWS 2001**

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING THE SECURED TRANSACTIONS ARTICLE OF THE UNIFORM COMMERCIAL CODE; AMENDING OTHER LAWS TO CONFORM TO THE REVISED PROVISIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 55-9-101 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-101) is repealed and a new Section 55-9-101 NMSA 1978 is enacted to read:

"55-9-101. SHORT TITLE.--Chapter 55, Article 9 NMSA 1978 may be cited as the "Uniform Commercial Code-Secured Transactions"."

## Section 2. Section 55-9-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-102, as amended) is repealed and a new Section 55-9-102 NMSA 1978 is enacted to read:

"55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

(a) In Chapter 55, Article 9 NMSA 1978:

(1) "accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;

(2) "account", except as used in "account for":

(A) means a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state; and

(B) includes health-care-insurance receivables; but

(C) does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) investment property;

(v) letter-of-credit rights or letters of credit; or

(vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;

(3) "account debtor" means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper;

(4) "accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail;

(5) "agricultural lien" means an interest, other than a security interest, in farm products:

(A) that secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) that is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property;

(6) "as-extracted collateral" means:

(A) oil, gas or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction;

(7) "authenticate" means to:

(A) sign; or

(B) execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record;

(8) "bank" means an organization that is engaged in the business of banking and includes savings banks, savings and loan associations, credit unions and trust companies;

(9) "cash proceeds" means proceeds that are money, checks, deposit accounts or the like;

(10) "certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral;

(11) "chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:

(A) charters or other contracts involving the use or hire of a vessel; or

(B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper;

(12) "collateral" means the property subject to a security interest or agricultural lien and includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) goods that are the subject of a consignment;

(13) "commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual;

(14) "commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer;

(15) "commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a commodity intermediary for a commodity customer;

(16) "commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books;

(17) "commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law;

(18) "communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule;

(19) "consignee" means a merchant to which goods are delivered in a consignment;

(20) "consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation;

(21) "consignor" means a person that delivers goods to a consignee in a consignment;

(22) "consumer debtor" means a debtor in a consumer transaction;

(23) "consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes;

(24) "consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family or household purposes; and

(B) a security interest in consumer goods secures the obligation;

(25) "consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes;

(26) "consumer transaction" means a transaction in which:

(i) an individual incurs an obligation primarily for personal, family or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions;

(27) "continuation statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement;

(28) "debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) a consignee;

(29) "deposit account" means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument;

(30) "document" means a document of title or a receipt of the type described in Subsection (2) of Section 55-7-201 NMSA 1978;

(31) "electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium;

(32) "encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property;

(33) "equipment" means goods other than inventory, farm products or consumer goods;

(34) "farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(A) crops grown, growing or to be grown, including:

(i) crops produced on trees, vines and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states;

(35) "farming operation" means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation;

(36) "file number" means the number assigned to an initial financing statement pursuant to Subsection (a) of Section 55-9-519 NMSA 1978;

(37) "filing office" means an office designated in Section 55-9-501 NMSA 1978 as the place to file a financing statement;

(38) "filing-office rule" means a rule adopted pursuant to Section 55-9-526 NMSA 1978;

(39) "financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement;

(40) "fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Subsections (a) and (b) of Section 55-9-502 NMSA 1978. The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures;

(41) "fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law;

(42) "general intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software;

(43) "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(44) "goods" means all things that are movable when a security interest attaches and:

(A) includes:

(i) fixtures;

(ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

(iii) the unborn young of animals;

(iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes;

(v) manufactured homes; and

(vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; but

(B) does not include:

(i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or

(ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction;

(45) "governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States;

(46) "health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided;

(47) "instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

(A) investment property;

(B) letters of credit; or

(C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;

(48) "inventory" means goods, other than farm products, that:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process or materials used or consumed in a business;

(49) "investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account;

(50) "jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized;

(51) "letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit;

(52) "lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment;

(53) "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 or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under 42 USCA;

(54) "manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral;

(55) "mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation;

(56) "new debtor" means a person that becomes bound as debtor under Subsection (d) of Section 55-9-203 NMSA 1978 by a security agreement previously entered into by another person;

(57) "new value" means:

(A) money;

(B) money's worth in property, services or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation;

(58) "noncash proceeds" means proceeds other than cash proceeds;

(59) "obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit;

(60) "original debtor", except as used in Subsection (c) of Section 55-9-310 NMSA 1978, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Subsection (d) of Section 55-9-203 NMSA 1978;

(61) "payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation;

(62) "person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual;

(63) "person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in Subparagraph (A) of this paragraph;

(D) the spouse of an individual described in Subparagraph (A), (B) or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in Subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual;

(64) "proceeds", except as used in Subsection (b) of Section 55-9-609 NMSA 1978, means:

(A) whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral;

(65) "promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds;

(66) "proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 55-9-620 through 55-9-622 NMSA 1978;

(67) "public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state;

(68) "pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation;

(69) "record", except as used in "for record", "of record", "record or legal title" and "record owner", 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;

(70) "registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized;

(71) "secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either;

(72) "secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 55-2-401, Section 55-2-505, Subsection (3) of Section 55-2-711, Subsection (5) of Section 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

(73) "security agreement" means an agreement that creates or provides for a security interest;

(74) "send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under Subparagraph (A) of this paragraph;

(75) "software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods;

(76) "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;

(77) "supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property;

(78) "tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium;

(79) "termination statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective; and

(80) "transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway or trolley bus;

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(b) The following definitions in other articles apply to this article:

"applicant" . . . . . Section 55-5-102 NMSA 1978;

"beneficiary" . . . . . Section 55-5-102 NMSA 1978;

"broker" . . . . . Section 55-8-102 NMSA 1978;

"certificated security" . . . . . Section 55-8-102 NMSA 1978;

"check" . . . . . Section 55-3-104 NMSA 1978;

"clearing corporation" . . . . . Section 55-8-102 NMSA 1978;

"contract for sale" . . . . . Section 55-2-106 NMSA 1978;

"customer" . . . . . Section 55-4-104 NMSA 1978;

"entitlement holder" . . . . . Section 55-8-102 NMSA 1978;

"financial asset" . . . . . Section

55-8-102 NMSA 1978;

"holder in due course" . . . . . Section

55-3-302 NMSA 1978;

"issuer" (with respect to a letter of credit or
letter-of-credit right) . . . . . Section

55-5-102 NMSA 1978;

"issuer" (with respect to a security) . . . . . .Section

55-8-201 NMSA 1978;

"lease" . . . . . Section

55-2A-103 NMSA 1978;

"lease agreement" . . . . . Section

55-2A-103 NMSA 1978;

"lease contract" . . . . . Section

55-2A-103 NMSA 1978;

"leasehold interest" . . . . . Section

55-2A-103 NMSA 1978;

"lessee . . . . . Section

55-2A-103 NMSA 1978;

"lessee in ordinary course of business" . . . . . Section

55-2A-103 NMSA 1978;

"lessor" . . . . . Section

55-2A-103 NMSA 1978;

"lessor's residual interest" . . . . . .Section

55-2A-103 NMSA 1978;

"letter of credit" . . . . . .Section

55-5-102 NMSA 1978;

"merchant" . . . . . Section

55-2-104 NMSA 1978;

"negotiable instrument" . . . . . Section

55-3-104 NMSA 1978;

"nominated person" . . . . . .Section

55-5-102 NMSA 1978;

"note" . . . . . Section

55-3-104 NMSA 1978;

"proceeds of a letter of credit" . . . . . Section

55-5-114 NMSA 1978;

"prove" . . . . . Section

55-3-103 NMSA 1978;

"sale" . . . . . Section

55-2-106 NMSA 1978;

"securities account" . . . . . Section

55-8-501 NMSA 1978;

"securities intermediary . . . . . .Section

55-8-102 NMSA 1978;

"security" . . . . . Section

55-8-102 NMSA 1978;

"security certificate" . . . . . .Section

55-8-102 NMSA 1978;

"security entitlement" . . . . . .Section

55-8-102 NMSA 1978; and

"uncertificated security" . . . . . Section

55-8-102 NMSA 1978.

(c) Chapter 12, Article 2A and Chapter 55, Article 1 NMSA 1978 contain general definitions and principles of construction and interpretation applicable throughout Chapter 55, Article 9 NMSA 1978."

## Section 3. Section 55-9-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-103, as amended) is repealed and a new Section 55-9-103 NMSA 1978 is enacted to read:

"55-9-103. PURCHASE-MONEY SECURITY INTEREST--APPLICATION OF PAYMENTS--BURDEN OF ESTABLISHING.--

(a) In this section:

(1) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, and to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in Subsections (e), (f) and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches."

## Section 4. Section 55-9-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-104, as amended) is repealed and a new Section 55-9-104 NMSA 1978 is enacted to read:

"55-9-104. CONTROL OF DEPOSIT ACCOUNT.--

(a) A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied Subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account."

## Section 5. Section 55-9-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-105, as amended) is repealed and a new Section 55-9-105 NMSA 1978 is enacted to read:

"55-9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.--A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored and assigned in such a manner that:

(a) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in Subsections (d) through (f) of this section, unalterable;

(b) the authoritative copy identifies the secured party as the assignee of the record or records;

(c) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision."

## Section 6. Section 55-9-106 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-106, as amended) is repealed and a new Section 55-9-106 NMSA 1978 is enacted to read:

"55-9-106. CONTROL OF INVESTMENT PROPERTY.--

(a) A person has control of a certificated security, uncertificated security or security entitlement as provided in Section 55-8-106 NMSA 1978.

(b) A secured party has control of a commodity contract if:

(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account."

## Section 7. Section 55-9-107 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-107) is repealed and a new Section 55-9-107 NMSA 1978 is enacted to read:

"55-9-107. CONTROL OF LETTER-OF-CREDIT RIGHT.--A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to

an assignment of proceeds of the letter of credit under Subsection (c) of Section 55-5-114 NMSA 1978 or otherwise applicable law or practice."

## Section 8. Section 55-9-108 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-108) is repealed and a new Section 55-9-108 NMSA 1978 is enacted to read:

"55-9-108. SUFFICIENCY OF DESCRIPTION.--

(a) Except as otherwise provided in Subsections (c), (d) and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in Subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in Subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in Subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in Subsection (e) of this section, a description of a security entitlement, securities account or commodity account is sufficient if it describes:

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account."

## Section 9. Section 55-9-109 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-109) is repealed and a new Section 55-9-109 NMSA 1978 is enacted to read:

"55-9-109. SCOPE.--

(a) Except as otherwise provided in Subsections (c) and (d) of this section, Chapter 55, Article 9 NMSA 1978 applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) a consignment;

(5) a security interest arising under Section 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978, as provided in Section 55-9-110 NMSA 1978; and

(6) a security interest arising under Section 55-4-210 or 55-5-118 NMSA 1978.

(b) The application of Chapter 55, Article 9 NMSA 1978 to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) Chapter 55, Article 9 NMSA 1978 does not apply to the extent that:

(1) a statute, regulation or treaty of the United States preempts the article;

(2) another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority or enforcement of a security interest created by the state, country or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 55-5-114 NMSA 1978.

(d) Chapter 55, Article 9 NMSA 1978 does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 55-9-333 NMSA 1978 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 55-9-315 and 55-9-322 NMSA 1978 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) Section 55-9-340 NMSA 1978 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 55-9-404 NMSA 1978 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in Sections 55-9-203 and 55-9-308 NMSA 1978;

(B) fixtures in Section 55-9-334 NMSA 1978;

(C) fixture filings in Sections 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978; and

(D) security agreements covering personal and real property in Section 55-9-604 NMSA 1978;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 55-9-315 and 55-9-322 NMSA 1978 apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA 1978 apply with respect to proceeds and priorities in proceeds; or

(14) a transfer by this state or a governmental unit of this state."

## Section 10. Section 55-9-110 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-110, as amended) is repealed and a new Section 55-9-110 NMSA 1978 is enacted to read:

"55-9-110. SECURITY INTERESTS ARISING UNDER CHAPTER 55, ARTICLE 2 OR 2A NMSA 1978**.--**A security interest arising under Section 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978 is subject to Chapter 55, Article 9 NMSA 1978. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978 has not been satisfied;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party after default by the debtor are governed by Chapter 55, Article 2 or 2A NMSA 1978; and

(4) the security interest has priority over a conflicting security interest created by the debtor."

## Section 11. Section 55-9-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-201) is repealed and a new Section 55-9-201 NMSA 1978 is enacted to read:

"55-9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.--

(a) Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.

(b) A transaction subject to Chapter 55, Article 9 NMSA 1978 is subject to any applicable rule of law which establishes a different rule for consumers, and to the provisions of the Oil and Gas Products Lien Act; Chapter 56, Article 1 NMSA 1978; the Artists' Consignment Act; the Pawnbrokers Act; the New Mexico Bank Installment Loan Act of 1959; the New Mexico Small Loan Act of 1955; the Motor Vehicle Sales Finance Act; and to rules adopted under those statutes.

(c) In case of conflict between Chapter 55, Article 9 NMSA 1978 and a rule of law, statute or rule described in Subsection (b) of this section, the rule of law, statute or rule controls. Failure to comply with a statute or rule described in Subsection (b) of this section has only the effect the statute or rule specifies.

(d) Chapter 55, Article 9 NMSA 1978 does not:

(1) validate any rate, charge, agreement or practice that violates a rule of law, statute or rule described in Subsection (b) of this section; or

(2) extend the application of the rule of law, statute or rule to a transaction not otherwise subject to it.

(e) The filing provisions set forth in the Farm Products Secured Interest Act and in the Public Utility Act are in addition to the filing provisions set forth in Chapter 55, Article 9 NMSA 1978. Failure to comply with the filing provisions in those acts has only the effect specified in those acts."

## Section 12. Section 55-9-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-202) is repealed and a new Section 55-9-202 NMSA 1978 is enacted to read:

"55-9-202. TITLE TO COLLATERAL IMMATERIAL.--Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of Chapter 55, Article 9 NMSA 1978 with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor."

## Section 13. Section 55-9-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-203, as amended) is repealed and a new Section 55-9-203 NMSA 1978 is enacted to read:

"55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST--PROCEEDS--SUPPORTING OBLIGATIONS--FORMAL REQUISITES.--

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in Subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 55-9-313 NMSA 1978 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 55-8-301 NMSA 1978 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property or letter-of-credit rights, and the secured party has control under Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978 pursuant to the debtor's security agreement.

(c) Subsection (b) of this section is subject to Section 55-4-210 NMSA 1978 on the security interest of a collecting bank, Section 55-5-118 NMSA 1978 on the security interest of a letter-of-credit issuer or nominated person, Section 55-9-110 NMSA 1978 on a security interest arising under Chapter 55, Article 2 or 2A NMSA 1978 and Section 55-9-206 NMSA 1978 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than Chapter 55, Article 9 NMSA 1978 or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies Paragraph (3) of Subsection (b) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 55-9-315 NMSA 1978 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account."

## Section 14. Section 55-9-204 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-204, as amended) is repealed and a new Section 55-9-204 NMSA 1978 is enacted to read:

"55-9-204. AFTER-ACQUIRED PROPERTY--FUTURE ADVANCES.--

(a) Except as otherwise provided in Subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) a commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment."

## Section 15. Section 55-9-205 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-205, as amended) is repealed and a new Section 55-9-205 NMSA 1978 is enacted to read:

"55-9-205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE.--

(a) A security interest is not invalid or fraudulent against creditors solely because:

(1) the debtor has the right or ability to:

(A) use, commingle or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle or dispose of proceeds; or

(2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party."

## Section 16. Section 55-9-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-206, as amended) is repealed and a new Section 55-9-206 NMSA 1978 is enacted to read:

"55-9-206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET.--

(a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in Subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

(d) The security interest described in Subsection (c) of this section secures the obligation to make payment for the delivery."

## Section 17. Section 55-9-207 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-207) is repealed and a new Section 55-9-207 NMSA 1978 is enacted to read:

"55-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL.--

(a) Except as otherwise provided in Subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in Subsection (d) of this section, if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in Subsection (d) of this section, a secured party having possession of collateral or control of collateral under Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles or promissory notes or is a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply."

## Section 18. Section 55-9-208 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-208) is repealed and a new Section 55-9-208 NMSA 1978 is enacted to read:

"55-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL.--

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Paragraph (2) of Subsection (a) of Section 55-9-104 NMSA 1978 shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Paragraph (3) of Subsection (a) of Section 55-9-104 NMSA 1978 shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 55-9-105 NMSA 1978 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under Paragraph (2) of Subsection (d) of Section 55-8-106 NMSA 1978 or Subsection (b) of Section 55-9-106 NMSA 1978 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) a secured party having control of a letter-of-credit right under Section 55-9-107 NMSA 1978 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party."

## Section 19. A new Section 55-9-209 NMSA 1978 is enacted to read:

"55-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT.--

(a) Except as otherwise provided in Subsection (c) of this section, this section applies if:

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Subsection (a) of Section 55-9-406 NMSA 1978 an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible."

## Section 20. A new Section 55-9-210 NMSA 1978 is enacted to read:

"55-9-210. REQUEST FOR ACCOUNTING--REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.--

(a) In this section:

(1) "request" means a record of a type described in Paragraph (2), (3) or (4) of this subsection;

(2) "request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request;

(3) "request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request; and

(4) "request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to Subsections (c), (d), (e) and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request and claimed an interest in the obligations at an earlier time shall comply with

the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response."

## Section 21. Section 55-9-301 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-301, as amended) is repealed and a new Section 55-9-301 NMSA 1978 is enacted to read:

"55-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.--Except as otherwise provided in Sections 55-9-303 through 55-9-306 NMSA 1978, the following rules determine the law governing perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral:

(1) except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral;

(2) while collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a possessory security interest in that collateral;

(3) except as otherwise provided in Subsection (4) of this section, while negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral; and

(4) the local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection and the priority of a security interest in as-extracted collateral."

## Section 22. Section 55-9-302 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-302, as amended) is repealed and a new Section 55-9-302 NMSA 1978 is enacted to read:

"55-9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS.--While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of an agricultural lien on the farm products."

## Section 23. Section 55-9-303 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-303) is repealed and a new Section 55-9-303 NMSA 1978 is enacted to read:

"55-9-303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE.--

(a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title."

## Section 24. Section 55-9-304 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-304, as amended) is repealed and a new Section 55-9-304 NMSA 1978 is enacted to read:

"55-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS.--

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of Sections 55-9-301 through 55-9-342 NMSA 1978:

(1) if an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction;

(2) if Paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction;

(3) if neither Paragraph (1) nor Paragraph (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction;

(4) if none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located; and

(5) if none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located."

## Section 25. Section 55-9-305 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-305, as amended) is repealed and a new Section 55-9-305 NMSA 1978 is enacted to read:

"55-9-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.--

(a) Except as otherwise provided in Subsection (c) of this section, the following rules apply:

(1) while a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in the certificated security represented thereby;

(2) the local law of the issuer's jurisdiction as specified in Subsection (d) of Section 55-8-110 NMSA 1978 governs perfection, the effect of perfection or nonperfection and the priority of a security interest in an uncertificated security;

(3) the local law of the securities intermediary's jurisdiction as specified in Subsection (e) of Section 55-8-110 NMSA 1978 governs perfection, the

effect of perfection or nonperfection and the priority of a security interest in a security entitlement or securities account; and

(4) the local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of Sections 55-9-301 through 55-9-342 NMSA 1978:

(1) if an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction;

(2) if Paragraph (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(3) if neither Paragraph (1) nor Paragraph (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(4) if none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located; and

(5) if none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary."

## Section 26. Section 55-9-306 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-306, as amended) is repealed and a new Section 55-9-306 NMSA 1978 is enacted to read:

"55-9-306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS.--

(a) Subject to Subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of Sections 55-9-301 through 55-9-342 NMSA 1978, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 55-5-116 NMSA 1978.

(c) This section does not apply to a security interest that is perfected only under Subsection (d) of Section 55-9-308 NMSA 1978."

## Section 27. Section 55-9-307 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-307, as amended) is repealed and a new Section 55-9-307 NMSA 1978 is enacted to read:

"55-9-307. LOCATION OF DEBTOR.--

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) a debtor who is an individual is located at the individual's principal residence;

(2) a debtor that is an organization and has only one place of business is located at its place of business; and

(3) a debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) of this section applies only if a debtor's residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a

condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If Subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence or have a place of business continues to be located in the jurisdiction specified by Subsections (b) and (c) of this section.

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in Subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates if the law designates a state of location;

(2) in the state that the registered organization, branch or agency designates if the law of the United States authorizes the registered organization, branch or agency to designate its state of location; or

(3) in the District of Columbia if neither Paragraph (1) nor Paragraph (2) of this subsection applies.

(g) A registered organization continues to be located in the jurisdiction specified by Subsection (e) or (f) of this section notwithstanding:

(1) the suspension, revocation, forfeiture or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of Sections 55-9-301 through 55-9-342 NMSA 1978."

## Section 28. Section 55-9-308 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-308, as amended) is repealed and a new Section 55-9-308 NMSA 1978 is enacted to read:

"55-9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED--CONTINUITY OF PERFECTION.--

(a) Except as otherwise provided in this section and Section 55-9-309 NMSA 1978, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 55-9-310 through 55-9-316 NMSA 1978 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 55-9-310 NMSA 1978 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under Chapter 55, Article 9 NMSA 1978 and is later perfected by another method under that article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account."

## Section 29. Section 55-9-309 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-309, as amended) is repealed and a new Section 55-9-309 NMSA 1978 is enacted to read:

"55-9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT.--The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in Subsection (b) of Section 55-9-311 NMSA 1978 with respect to consumer goods that are subject to a statute or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978;

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) a security interest arising under Section 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978, until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under Section 55-4-210 NMSA 1978;

(8) a security interest of an issuer or nominated person arising under Section 55-5-118 NMSA 1978;

(9) a security interest arising in the delivery of a financial asset under Subsection (c) of Section 55-9-206 NMSA 1978;

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate."

## Section 30. Section 55-9-310 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-310) is repealed and a new Section 55-9-310 NMSA 1978 is enacted to read:

"55-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN--SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.--

(a) Except as otherwise provided in Subsection (b) of this section and in Section 55-9-312 NMSA 1978, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Subsection (d), (e), (f) or (g) of Section 55-9-308 NMSA 1978;

(2) that is perfected under Section 55-9-309

NMSA 1978 when it attaches;

(3) in property subject to a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978;

(4) in goods in possession of a bailee which is perfected under Paragraph (1) or (2) of Subsection (d) of Section 55-9-312 NMSA 1978;

(5) in certificated securities, documents, goods or instruments which is perfected without filing or possession under Subsection (e), (f) or (g) of Section 55-9-312 NMSA 1978;

(6) in collateral in the secured party's possession under Section 55-9-313 NMSA 1978;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 55-9-313 NMSA 1978;

(8) in deposit accounts, electronic chattel paper, investment property or letter-of-credit rights which is perfected by control under Section 55-9-314 NMSA 1978;

(9) in proceeds that is perfected under Section 55-9-315 NMSA 1978; or

(10) that is perfected under Section 55-9-316 NMSA 1978.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under Chapter 55, Article 9 NMSA 1978 is not required to continue the

perfected status of the security interest against creditors of and transferees from the original debtor."

## Section 31. Section 55-9-311 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-311) is repealed and a new Section 55-9-311 NMSA 1978 is enacted to read:

"55-9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS AND TREATIES.--

(a) Except as otherwise provided in Subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Subsection (a) of Section 55-9-310 NMSA 1978;

(2) the provisions of Chapter 66 NMSA 1978; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation or treaty described in Subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under Chapter 55, Article 9 NMSA 1978. Except as otherwise provided in Subsection (d) of this section and in Section 55-9-313 and Subsections (d) and (e) of Section 55-9-316 NMSA 1978 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in Subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in Subsection (d) of this section and Subsections (d) and (e) of Section 55-9-316 NMSA 1978, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in Subsection (a) of this section are governed by the statute, regulation or treaty. In other respects, the security interest is subject to Chapter 55, Article 9 NMSA 1978.

(d) During any period in which collateral subject to a statute specified in Paragraph (2) of Subsection (a) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling

goods of that kind, this section does not apply to a security interest in that collateral created by that person."

## Section 32. Section 55-9-312 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-312, as amended) is repealed and a new Section 55-9-312 NMSA 1978 is enacted to read:

"55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS AND MONEY--PERFECTION BY PERMISSIVE FILING--TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.--

(a) A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Except as otherwise provided in Subsections (c) and (d) of Section 55-9-315 NMSA 1978 for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 55-9-314 NMSA 1978;

(2) and except as otherwise provided in Subsection (d) of Section 55-9-308 NMSA 1978, a security interest in a letter-of-credit right may be perfected only by control under Section 55-9-314 NMSA 1978; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 55-9-313 NMSA 1978.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty-day period specified in Subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with Chapter 55, Article 9 NMSA 1978."

## Section 33. Section 55-9-313 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-313, as amended) is repealed and a new Section 55-9-313 NMSA 1978 is enacted to read:

"55-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.--

(a) Except as otherwise provided in Subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A

secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 55-8-301 NMSA 1978.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Subsection (d) of Section 55-9-316 NMSA 1978.

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 55-8-301 NMSA 1978 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under Subsection (c) of this section or Subsection (a) of Section 55-8-301 NMSA 1978, even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than Chapter 55, Article 9 NMSA 1978 otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the

person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under Subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under Subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides."

## Section 34. Section 55-9-314 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-314) is repealed and a new Section 55-9-314 NMSA 1978 is enacted to read:

"55-9-314. PERFECTION BY CONTROL.--

(a) A security interest in investment property, deposit accounts, letter-of-credit rights or electronic chattel paper may be perfected by control of the collateral under Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978.

(b) A security interest in deposit accounts, electronic chattel paper or letter-of-credit rights is perfected by control under Section 55-9-104, 55-9-105 or 55-9-107 NMSA 1978 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 55-9-106 NMSA 1978 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder."

## Section 35. Section 55-9-315 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-315) is repealed and a new Section 55-9-315 NMSA 1978 is enacted to read:

"55-9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS.--

(a) Except as otherwise provided in Chapter 55, Article 9 NMSA 1978, the Farm Products Secured Interest Act and in Subsection (2) of Section 55-2-403 NMSA 1978:

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by Section 55-9-336 NMSA 1978; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than Chapter 55, Article 9 NMSA 1978 with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under Subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under Paragraph (1) of Subsection (d) of this section becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under Section 55-9-515 NMSA 1978 or is terminated under Section 55-9-513 NMSA 1978; or

(2) the twenty-first day after the security interest attaches to the proceeds."

## Section 36. Section 55-9-316 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-316) is repealed and a new Section 55-9-316 NMSA 1978 is enacted to read:

"55-9-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW.--

(a) A security interest perfected pursuant to the law of the jurisdiction designated in Subsection (1) of Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA 1978 remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in Subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in Subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in Subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Subsection (b) of Section 55-9-311 or Section 55-9-313 NMSA 1978 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in Subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time

or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

## Section 37. Section 55-9-317 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-317) is repealed and a new Section 55-9-317 NMSA 1978 is enacted to read:

"55-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 55-9-322 NMSA 1978; and

(2) except as otherwise provided in Subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978 is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in Subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in Subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 55-9-320 and 55-9-321 NMSA 1978, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the

collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing."

## Section 38. Section 55-9-318 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-318, as amended) is repealed and a new Section 55-9-318 NMSA 1978 is enacted to read:

"55-9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD--RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS.--

(a) A debtor that has sold an account, chattel paper, payment intangible or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold."

## Section 39. A new Section 55-9-319 NMSA 1978 is enacted to read:

"55-9-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS.--

(a) Except as otherwise provided in Subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than Chapter 55, Article 9 NMSA 1978 determines the rights and title of a consignee while goods are in the consignee's possession if, under Sections 55-9-301 through 55-9-342 NMSA 1978, a perfected security interest held by the consignor would have priority over the rights of the creditor."

## Section 40. A new Section 55-9-320 NMSA 1978 is enacted to read:

"55-9-320. BUYER OF GOODS.--

(a) Except as otherwise provided in Subsection (e) of this section or in the Farm Products Secured Interest Act, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free

of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in Subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family or household purposes; and

(4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under Subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Subsections (a) and (b) of Section 55-9-316 NMSA 1978.

(d) A buyer in ordinary course of business buying oil, gas or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under Section 55-9-313 NMSA 1978."

## Section 41. A new Section 55-9-321 NMSA 1978 is enacted to read:

"55-9-321. LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS.--

(a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence."

## Section 42. A new Section 55-9-322 NMSA 1978 is enacted to read:

"55-9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.--

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of Paragraph (1) of Subsection (a) of this section:

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in Subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under Section 55-9-327, 55-9-328, 55-9-329, 55-9-330 or 55-9-331 NMSA 1978 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral or an account relating to the collateral.

(d) Subject to Subsection (e) of this section and except as otherwise provided in Subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter-of-credit rights.

(f) Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of Sections 55-9-301 through 55-9-342 NMSA 1978;

(2) Section 55-4-210 NMSA 1978 with respect to a security interest of a collecting bank;

(3) Section 55-5-118 NMSA 1978 with respect to a security interest of an issuer or nominated person; and

(4) Section 55-9-110 NMSA 1978 with respect to a security interest arising under Chapter 55, Article 2 or 2A NMSA 1978.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides. If a statute other than Chapter 55, Article 9 NMSA 1978 creates an agricultural lien, and the other statute does not specify the priority of the agricultural lien relative to an agricultural lien or security interest in the same collateral created pursuant to Chapter 55, Article 9 NMSA 1978, then Subsection (a)(1) of this section shall govern the priority of the agricultural liens and security interests."

## Section 43. A new Section 55-9-323 NMSA 1978 is enacted to read:

"55-9-323. FUTURE ADVANCES.--

(a) Except as otherwise provided in Subsection (c) of this section, for purposes of determining the priority of a perfected security interest under Paragraph (1) of Subsection (a) of Section 55-9-322 NMSA 1978, perfection of the security interest

dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under Section 55-9-309 NMSA 1978 when it attaches; or

(B) temporarily under Subsection (e), (f) or (g) of Section 55-9-312 NMSA 1978; and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 55-9-309 or Subsection (e), (f) or (g) of Section 55-9-312 NMSA 1978.

(b) Except as otherwise provided in Subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.

(d) Except as otherwise provided in Subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) forty-five days after the purchase.

(e) Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in Subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the lease; or

(2) forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period."

## Section 44. A new Section 55-9-324 NMSA 1978 is enacted to read:

"55-9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.--

(a) Except as otherwise provided in Subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 55-9-327 NMSA 1978, a perfected security interest in its identifiable proceeds also has priority if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Subject to Subsection (c) of this section and except as otherwise provided in Subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 55-9-330 NMSA 1978, and, except as otherwise provided in Section 55-9-327 NMSA 1978, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Paragraphs (2) through (4) of Subsection (b) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection (f) of Section 55-9-312 NMSA 1978, before the beginning of the twenty-day period thereunder.

(d) Subject to Subsection (e) of this section and except as otherwise provided in Subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 55-9-327 NMSA 1978, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Paragraphs (2) through (4) of Subsection (d) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection (f) of Section 55-9-312 NMSA 1978, before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in Subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 55-9-327 NMSA 1978, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under Subsection (a), (b), (d) or (f) of this section:

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, Subsection (a) of Section 55-9-322 NMSA 1978 applies to the qualifying security interests."

## Section 45. A new Section 55-9-325 NMSA 1978 is enacted to read:

"55-9-325. PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL.--

(a) Except as otherwise provided in Subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Subsection (a) of this section subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under Subsection (a) of Section 55-9-322 NMSA 1978 or under Section 55-9-324 NMSA 1978; or

(2) arose solely under Subsection (3) of Section 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978."

## Section 46. A new Section 55-9-326 NMSA 1978 is enacted to read:

"55-9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.--

(a) Subject to Subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 55-9-508 NMSA 1978 in collateral in which a new debtor has or acquires

rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 55-9-508 NMSA 1978.

(b) The other provisions of Sections 55-9-301 through 55-9-342 NMSA 1978 determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 55-9-508 NMSA 1978. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor having become bound."

## Section 47. A new Section 55-9-327 NMSA 1978 is enacted to read:

"55-9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT.--The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Section 55-9-104 NMSA 1978 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in Subsections (3) and (4) of this section, security interests perfected by control under Section 55-9-314 NMSA 1978 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in Subsection (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Paragraph (3) of Subsection (a) of Section 55-9-104 NMSA 1978 has priority over a security interest held by the bank with which the deposit account is maintained."

## Section 48. A new Section 55-9-328 NMSA 1978 is enacted to read:

"55-9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.--The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Section 55-9-106 NMSA 1978 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in Subsections (3) and (4) of this section, conflicting security interests held by secured parties, each of which has control under Section 55-9-106 NMSA 1978, rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under Paragraph (1) of Subsection (d) of Section 55-8-106 NMSA 1978, the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under Paragraph (2) of Subsection (d) of Section 55-8-106 NMSA 1978, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under Paragraph (3) of Subsection (d) of Section 55-8-106 NMSA 1978, the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Paragraph (2) of Subsection (b) of Section 55-9-106 NMSA 1978 with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under Subsection (a) of Section 55-9-313 NMSA 1978 and not by control under Section 55-9-314 NMSA 1978 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary or commodity intermediary which are perfected without control under Section 55-9-106 NMSA 1978 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by Sections 55-9-322 and 55-9-323 NMSA 1978."

## Section 49. A new Section 55-9-329 NMSA 1978 is enacted to read:

"55-9-329. PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHT.--The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under Section 55-9-107 NMSA 1978 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 55-9-314 NMSA 1978 rank according to priority in time of obtaining control."

## Section 50. A new Section 55-9-330 NMSA 1978 is enacted to read:

"55-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.--

(a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 55-9-105 NMSA 1978; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 55-9-105 NMSA 1978 in good faith, in the ordinary course of the purchaser's business and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in Section 55-9-327 NMSA 1978, a purchaser having priority in chattel paper under Subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) Section 55-9-322 NMSA 1978 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in Subsection (a) of Section 55-9-331 NMSA 1978, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of Subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of Subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party."

## Section 51. A new Section 55-9-331 NMSA 1978 is enacted to read:

"55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER ARTICLES-- PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 55, ARTICLE 8 NMSA 1978.--

(a) Chapter 55, Article 9 NMSA 1978 does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapter 55, Articles 3, 7 and 8 NMSA 1978.

(b) Chapter 55, Article 9 NMSA 1978 does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under Chapter 55, Article 8 NMSA 1978.

(c) Filing under Chapter 55, Article 9 NMSA 1978 does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in Subsections (a) and (b) of this section."

## Section 52. A new Section 55-9-332 NMSA 1978 is enacted to read:

"55-9-332. TRANSFER OF MONEY--TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT.

(a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party."

## Section 53. A new Section 55-9-333 NMSA 1978 is enacted to read:

"55-9-333. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.--

(a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) that is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise."

## Section 54. A new Section 55-9-334 NMSA 1978 is enacted to read:

"55-9-334. PRIORITY OF SECURITY INTERESTS IN FIXTURES.--

(a) A security interest under Chapter 55, Article 9 NMSA 1978 may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) Chapter 55, Article 9 NMSA 1978 does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by Subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in Subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by Chapter 55, Article 9 NMSA 1978, and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Paragraph (2) of Subsection (a) of Section 55-9-311 NMSA 1978.

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under Paragraph (2) of Subsection (f) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage."

## Section 55. A new Section 55-9-335 NMSA 1978 is enacted to read:

"55-9-335. ACCESSIONS.--

(a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in Subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Subsection (b) of Section 55-9-311 NMSA 1978.

(e) After default, subject to Sections 55-9-601 through 55-9-628 NMSA 1978, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under Subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured

party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse."

## Section 56. A new Section 55-9-336 NMSA 1978 is enacted to read:

"55-9-336. COMMINGLED GOODS.--

(a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under Subsection (c) of this section is perfected.

(e) Except as otherwise provided in Subsection (f) of this section, the other provisions of Sections 55-9-301 through 55-9-342 NMSA 1978 determine the priority of a security interest that attaches to the product or mass under Subsection (c) of this section.

(f) If more than one security interest attaches to the product or mass under Subsection (c) of this section, the following rules determine priority:

(1) a security interest that is perfected under Subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods; or

(2) if more than one security interest is perfected under Subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods."

## Section 57. A new Section 55-9-337 NMSA 1978 is enacted to read:

"55-9-337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE.--If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that

does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Subsection (b) of Section 55-9-311 NMSA 1978, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest."

## Section 58. A new Section 55-9-338 NMSA 1978 is enacted to read:

"55-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION.--If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Paragraph (5) of Subsection (b) of Section 55-9-516 NMSA 1978 which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments or a security certificate, receives delivery of the collateral."

## Section 59. A new Section 55-9-339 NMSA 1978 is enacted to read:

"55-9-339. PRIORITY SUBJECT TO SUBORDINATION.--Chapter 55, Article 9 NMSA 1978 does not preclude subordination by agreement by a person entitled to priority."

## Section 60. A new Section 55-9-340 NMSA 1978 is enacted to read:

"55-9-340. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT.--

(a) Except as otherwise provided in Subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in Subsection (c) of this section, the application of Chapter 55, Article 9 NMSA 1978 to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Paragraph (3) of Subsection (a) of Section 55-9-104 NMSA 1978, if the set-off is based on a claim against the debtor."

## Section 61. A new Section 55-9-341 NMSA 1978 is enacted to read:

"55-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT.--Except as otherwise provided in Subsection (c) of Section 55-9-340 NMSA 1978, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) the creation, attachment or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party."

## Section 62. A new Section 55-9-342 NMSA 1978 is enacted to read:

"55-9-342. BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT.--Chapter 55, Article 9 NMSA 1978 does not require a bank to enter into an agreement of the kind described in Paragraph (2) of Subsection (a) of Section 55-9-104 NMSA 1978, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer."

## Section 63. Section 55-9-401 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-401, as amended) is repealed and a new Section 55-9-401 NMSA 1978 is enacted to read:

"55-9-401. ALIENABILITY OF DEBTOR'S RIGHTS.--

(a) Except as otherwise provided in Subsection (b) of this section and Sections 55-9-406 through 55-9-409 NMSA 1978, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than Chapter 55, Article 9 NMSA 1978.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect."

## Section 64. Section 55-9-402 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-402, as amended) is repealed and a new Section 55-9-402 NMSA 1978 is enacted to read:

"55-9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT.--The existence of a security interest, agricultural lien or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions."

## Section 65. Section 55-9-403 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-403, as amended) is repealed and a new Section 55-9-403 NMSA 1978 is enacted to read:

"55-9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE.--

(a) In this section, "value" has the meaning provided in Subsection (a) of Section 55-3-303 NMSA 1978.

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) for value;

(2) in good faith;

(3) without notice of a claim of a property or possessory right to the property assigned; and

(4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Subsection (a) of Section 55-3-305 NMSA 1978.

(c) Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Subsection (b) of Section 55-3-305 NMSA 1978.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than Chapter 55, Article 9 NMSA 1978 requires that the record

include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and if the record does not include such a statement:

(1) the record has the same effect as if the record included such a statement; and

(2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(f) Except as otherwise provided in Subsection (d) of this section, this section does not displace law other than Chapter 55, Article 9 NMSA 1978 which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee."

## Section 66. Section 55-9-404 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-404, as amended) is repealed and a new Section 55-9-404 NMSA 1978 is enacted to read:

"55-9-404. RIGHTS ACQUIRED BY ASSIGNEE-- CLAIMS AND DEFENSES AGAINST ASSIGNEE.--

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to Subsection (c) of this section and except as otherwise provided in Subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under Subsection (a) of this section only to reduce the amount the account debtor owes.

(c) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than Chapter 55, Article 9 NMSA 1978 requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and if the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable."

## Section 67. Section 55-9-405 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-405, as amended) is repealed and a new Section 55-9-405 NMSA 1978 is enacted to read:

"55-9-405. MODIFICATION OF ASSIGNED CONTRACT.--

(a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to Subsections (b) through (d) of this section.

(b) Subsection (a) of this section applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Subsection (a) of Section 55-9-406 NMSA 1978.

(c) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable."

## Section 68. Section 55-9-406 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-406, as amended) is repealed and a new Section 55-9-406 NMSA 1978 is enacted to read:

"55-9-406. DISCHARGE OF ACCOUNT DEBTOR--NOTIFICATION OF ASSIGNMENT--IDENTIFICATION AND PROOF OF ASSIGNMENT--RESTRICTIONS

ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE.--

(a) Subject to Subsections (b) through (i) of this section, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to Subsection (h) of this section, notification is ineffective under Subsection (a) of this section:

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than Chapter 55, Article 9 NMSA 1978; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to Subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under Subsection (a) of this section.

(d) Except as otherwise provided in Subsection (e) of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978, and subject to Subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the

creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in Sections 55-2A-303 and 55-9-407 NMSA 1978 and subject to Subsections (h) and (i) of this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subject to Subsection (h) of this section, an account debtor may not waive or vary its option under Paragraph (3) of Subsection (b) of this section.

(h) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section is subject to laws other than Chapter 55, Article 9 NMSA 1978 to the extent that those laws prohibit or restrict the assignment, transfer of or creation of a security interest in benefits, compensation, any other account or chattel paper."

## Section 69. Section 55-9-407 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-407, as amended) is repealed and a new Section 55-9-407 NMSA 1978 is enacted to read:

"55-9-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST.--

(a) Except as otherwise provided in Subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.

(b) Except as otherwise provided in Subsection (7) of Section 55-2A-303 NMSA 1978, a term described in Paragraph (2) of Subsection (a) of this section is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Subsection (4) of Section 55-2A-303 NMSA 1978 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor."

## Section 70. Section 55-9-408 NMSA 1978 (being Laws 1985, Chapter 193, Section 33) is repealed and a new Section 55-9-408 NMSA 1978 is enacted to read:

"55-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.--

(a) Except as otherwise provided in Subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a

contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) would impair the creation, attachment or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in Subsection (c) of this section would be effective under law other than Chapter 55, Article 9 NMSA 1978 but is ineffective under Subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;

(5) does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible. The provisions of this section shall prevail over an inconsistent provision of an existing or future statute or rule of this state, unless the inconsistent provision is set forth in a statute of this state that refers expressly to this section and states that the inconsistent provision shall prevail over the provisions of this section."

## Section 71. A new Section 55-9-409 NMSA 1978 is enacted to read:

"55-9-409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS INEFFECTIVE.--

(a) A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

(1) would impair the creation, attachment or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under Subsection (a) of this section but would be effective under law other than Chapter 55, Article 9 NMSA 1978 or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit or to the assignment of a right to proceeds of the letter of credit, the creation, attachment or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person or transferee beneficiary to recognize the security interest, pay or render performance to the secured party or accept payment or other performance from the secured party."

## Section 72. Section 55-9-501 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-501, as amended) is repealed and a new Section 55-9-501 NMSA 1978 is enacted to read:

"55-9-501. FILING OFFICE.--

(a) Except as otherwise provided in Subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office of the county clerk where a record of a mortgage on the related real property would be recorded if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures."

## Section 73. Section 55-9-502 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-502, as amended) is repealed and a new Section 55-9-502 NMSA 1978 is enacted to read:

"55-9-502. CONTENTS OF FINANCING

STATEMENT--RECORD OF MORTGAGE AS FINANCING STATEMENT--TIME OF FILING FINANCING STATEMENT.--

(a) Subject to Subsection (b) of this section, a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Subsection (b) of Section 55-9-501 NMSA 1978, to be sufficient a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy Subsection (a) of this section and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage pursuant to the laws of this state if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date it is filed for record, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed for record in the real property records; and

(4) the record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

## Section 74. Section 55-9-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-503) is repealed and a new Section 55-9-503 NMSA 1978 is enacted to read:

"55-9-503. NAME OF DEBTOR AND SECURED PARTY.--

(a) A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with Subsection (a) of this section is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under Subparagraph (B) of Paragraph (4) of Subsection (a) of this section, names of partners, members, associates or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party."

## Section 75. Section 55-9-504 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-504, as amended) is repealed and a new Section 55-9-504 NMSA 1978 is enacted to read:

"55-9-504. INDICATION OF COLLATERAL.--A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to Section 55-9-108 NMSA 1978; or

(2) an indication that the financing statement covers all assets or all personal property."

## Section 76. Section 55-9-505 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-505, as amended) is repealed and a new Section 55-9-505 NMSA 1978 is enacted to read:

"55-9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS AND OTHER TRANSACTIONS.--

(a) A consignor, lessor, or other bailor of goods, a licensor or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978, using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller" or words of similar import, instead of the terms "secured party" and "debtor".

(b) Sections 55-9-501 through 55-9-526 NMSA 1978 apply to the filing of a financing statement under Subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under Subsection (b) of Section 55-9-311 NMSA 1978, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the

consignor, lessor, bailor, licensor, owner or buyer which attaches to the collateral is perfected by the filing or compliance."

## Section 77. Section 55-9-506 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-506) is repealed and a new Section 55-9-506 NMSA 1978 is enacted to read:

"55-9-506. EFFECT OF ERRORS OR OMISSIONS.--

(a) A financing statement substantially satisfying the requirements of Sections 55-9-501 through 55-9-526 NMSA 1978 is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in Subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with Subsection (a) of Section 55-9-503 NMSA 1978 is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Subsection (a) of Section 55-9-503 NMSA 1978, the name provided does not make the financing statement seriously misleading.

(d) For purposes of Subsection (b) of Section 55-9-508 NMSA 1978, the "debtor's correct name" in Subsection (c) of this section means the correct name of the new debtor."

## Section 78. Section 55-9-507 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-507) is repealed and a new Section 55-9-507 NMSA 1978 is enacted to read:

"55-9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.--

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in Subsection (c) of this section and Section 55-9-508 NMSA 1978, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 55-9-506 NMSA 1978.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 55-9-506 NMSA 1978:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change."

## Section 79. A new Section 55-9-508 NMSA 1978 is enacted to read:

"55-9-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.--

(a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under Subsection (a) of this section to be seriously misleading under Section 55-9-506 NMSA 1978:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Subsection (d) of Section 55-9-203 NMSA 1978; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Subsection (d) of Section 55-9-203 NMSA 1978 unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Subsection (a) of Section 55-9-507 NMSA 1978."

## Section 80. A new Section 55-9-509 NMSA 1978 is enacted to read:

"55-9-509. PERSONS ENTITLED TO FILE A RECORD.--

(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to Subsection (b) or (c) of this section; or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978, whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under Paragraph (1) of Subsection (a) of Section 55-9-315 NMSA 1978, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978.

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Subsection (a) or (c) of Section 55-9-513 NMSA 1978, the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under Subsection (d) of this section."

## Section 81. A new Section 55-9-510 NMSA 1978 is enacted to read:

"55-9-510. EFFECTIVENESS OF FILED RECORD.--

(a) A filed record is effective only to the extent that it was filed by a person that may file it under Section 55-9-509 NMSA 1978.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by Subsection (d) of Section 55-9-515 NMSA 1978 is ineffective."

## Section 82. A new Section 55-9-511 NMSA 1978 is enacted to read:

"55-9-511. SECURED PARTY OF RECORD.--

(a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Subsection (a) of Section 55-9-514 NMSA 1978, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Subsection (b) of Section 55-9-514 NMSA 1978, the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person."

## Section 83. A new Section 55-9-512 NMSA 1978 is enacted to read:

"55-9-512. AMENDMENT OF FINANCING STATEMENT.--

(a) Subject to Section 55-9-509 NMSA 1978, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to Subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed in a county clerk's office, provides the information specified in Subsection (b) of Section 55-9-502 NMSA 1978.

(b) Except as otherwise provided in Section 55-9-515 NMSA 1978, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record."

## Section 84. A new Section 55-9-513 NMSA 1978 is enacted to read:

"55-9-513. TERMINATION STATEMENT.--

(a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) To comply with Subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) if earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by Subsection (a) of this section, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 55-9-510 NMSA 1978, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 55-9-510 NMSA 1978, for purposes of Subsection (c) of Section 55-9-519, Subsection (a) of Section 55-9-522 and Subsection (b) of Section 55-9-523 NMSA 1978, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse."

## Section 85. A new Section 55-9-514 NMSA 1978 is enacted to read:

"55-9-514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD.--

(a) Except as otherwise provided in Subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in Subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) An assignment of a record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing pursuant to the provisions of Subsection (c) of Section 55-9-502 NMSA 1978 may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code."

## Section 86. A new Section 55-9-515 NMSA 1978 is enacted to read:

"55-9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT--EFFECT OF LAPSED FINANCING STATEMENT.--

(a) Except as otherwise provided in Subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in Subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to Subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in Subsection (a) of this section or the thirty-year period specified in Subsection (b) of this section, whichever is applicable.

(e) Except as otherwise provided in Section 55-9-510 NMSA 1978, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in Subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to Subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed. The

filing officer may require proof of the debtor's authority to operate as a transmitting utility as a condition of filing the financing statement.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Subsection (c) of Section 55-9-502 NMSA 1978 remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

## Section 87. A new Section 55-9-516 NMSA 1978 is enacted to read:

"55-9-516. WHAT CONSTITUTES FILING-- EFFECTIVENESS OF FILING.--

(a) Except as otherwise provided in Subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that the secretary of state refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor; or

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by Section 55-9-512 or 55-9-518 NMSA 1978, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 55-9-515 NMSA 1978;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; and

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) in the case of an assignment reflected in an initial financing statement under Subsection (a) of Section 55-9-514 NMSA 1978 or an amendment filed under Subsection (b) of Section 55-9-514 NMSA 1978, the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Subsection (d) of Section 55-9-515 NMSA 1978.

(c) For purposes of Subsection (b) of this section:

(1) a record does not provide information if the secretary of state is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 55-9-512, 55-9-514 or 55-9-518 NMSA 1978, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the secretary of state refuses to accept for a reason other than one set forth in Subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files."

## Section 88. A new Section 55-9-517 NMSA 1978 is enacted to read:

"55-9-517. EFFECT OF INDEXING ERRORS.-- The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record."

## Section 89. A new Section 55-9-518 NMSA 1978 is enacted to read:

"55-9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.--

(a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a correction statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record."

## Section 90. A new Section 55-9-519 NMSA 1978 is enacted to read:

"55-9-519. NUMBERING, MAINTAINING AND INDEXING RECORDS--COMMUNICATING INFORMATION PROVIDED IN RECORDS.--

(a) For each record filed in a filing office, the filing office shall:

(1) assign a unique number to the filed record;

(2) create a record that bears the number assigned to the filed record and the date and time of filing; and

(3) maintain the filed record for public inspection.

(b) The filing office shall maintain a capability to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates. The secretary of state shall also maintain a capability to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(c) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 55-9-515 NMSA 1978 with respect to all secured parties of record.

(d) The secretary of state shall perform the acts required by Subsections (a) through (c) of this section at the time and in the manner prescribed by filing-office rule, but not later than three business days after the filing office receives the record in question."

## Section 91. A new Section 55-9-520 NMSA 1978 is enacted to read:

"55-9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.--

(a) The secretary of state shall refuse to accept a record for filing for a reason set forth in Subsection (b) of Section 55-9-516 NMSA 1978 and may refuse to accept a record for filing only for a reason set forth in that subsection.

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule or by other law.

(c) A filed financing statement satisfying Subsections (a) and (b) of Section 55-9-502 NMSA 1978 is effective, even if the secretary of state is required to refuse to accept it for filing under Subsection (a) of this section. However, Section 55-9-338 NMSA 1978 applies to a filed financing statement providing information described in Paragraph (5) of Subsection (b) of Section 55-9-516 NMSA 1978 which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately."

## Section 92. A new Section 55-9-521 NMSA 1978 is enacted to read:

"55-9-521. FORM OF FINANCING STATEMENT AND AMENDMENT--RECORDS.--

(a) A filing office that accepts written records may not refuse to accept a financing statement or amendment that is in the form and format prescribed by the secretary of state, except for a reason set forth in Subsection (b) of Section 55-9-516 NMSA 1978.

(b) Prior to July 1, 2001, the secretary of state shall prescribe by rule the form and format of a written financing statement and amendment.

(c) A filing officer shall prescribe by rule the use of one other medium, other than writing, for filing records under Chapter 55, Article 9 NMSA 1978. The filing officer may also prescribe by rule mandatory requirements for the medium to ensure

compatibility with the filing officer's system of transmission, receipt, storage, indexing and retrieval of records.

(d) A rule prescribed pursuant to this section is subject to the provisions of Section 55-9-526 NMSA 1978."

## Section 93. A new Section 55-9-522 NMSA 1978 is enacted to read:

"55-9-522. MAINTENANCE AND DESTRUCTION OF RECORDS.--

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 55-9-515 NMSA 1978 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with Subsection (a) of this section."

## Section 94. A new Section 55-9-523 NMSA 1978 is enacted to read:

"55-9-523. INFORMATION FROM SECRETARY OF STATE.--

(a) If a person that files a written record requests an acknowledgment of the filing, the secretary of state shall send to the person an image of the record showing the number assigned to the record pursuant to Paragraph (1) of Subsection (a) of Section 55-9-519 NMSA 1978 and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to Paragraph (1) of Subsection (a) of Section 55-9-519 NMSA 1978 and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) The secretary of state shall make available to the general public records indexed both by the names of debtors and by unique file numbers, based upon which copies may be obtained.

(c) In complying with its duty under Subsection (b) of this section, the secretary of state may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(d) If a person files a record other than a written record that is communicated by a method or medium of communication authorized by the filing office, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to Paragraph (1) of Subsection (a) of Section 55-9-519 NMSA 1978; and

(3) the date and time of the filing of the record.

(e) The secretary of state shall perform the action required by Subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but not later than three business days after the filing office receives the request."

## Section 95. A new Section 55-9-524 NMSA 1978 is enacted to read:

"55-9-524. DELAY BY SECRETARY OF STATE.--Delay by the secretary of state beyond the time limits prescribed in Section 55-9-519 NMSA 1978 and Section 55-9-523 NMSA 1978 is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, lack of appropriations or other circumstances beyond control of the secretary of state; and

(2) the secretary of state exercises reasonable diligence under the circumstances."

## Section 96. A new Section 55-9-525 NMSA 1978 is enacted to read:

"55-9-525. FEES.--

(a) Except as provided in Subsections (b) and (d) of this section, the fee for filing and indexing a record pursuant to Section 55-9-501 through 55-9-526 NMSA 1978 is:

(1) if the record is communicated in writing in a form prescribed by the secretary of state:

(i) twenty dollars ($20.00) if the record consists of one, two or three pages;

(ii) forty dollars ($40.00) if the record consists of at least four pages, but no more than twenty-five pages; and

(iii) one hundred dollars ($100) if the record consists of more than twenty-five pages, plus five dollars ($5.00) for each page;

(2) if the record is communicated in writing, but not in a form prescribed by the secretary of state, double the amount specified in Paragraph (1) of this subsection for a record of the same length;

(3) if the record is communicated by facsimile or a similar medium and the use of that medium is authorized by filing-office rule, the amount specified in Paragraph (1) of this subsection for a record of the same length; and

(4) if the record is communicated in any other medium authorized by filing-office rule:

(i) ten dollars ($10.00) if the record consists of fifteen thousand or fewer bytes;

(ii) twenty dollars ($20.00) if the record consists of more than fifteen thousand bytes, but no more than thirty thousand bytes; and

(iii) fifty dollars ($50.00) if the record consists of more than thirty thousand bytes, plus five dollars ($5.00) per each thousand bytes of the record.

(b) Except as otherwise provided in Subsection (d) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in Subsection (a) of this section plus:

(1) one hundred dollars ($100) if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) one hundred dollars ($100) if the financing statement states that a debtor is a transmitting utility; and

(3) one hundred dollars ($100) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) The number of names required to be indexed does not affect the amount the fee set forth in Subsections (a) and (b) of this section.

(d) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under

Subsection (c) of Section 55-9-502 NMSA 1978. However, the recording fees that otherwise would be applicable to the record of the mortgage apply."

## Section 97. A new Section 55-9-526 NMSA 1978 is enacted to read:

"55-9-526. FILING-OFFICE RULES.--The secretary of state shall adopt and publish rules to implement Sections 55-9-501 through 55-9-526 NMSA 1978. The filing-office rules must be:

(a) consistent with Chapter 55, Article 9 NMSA 1978; and

(b) adopted and published in accordance with the State Rules Act."

## Section 98. A new Section 55-9-601 NMSA 1978 is enacted to read:

"55-9-601. RIGHTS AFTER DEFAULT--JUDICIAL ENFORCEMENT--CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES OR PROMISSORY NOTES.--

(a) After default, a secured party has the rights provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and, except as otherwise provided in Section 55-9-602 NMSA 1978, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978 has the rights and duties provided in Section 55-9-207 NMSA 1978.

(c) The rights under Subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in Subsection (g) of this section and Section 55-9-605 NMSA 1978, after default, a debtor and an obligor have the rights provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of Chapter 55, Article 9 NMSA 1978.

(g) Except as otherwise provided in Subsection (c) of Section 55-9-607 NMSA 1978 this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes."

## Section 99. A new Section 55-9-602 NMSA 1978 is enacted to read:

"55-9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.--Except as otherwise provided in Section 55-9-624 NMSA 1978, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Subparagraph (C) of Paragraph (4) of Subsection (b) of Section 55-9-207 NMSA 1978, which deals with use and operation of the collateral by the secured party;

(2) Section 55-9-210 NMSA 1978, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Subsection (c) of Section 55-9-607 NMSA 1978, which deals with collection and enforcement of collateral;

(4) Subsection (a) of Section 55-9-608 and Subsection (c) of Section 55-9-615 NMSA 1978 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement or disposition;

(5) Subsection (a) of Section 55-9-608 and Subsection (d) of Section 55-9-615 NMSA 1978 to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 55-9-609 NMSA 1978 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Subsection (b) of Section 55-9-610, Sections

55-9-611, 55-9-613 and 55-9-614 NMSA 1978, which deal with disposition of collateral;

(8) Subsection (f) of Section 55-9-615 NMSA 1978, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party or a secondary obligor;

(9) Section 55-9-616 NMSA 1978, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 55-9-620 through 55-9-622 NMSA 1978, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 55-9-623 NMSA 1978, which deals with redemption of collateral;

(12) Section 55-9-624 NMSA 1978, which deals with permissible waivers; and

(13) Sections 55-9-625 and 55-9-626 NMSA 1978, which deal with the secured party's liability for failure to comply with Chapter 55, Article 9 NMSA 1978."

## Section 100. A new Section 55-9-603 NMSA 1978 is enacted to read:

"55-9-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES.--

(a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 55-9-602 NMSA 1978 if the standards are not manifestly unreasonable.

(b) Subsection (a) of this section does not apply to the duty under Section 55-9-609 NMSA 1978 to refrain from breaching the peace."

## Section 101. A new Section 55-9-604 NMSA 1978 is enacted to read:

"55-9-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES.--

(a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) under Sections 55-9-601 through 55-9-628 NMSA 1978 as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of Sections 55-9-601 through 55-9-628 NMSA 1978 do not apply.

(b) Subject to Subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under Sections 55-9-601 through 55-9-628 NMSA 1978; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of Sections 55-9-601 through 55-9-628 NMSA 1978 do not apply.

(c) Subject to the other provisions of Sections 55-9-601 through 55-9-628 NMSA 1978, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse."

## Section 102. A new Section 55-9-605 NMSA 1978 is enacted to read:

"55-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.--A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person."

## Section 103. A new Section 55-9-606 NMSA 1978 is enacted to read:

"55-9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN.--For purposes of Sections 55-9-601 through 55-9-628 NMSA 1978, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created."

## Section 104. A new Section 55-9-607 NMSA 1978 is enacted to read:

"55-9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.--

(a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 55-9-315 NMSA 1978;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Paragraph (1) of Subsection (a) of Section 55-9-104 NMSA 1978, may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Paragraphs (2) or (3) of Subsection (a) of Section 55-9-104 NMSA 1978, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under Paragraph (3) of Subsection (a) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to Subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party."

## Section 105. A new Section 55-9-608 NMSA 1978 is enacted to read:

"55-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 55-9-607 NMSA 1978 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under Subparagraph (C) of Paragraph (1) of Subsection (a) of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 55-9-607 NMSA 1978 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency."

## Section 106. A new Section 55-9-609 NMSA 1978 is enacted to read:

"55-9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT.--

(a) After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 55-9-610 NMSA 1978.

(b) A secured party may proceed under Subsection (a) of this section:

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties."

## Section 107. A new Section 55-9-610 NMSA 1978 is enacted to read:

"55-9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.--

(a) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under Subsection (d) of this section:

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under Subsection (e) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition" or uses words of similar import."

## Section 108. A new Section 55-9-611 NMSA 1978 is enacted to read:

"55-9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.--

(a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in Subsection (d) of this section, a secured party that disposes of collateral under Section 55-9-610 NMSA 1978 shall send to the persons specified in Subsection (c) of this section a reasonable authenticated notification of disposition.

(c) To comply with Subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978.

(d) Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by Subparagraph (B) of Paragraph (3) of Subsection (c) of this section if:

(1) not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subparagraph (B) of Paragraph (3) of Subsection (c) of this section; and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral."

## Section 109. A new Section 55-9-612 NMSA 1978 is enacted to read:

"55-9-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.--

(a) Except as otherwise provided in Subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition."

## Section 110. A new Section 55-9-613 NMSA 1978 is enacted to read:

"55-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--GENERAL.--Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in Subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in Subsection (1) of this section are sufficient, even if the notification includes:

(A) information not specified by that subsection; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Subsection (3) of Section 55-9-614 NMSA 1978, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (*Name of debtor, obligor or other person to which the notification is sent*)

From: (*Name, address and telephone number of*

*secured party*)

Name of Debtor(s): (*Include only if debtor(s) are not an addressee*)

(*For a public disposition:*)

We will sell (or lease or license, as applicable) the (*describe collateral*) to the highest qualified bidder in public as follows:

Day and Date:

Time:

Place:

(*For a private disposition:*)

We will sell (or lease or license, as applicable) the (*describe collateral*) privately sometime after *(day and date)* .

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of $ _____). You may request an accounting by calling us at (*telephone number*) ."

## Section 111. A new Section 55-9-614 NMSA 1978 is enacted to read:

"55-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--CONSUMER-GOODS TRANSACTION.--In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Subsection (1) of Section 55-9-613 NMSA 1978;

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 55-9-623 NMSA 1978 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

(*Name and address of secured party*)

(*Date*)

NOTICE OF OUR PLAN TO SELL PROPERTY

(*Name and address of any obligor who is also a debtor*)

Subject: (*Identification of Transaction*)

We have your (*describe collateral*) , because you broke promises in our agreement.

(*For a public disposition:*)

We will sell (*describe collateral*) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

(*For a private disposition:*)

We will sell *(describe collateral)* at private sale sometime after *(date)* . A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (*will or will not, as applicable*) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (*telephone number*) .

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (*telephone number*) (or write us at (*secured party's address*) ) and request a written explanation. (We will charge you $ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at *(telephone number)* (or write us at *(secured party's address)* ).

We are sending this notice to the following other people who have an interest in (*describe collateral*) or who owe money under your agreement:

*(Names of all other debtors and obligors, if any)* .

(4) the form of notification provided in Subsection (3) of this section is sufficient even if additional information appears at the end of the form.

(5) The form of notification provided in Subsection (3) of this section is sufficient even if it includes an error regarding information that is not required pursuant to Subsection (1) of this section, unless the error is misleading with respect to rights that arise pursuant to Chapter 55, Article 9 NMSA 1978.

(6) If notification under this section is not in the form provided in Subsection (3) of this section, law other than Chapter 55, Article 9 NMSA 1978 shall determine the effect of including information that is not required pursuant to Subsection (1) of this section."

## Section 112. A new Section 55-9-615 NMSA 1978 is enacted to read:

"55-9-615. APPLICATION OF PROCEEDS OF DISPOSITION--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

(a) A secured party shall apply or pay over for application the cash proceeds of disposition pursuant to Section 55-9-610 NMSA 1978 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Paragraph (3) of Subsection (a) of this section.

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 55-9-610 NMSA 1978 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by Subsection (a) of this section and permitted by Subsection (c) of this section:

(1) unless Paragraph (4) of Subsection (a) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus."

## Section 113. A new Section 55-9-616 NMSA 1978 is enacted to read:

"55-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY.--

(a) In this section:

(1) "explanation" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with Subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available; and

(2) "request" means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 55-9-610 NMSA 1978.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 55-9-615 NMSA 1978, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within fourteen days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with Subparagraph (B) of Paragraph (1) of Subsection (a) of this section, a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Paragraph (1) of this subsection; and

(6) the amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of Subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to Paragraph (1) of Subsection (b) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response."

## Section 114. A new Section 55-9-617 NMSA 1978 is enacted to read:

"55-9-617. RIGHTS OF TRANSFEREE OF COLLATERAL.--

(a) A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in Subsection (a) of this section, even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in Subsection (a) of this section, the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien."

## Section 115. A new Section 55-9-618 NMSA 1978 is enacted to read:

"55-9-618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS.--

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer or subrogation described in Subsection (a) of this section:

(1) is not a disposition of collateral under Section 55-9-610 NMSA 1978; and

(2) relieves the secured party of further duties under Chapter 55, Article 9 NMSA 1978."

## Section 116. A new Section 55-9-619 NMSA 1978 is enacted to read:

"55-9-619. TRANSFER OF RECORD OR LEGAL TITLE.--

(a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under Subsection (b) of this section or otherwise is not of itself a disposition of collateral under Chapter 55, Article 9 NMSA 1978 and does not of itself relieve the secured party of its duties under that article."

## Section 117. A new Section 55-9-620 NMSA 1978 is enacted to read:

"55-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF COLLATERAL.--

(a) Except as otherwise provided in Subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) the debtor consents to the acceptance under Subsection (c) of this section;

(2) the secured party does not receive, within the time set forth in Subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under Section 55-9-621 NMSA 1978; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 55-9-624 NMSA 1978.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of Subsection (a) of this section are met.

(c) For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) To be effective under Paragraph (2) of Subsection (a) of this section, a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 55-9-621 NMSA 1978, within twenty days after notification was sent to that person; and

(2) in other cases:

(A) within twenty days after the last notification was sent pursuant to Section 55-9-621 NMSA 1978; or

(B) if a notification was not sent, before the debtor consents to the acceptance under Subsection (c) of this section.

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 55-9-610 NMSA 1978 within the time specified in Subsection (f) of this section if:

(1) sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) To comply with Subsection (e) of this section, the secured party shall dispose of the collateral:

(1) within ninety days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures."

## Section 118. A new Section 55-9-621 NMSA 1978 is enacted to read:

"55-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.--

(a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978.

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in Subsection (a) of this section."

## Section 119. A new Section 55-9-622 NMSA 1978 is enacted to read:

"55-9-622. EFFECT OF ACCEPTANCE OF COLLATERAL.--

(a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under Subsection (a) of this section, even if the secured party fails to comply with Chapter 55, Article 9 NMSA 1978."

## Section 120. A new Section 55-9-623 NMSA 1978 is enacted to read:

"55-9-623. RIGHT TO REDEEM COLLATERAL.--

(a) A debtor, any secondary obligor or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney fees described in Paragraph (1) of Subsection (a) of Section 55-9-615 NMSA 1978.

(c) A redemption may occur at any time before a secured party:

(1) has collected collateral under Section 55-9-607 NMSA 1978;

(2) has disposed of collateral or entered into a contract for its disposition under Section 55-9-610 NMSA 1978; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 55-9-622 NMSA 1978."

## Section 121. A new Section 55-9-624 NMSA 1978 is enacted to read:

"55-9-624. WAIVER.--

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 55-9-611 NMSA 1978 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under Subsection (e) of Section 55-9-620 NMSA 1978 only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 55-9-623 NMSA 1978 only by an agreement to that effect entered into and authenticated after default."

## Section 122. A new Section 55-9-625 NMSA 1978 is enacted to read:

"55-9-625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH ARTICLE.--

(a) If it is established that a secured party is not proceeding in accordance with Chapter 55, Article 9 NMSA 1978, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

(b) Subject to Subsections (c), (d) and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with Chapter 55, Article 9 NMSA 1978. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 55-9-628 NMSA 1978:

(1) a person that, at the time of the failure, was a debtor, was an obligor or held a security interest in or other lien on the collateral may recover damages under Subsection (b) of this section for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) A debtor whose deficiency is eliminated under Section 55-9-626 NMSA 1978 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 55-9-626 NMSA 1978 may not otherwise recover under Subsection (b) of this section for noncompliance with the provisions of Sections 55-9-601 through 55-9-628 NMSA 1978 relating to collection, enforcement, disposition or acceptance.

(e) In addition to any damages recoverable under Subsection (b) of this section, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover five hundred dollars ($500) in each case from a person that:

(1) fails to comply with Section 55-9-208 NMSA 1978;

(2) fails to comply with Section 55-9-209 NMSA 1978;

(3) files a record that the person is not entitled to file under Subsection (a) of Section 55-9-509 NMSA 1978;

(4) fails to cause the secured party of record to file or send a termination statement as required by Subsection (a) or (c) of Section 55-9-513 NMSA 1978;

(5) fails to comply with Paragraph (1) of Subsection (b) of Section 55-9-616 NMSA 1978 and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with Paragraph (2) of Subsection (b) of Section 55-9-616 NMSA 1978.

(f) A debtor or consumer obligor may recover damages under Subsection (b) of this section and, in addition, five hundred dollars ($500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 55-9-210 NMSA 1978. A recipient of a request under Section 55-9-210 NMSA 1978 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 55-9-210 NMSA 1978, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure."

## Section 123. A new Section 55-9-626 NMSA 1978 is enacted to read:

"55-9-626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE.--

(a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with Sections 55-9-601 through 55-9-628 NMSA 1978.

(3) Except as otherwise provided in Section 55-9-628 NMSA 1978, if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of Sections 55-9-601 through 55-9-628 NMSA 1978 relating to collection, enforcement, disposition or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to

an amount by which the sum of the secured obligation, expenses and attorney fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(4) For purposes of Subparagraph (B) of Paragraph (3) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under Subsection (f) of Section 55-9-615 NMSA 1978, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(b) The limitation of the rules in Subsection (a) of this section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches."

## Section 124. A new Section 55-9-627 NMSA 1978 is enacted to read:

"55-9-627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALLY REASONABLE.--

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

(d) Approval under Subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable."

## Section 125. A new Section 55-9-628 NMSA 1978 is enacted to read:

"55-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR.--

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with Chapter 55, Article 9 NMSA 1978; and

(2) the secured party's failure to comply with Chapter 55, Article 9 NMSA 1978 does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA 1978 for its failure to comply with Section 55-9-616 NMSA 1978.

(e) A secured party is not liable under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA 1978 more than once with respect to any one secured obligation."

## Section 126. Section 55-1-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-105, as amended) is amended to read:

"55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES' POWER TO CHOOSE APPLICABLE LAW.--

(1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or such other state or nation shall govern their rights and duties. Failing such agreement, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

rights of creditors against sold goods. Section 55-2-402 NMSA 1978;

applicability of the article on leases. Sections 55-2A-105 and 55-2A-106 NMSA 1978;

applicability of the article on bank deposits and collections. Section 55-4-102 NMSA 1978;

governing law in the article on fund transfers. Section 55-4A-507 NMSA 1978;

letters of credit. Section 55-5-116 NMSA 1978;

applicability of the article on investment securities. Section 55-8-110 NMSA 1978; and

law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 55-9-301 through 55-9-307 NMSA 1978."

## Section 127. Section 55-1-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-201, as amended) is amended to read:

"55-1-201. GENERAL DEFINITIONS.--Subject to additional definitions contained in the subsequent articles of the Uniform Commercial Code which are applicable to specific articles or parts thereof and unless the context otherwise requires, in that act:

(1) "action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined;

(2) "aggrieved party" means a party entitled to resort to a remedy;

(3) "agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in Sections 55-1-205, 55-2-208 and 55-2A-207 NMSA 1978. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code, if applicable; otherwise by the law of contracts (Section 55-1-103 NMSA 1978). (Compare "contract".);

(4) "bank" means any person engaged in the business of banking;

(5) "bearer" means the person in possession of an instrument, document of title or certificated security payable to bearer or indorsed in blank;

(6) "bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation and includes an air consignment note or air waybill;

(7) "branch" includes a separately incorporated foreign branch of a bank;

(8) "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence;

(9) "buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 55, Article 2 NMSA 1978 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business;

(10) "conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court;

(11) "contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "agreement".);

(12) "creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate;

(13) "defendant" includes a person in the position of defendant in a cross-action or counterclaim;

(14) "delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession;

(15) "document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods and also any other document which in the regular course of business or financing is treated as adequately evidencing that

the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass;

(16) "fault" means wrongful act, omission or breach;

(17) "fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents;

(18) "genuine" means free of forgery or counterfeiting;

(19) "good faith" means honesty in fact in the conduct or transaction concerned;

(20) "holder", with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder", with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession;

(21) to "honor" is to pay or to accept and pay, or where a credit so engages, to purchase or discount a draft complying with the terms of the credit;

(22) "insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved;

(23) a person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law;

(24) "money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations;

(25) a person has "notice" of a fact when:

(a) he has actual knowledge of it;

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the Uniform Commercial Code;

(26) a person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications;

(27) notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information;

(28) "organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

(29) "party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within the Uniform Commercial Code;

(30) "person" includes an individual or an organization (see Section 55-1-102 NMSA 1978);

(31) "presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence;

(32) "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property;

(33) "purchaser" means a person who takes by purchase;

(34) "remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal;

(35) "representative" includes an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate or any other person empowered to act for another;

(36) "rights" includes remedies;

(37) "security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to Chapter 55, Article 9 NMSA 1978. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 55-2-401 NMSA 1978 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 55, Article 9 NMSA 1978. Except as otherwise provided in Section 55-2-505 NMSA 1978, the right of a seller or lessor of goods under Chapter 55, Article 2 or 2A NMSA 1978 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Chapter 55, Article 9 NMSA 1978. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 55-2-401 NMSA 1978) is limited in effect to a reservation of a "security interest".

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees or service or maintenance costs with respect to the goods;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this Subsection (37):

(x) additional consideration is not nominal if: (i) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or (ii) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;

(38) "send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending;

(39) "signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing;

(40) "surety" includes guarantor;

(41) "telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission or the like;

(42) "term" means that portion of an agreement which relates to a particular matter;

(43) "unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery;

(44) "value". Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 55-3-303, 55-4-210 and 55-4-211 NMSA 1978) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a pre-existing claim;

(c) by accepting delivery pursuant to a

pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract;

(45) "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire; and

(46) "written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form."

## Section 128. Section 55-2-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-103, as amended) is amended to read:

"55-2-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

(1) In this article, unless the context otherwise requires:

(a) "buyer" means a person who buys or contracts to buy goods;

(b) "good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade;

(c) "receipt" of goods means taking physical possession of them; and

(d) "seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". . . . . Section 55-2-606 NMSA 1978;

"Banker's credit". . . . . Section 55-2-325 NMSA 1978;

"Between merchants". . . . . Section 55-2-104 NMSA 1978;

"Cancellation". . . . . Section 55-2-106(4) NMSA 1978;

"Commercial unit". . . . . Section 55-2-105 NMSA 1978;

"Confirmed credit". . . . . Section 55-2-325 NMSA 1978;

"Conforming to contract". . . . . Section 55-2-106 NMSA 1978;

"Contract for sale". . . . . Section 55-2-106 NMSA 1978;

"Cover". . . . . Section 55-2-712 NMSA 1978;

"Entrusting". . . . . Section 55-2-403 NMSA 1978;

"Financing agency". . . . . .Section 55-2-104 NMSA 1978;

"Future goods". . . . . Section 55-2-105 NMSA 1978;

"Goods". . . . . Section 55-2-105 NMSA 1978;

"Identification". . . . . Section 55-2-501 NMSA 1978;

"Installment contract". . . . . Section 55-2-612 NMSA 1978;

"Letter of Credit". . . . . Section 55-2-325 NMSA 1978;

"Lot". . . . . Section 55-2-105 NMSA 1978;

"Merchant". . . . . Section 55-2-104 NMSA 1978;

"Overseas". . . . . Section 55-2-323 NMSA 1978;

"Person in the position of a seller". . . . . Section 55-2-707 NMSA 1978;

"Present sale". . . . . Section 55-2-106 NMSA 1978;

"Sale". . . . . Section 55-2-106 NMSA 1978;

"Sale on approval". . . . . Section 55-2-326 NMSA 1978;

"Sale or return". . . . . Section 55-2-326 NMSA 1978;

"Termination". . . . . Section 55-2-106 NMSA 1978;

(3) The following definitions in other articles apply to this article:

"Check". . . . . Section 55-3-104 NMSA 1978;

"Consignee". . . . . Section 55-7-102 NMSA 1978;

"Consignor". . . . . Section 55-7-102 NMSA 1978;

"Consumer goods". . . . . Section 55-9-102 NMSA 1978;

"Dishonor". . . . . Section 55-3-502 NMSA 1978; and

"Draft". . . . . Section

55-3-104 NMSA 1978.

(4) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

## Section 129. Section 55-2-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-210) is amended to read:

"55-2-210. DELEGATION OF PERFORMANCE--ASSIGNMENT OF RIGHTS.--

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 55-9-406 NMSA 1978, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party or increase materially the burden or risk imposed on him by his contract or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of Subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the

assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 55-2-609 NMSA 1978)."

## Section 130. Section 55-2-326 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-326, as amended) is amended to read:

"55-2-326. SALE ON APPROVAL AND SALE OR RETURN--RIGHTS OF CREDITORS.--

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (Section 55-2-201 NMSA 1978) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (Section 55-2-202 NMSA 1978)."

## Section 131. Section 55-2-502 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-502) is amended to read:

"55-2-502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO DELIVER OR INSOLVENCY.--

(1) Subject to Subsections (2) and (3) of this section and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover goods pursuant to Paragraph (a) of Subsection (1) of this section vests upon acquisition of a special property even if the seller has not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale."

## Section 132. Section 55-2-716 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-716) is amended to read:

"55-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.--

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

## Section 133. Section 55-2A-103 NMSA 1978 (being Laws 1992, Chapter 114, Section 10, as amended) is amended to read:

"55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

(1) In this article unless the context otherwise requires:

(a) "buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a

pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(b) "cancellation" occurs when either party puts an end to the lease contract for default by the other party;

(c) "commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole;

(d) "conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract;

(e) "consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose;

(f) "fault" means wrongful act, omission, breach or default;

(g) "finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of

the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies;

(h) "goods" means all things that are movable at the time of identification to the lease contract or are fixtures (Section 55-2A-309 NMSA 1978), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals;

(i) "installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent;

(j) "lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease; unless the context clearly indicates otherwise, the term includes a sublease;

(k) "lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage or trade or course of performance as provided in this article; unless the context clearly indicates otherwise, the term includes a sublease agreement;

(l) "lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law; unless the context clearly indicates otherwise, the term includes a sublease contract;

(m) "leasehold interest" means the interest of the lessor or the lessee under a lease contract;

(n) "lessee" means a person who acquires the right to possession and use of goods under a lease; unless the context clearly indicates otherwise, the term includes a sublessee;

(o) "lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker; "leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(p) "lessor" means a person who transfers the right to possession and use of goods under a lease; unless the context clearly indicates otherwise, the term includes a sublessor;

(q) "lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract;

(r) "lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest;

(s) "lot" means a parcel or a single article that is the subject matter of a separate lease or delivery whether or not it is sufficient to perform the lease contract;

(t) "merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease;

(u) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain; the discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;

(v) "purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods;

(w) "sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease;

(x) "supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease;

(y) "supply contract" means a contract under which a lessor buys or leases goods to be leased; and

(z) "termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions" Section

55-2A-310(1) NMSA 1978.

"Construction mortgage" Section

55-2A-309(1)(d) NMSA 1978.

"Encumbrance" Section

55-2A-309(1)(e) NMSA 1978.

"Fixtures". Section

55-2A-309(1)(a) NMSA 1978.

"Fixture filing". Section

55-2A-309(1)(b) NMSA 1978.

"Purchase money lease" Section

55-2A-309(1)(c) NMSA 1978.

(3) The following definitions in other articles apply to this article:

"Account" . . . . . Paragraph (2) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Between merchants" . . . . . .Subsection (3) of Section 55-2-104 NMSA 1978.

"Buyer" . . . . . .Paragraph (a) of Subsection (1) of Section 55-2-103 NMSA 1978.

"Chattel paper" . . . . . .Paragraph (11) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Consumer goods". . . . . .Paragraph (23) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Document". . . . . .Paragraph (30) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Entrusting". . . . . .Subsection (3) of Section 55-2-403 NMSA 1978.

"General intangible". . . . . .Paragraph (42) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Good faith". . . . . .Paragraph (b) of Subsection (1) of Section 55-2-103 NMSA 1978.

"Instrument". . . . . .Paragraph (47) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Merchant". . . . . .Subsection (1) of Section 55-2-104 NMSA 1978.

"Mortgage". . . . . .Paragraph (55) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Pursuant to commitment". . . . . .Paragraph (68) of Subsection (a) of Section 55-9-102 NMSA 1978.

"Receipt" . . . . . .Paragraph (c) of Subsection (1) of Section 55-2-103 NMSA 1978.

"Sale". . . . . .Subsection (1) of Section 55-2-106 NMSA 1978.

"Sale on approval". . . . . .Section 55-2-326 NMSA 1978.

"Sale or return". . . . . .Section 55-2-326 NMSA 1978.

"Seller". . . . . .Paragraph (d) of Subsection (1) of Section 55-2-103 NMSA 1978.

(4) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

## Section 134. Section 55-2A-303 NMSA 1978 (being Laws 1992, Chapter 114, Section 40) is amended to read:

"55-2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS--DELEGATION OF PERFORMANCE--TRANSFER OF RIGHTS.--

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter 55, Article 9 NMSA 1978 by reason of Paragraph (3) of Subsection (a) of Section 55-9-109 NMSA 1978.

(2) Except as provided in Subsection (3) of this section and Section 55-9-407 NMSA 1978, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in Subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of Subsection (4) of this section.

(4) Subject to Subsection (3) of this section and Section 55-9-407 NMSA 1978:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Subsection (2) of Section 55-2A-501 NMSA 1978; and

(b) if Paragraph (a) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement, or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing and conspicuous."

## Section 135. Section 55-2A-307 NMSA 1978 (being Laws 1992, Chapter 114, Section 44) is amended to read:

"55-2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN AND OTHER CLAIMS TO GOODS.--

(1) Except as otherwise provided in Section 55-2A-306 NMSA 1978, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in Subsection (3) of this section and in Sections 55-2A-306 and 55-2A-308 NMSA 1978, a creditor of a lessor takes subject to the lease contract unless

the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in Sections 55-9-317, 55-9-321 and 55-9-323 NMSA 1978, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

## Section 136. Section 55-2A-309 NMSA 1978 (being Laws 1992, Chapter 114, Section 46) is amended to read:

"55-2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.--

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Subsections (a) and (b) of Section 55-9-502 NMSA 1978;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding Paragraph (a) of Subsection (4) of this section but otherwise subject to Subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Chapter 55, Article 9 NMSA 1978."

## Section 137. Section 55-4-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-208, as amended) is amended to read:

"55-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS.--

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 55, Article 9 NMSA 1978, but:

(1) no security agreement is necessary to make the security interest enforceable (Subparagraph (A) of Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978);

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

## Section 138. A new Section 55-5-118 NMSA 1978 is enacted to read:

"55-5-118. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON.--

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a

security interest in a document under Subsection (a) of this section, the security interest continues and is subject to Chapter 55, Article 9 NMSA 1978, but:

(1) a security agreement is not necessary to make the security interest enforceable under Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978;

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document."

## Section 139. Section 55-7-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-503) is amended to read:

"55-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.--

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (Section 55-7-403 NMSA 1978) or with power of disposition under Sections 55-2-403 and 55-9-320 NMSA 1978 or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under Section 55-7-504 NMSA 1978 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Sections 55-7-401 through 55-7-404 NMSA 1978 pursuant to its own bill of lading discharges the carrier's obligation to deliver."

## Section 140. Section 55-8-103 NMSA 1978 (being Laws 1996, Chapter 47, Section 7) is amended to read:

"55-8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.--

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by Chapter 55, Article 3 NMSA 1978, even though it also meets the requirements of that article. However, a negotiable instrument governed by Chapter 55, Article 3 NMSA 1978 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security. It is a financial asset.

(f) A commodity contract, as defined in Paragraph (15) of Subsection (a) of Section 55-9-102 NMSA 1978, is not a security or a financial asset."

## Section 141. Section 55-8-106 NMSA 1978 (being Laws 1996, Chapter 47, Section 10) is amended to read:

"55-8-106. CONTROL.--

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of Subsection (c) or (d)of this section has control even if the registered owner in the case of Subsection (c)of this section or the entitlement holder in the case of Subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in Paragraph (2) of Subsection (c)or Paragraph (2) of Subsection (d)of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder."

## Section 142. Section 55-8-110 NMSA 1978 (being Laws 1996, Chapter 47, Section 14) is amended to read:

"55-8-110. APPLICABILITY--CHOICE OF LAW.--

(a) The local law of the issuer's jurisdiction, as specified in Subsection (d) of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in Subsection (e) of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may

specify the law of another jurisdiction as the law governing the matters specified in Paragraphs (2) through (5) of Subsection (a) of this section.

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) if an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of Sections 55-8-101 through 55-8-116 NMSA 1978,

that jurisdiction is the securities intermediary's jurisdiction;

(2) if Paragraph (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

(3) if neither Paragraph (1) nor Paragraph (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

(4) if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located; or

(5) if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement or by the location of facilities for data processing or other record keeping concerning the account."

## Section 143. Section 55-8-301 NMSA 1978 (being Laws 1996, Chapter 47, Section 31) is amended to read:

"55-8-301. DELIVERY.--

(a) Delivery of a certificated security to a purchaser occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser."

## Section 144. Section 55-8-302 NMSA 1978 (being Laws 1996, Chapter 47, Section 32) is amended to read:

"55-8-302. RIGHTS OF PURCHASER.--

(a) Except as otherwise provided in Subsections (b) and (c) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser."

## Section 145. Section 55-8-510 NMSA 1978 (being Laws 1996, Chapter 47, Section 54) is amended to read:

"55-8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER.--

(a) In a case not covered by the priority rules in Chapter 55, Article 9 NMSA 1978 or the rules stated in Subsection (c) of this section, an action based on an

adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 55-8-502 NMSA 1978, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Chapter 55, Article 9 NMSA 1978, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in Subsection (d) of this section, purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under Paragraph (1) of Subsection (d) of Section 55-8-106 NMSA 1978;

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under Paragraph (2) of Subsection (d) of Section 55-8-106 NMSA 1978; or

(3) if the purchaser obtained control through another person under Paragraph (3) of Subsection (d) of Section 55-8-106 NMSA 1978, the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

## Section 146. SAVING CLAUSE.--

(a) Except as otherwise provided in Sections 146 through 155 of this act, its provisions apply to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) Except as otherwise provided in Subsection (c) of this section and Sections 147 through 153 of this act:

(1) transactions and liens that were not governed by Chapter 55, Article 9 NMSA 1978, as it existed prior to July 1, 2001, were validly entered into or created before that date and would be subject to this act if they had been entered into or created after July 1, 2001, and the rights, duties and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) the transactions and liens described in Paragraph (1) of this subsection may be terminated, completed, consummated and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) This act does not affect an action, case or proceeding commenced before July 1, 2001.

## Section 147. TEMPORARY TRANSITION PROVISION--SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.--

(a) A security interest that is enforceable immediately before July 1, 2001 and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, on July 1, 2001, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Except as otherwise provided in Section 149 of this act, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied on July 1, 2001, the security interest:

(1) is a perfected security interest until midnight on June 30, 2002;

(2) remains enforceable on and after July 1, 2002 only if the security interest becomes enforceable pursuant to Section 55-9-203 NMSA 1978 before midnight on June 30, 2002; and

(3) remains perfected on and after July 1, 2002 only if the applicable requirements for perfection under this act are satisfied before midnight on June 30, 2002.

## Section 148. TEMPORARY TRANSITION PROVISION--SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.--A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest until midnight June 30, 2002;

(2) remains enforceable on and after July 1, 2002 if the security interest becomes enforceable pursuant to Section 55-9-203 NMSA 1978 before June 30, 2002; and

(3) becomes perfected:

(A) without further action on July 1, 2002 if the applicable requirements for perfection under this act are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after the time specified in Paragraph (A) of this subsection.

## Section 149. TEMPORARY TRANSITION PROVISION--EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.--

(a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and if the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before that date, the action is effective to perfect a security interest that attaches under this act before July 1, 2002. An attached security interest becomes unperfected on July 1, 2002 unless the security interest becomes a perfected security interest under this act before that date.

(b) The filing of a financing statement before July 1, 2001 is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Section 55-9-103 NMSA 1978 as it existed prior to July 1, 2001. However, except as otherwise provided in Subsections (d) and (e) of this section and Section 150 of this act, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Filing of a continuation statement after July 1, 2001 does not continue the effectiveness of a financing statement filed before that date. However, upon the timely filing of a continuation statement on or after July 1, 2001 and in accordance with the law of the jurisdiction governing perfection as provided in Sections 55-9-301 through

55-9-342 NMSA 1978, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001 continues for the period provided by the law of that jurisdiction.

(e) Paragraph (2) of Subsection (c) of this section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Section 55-9-103 NMSA 1978 as that section existed prior to July 1, 2001 only to the extent that Sections 55-9-301 through 55-9-342 NMSA 1978 provide that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before July 1, 2001 and a continuation statement filed after that date is effective only to the extent that it satisfies the requirements of Sections 55-9-501 through 55-9-518 NMSA 1978 for an initial financing statement.

## Section 150. TEMPORARY TRANSITION PROVISION--WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.--

(a) The filing of an initial financing statement in the office specified in Section 55-9-501 NMSA 1978 continues the effectiveness of a financing statement filed before July 1, 2001 if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) the pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) the initial financing statement satisfies Subsection (c) of this section.

(b) The filing of an initial financing statement under Subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before July 1, 2001, for the period provided in Section 55-9-403 NMSA 1978 as it existed prior to July 1, 2001, with respect to a financing statement; and

(2) if the initial financing statement is filed after July 1, 2001, for the period provided in Section 55-9-515 NMSA 1978 with respect to an initial financing statement.

(c) To be effective for purposes of Subsection (a) of this section, an initial financing statement must:

(1) satisfy the requirements of Sections 55-9-501 through 55-9-526 NMSA 1978 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

## Section 151. TEMPORARY TRANSITION PROVISION--AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.--

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2001.

(b) After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Sections 55-9-301 through 55-9-338 NMSA 1978. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in Subsection (d) of this section if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2001 only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 55-9-501 NMSA 1978;

(2) an amendment is filed in the office specified in Section 55-9-501 NMSA 1978 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Subsection (c) of Section 149 of this act; or

(3) an initial financing statement that provides the information as amended and satisfies Subsection (c) of Section 149 of this act is filed in the office specified in Section 55-9-501 NMSA 1978.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Subsections (d) and (f) of Section 148 of this act or Section 149 of this act.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2001 by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Subsection (c) of Section 149 of this act has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Sections 55-9-301 through 55-9-342 NMSA 1978 as the office in which to file a financing statement.

## Section 152. TEMPORARY TRANSITION PROVISION--PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.--A person may file an initial financing statement or a continuation statement under Sections 145 through 152 of this act if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under Sections 145 through 153 of this act:

(A) to continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) to perfect or continue the perfection of a security interest.

## Section 153. TEMPORARY TRANSITION PROVISION--PRIORITY.--

(a) This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, Chapter 55, Article 9 NMSA 1978 as it existed before that date determines priority.

(b) For purposes of Subsection (a) of Section 55-9-322 NMSA 1978, the priority of a security interest that becomes enforceable under Section 55-9-203 NMSA 1978 dates from July 1, 2001 if the security interest is perfected under this act by the filing of a financing statement before that date which would not have been effective to perfect the security interest under Chapter 55, Article 9 NMSA 1978 as it existed before July 1, 2001. This subsection does not apply to conflicting security interests, each of which is perfected by the filing of such a financing statement.

## Section 154. TEMPORARY TRANSITION PROVISION--CERTAIN RECORDS OF COUNTY CLERKS.--

(a) As used in this section, "pre-effective-date record" means a financing statement and related records filed in a county clerk's office, pursuant to the provisions of Chapter 55, Article 9 NMSA 1978 as it existed prior to July 1, 2001, but does not include real estate records filed in the county clerk's office.

(b) Until July 1, 2008, a county clerk shall maintain, index and make available to the public all pre-effective-date records.

(c) On or after July 1, 2008, a county clerk may remove and destroy pre-effective-date records, including related indexes, so long as the county clerk complies with other applicable laws regarding retention of records.

## Section 155. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 408

# CHAPTER 140

**CHAPTER 140, LAWS 2001**

AN ACT

RELATING TO THE LITTER CONTROL AND BEAUTIFICATION ACT; TRANSFERRING ACTIVITIES TO THE TOURISM DEPARTMENT; 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 67-16-3 NMSA 1978 (being Laws 1985, Chapter 23, Section 3, as amended) is amended to read:

"67-16-3. DEFINITIONS.--As used in the Litter Control and Beautification Act:

A. "keep America beautiful system" means a comprehensive program to improve waste handling practices and the control of litter;

B. "keep New Mexico beautiful, incorporated" is the statewide organization that is the official clearinghouse for beautification projects in the state;

C. "council" means the litter control council;

D. "department" means the tourism department;

E. "litter" means weeds, graffiti and all waste material, including disposable packages or containers, but not including the waste of the primary processes of mining, logging, sawmilling or farming;

F. "person" means an individual, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind;

G. "public place" means an area that is used or held out for use by the public, whether owned or operated by public or private interests; and

H. "recycling" means the collection, separation or processing and return to the economic mainstream of raw materials or products that would otherwise become solid waste."

## Section 2. Section 67-16-8 NMSA 1978 (being Laws 1985, Chapter 23, Section 8, as amended) is amended to read:

"67-16-8. CONTRACTING WITH OTHER AGENCIES.--The department shall have authority to contract with other state and local government agencies for services and personnel reasonably necessary to carry out the provisions of the Litter Control and Beautification Act."

## Section 3. Section 67-16-9 NMSA 1978 (being Laws 1985, Chapter 23, Section 9) is amended to read:

"67-16-9. LITTER RECEPTACLES--PLACEMENT.--The department shall establish reasonable guidelines for the number, placement and maintenance of receptacles in cooperation with the persons in control of any property that is open to the public. The department shall consider, among other public places, the public highways of the state, all parks, campgrounds, trailer parks, drive-in restaurants, construction sites, gasoline service stations, shopping centers, retail store parking lots, parking lots of industrial and business firms, marinas, boating areas, public and private piers, beaches and bathing areas. Litter receptacles shall be maintained in a manner to prevent overflow or spillage from the receptacles."

## Section 4. Section 67-16-10 NMSA 1978 (being Laws 1985, Chapter 23, Section 10) is amended to read:

"67-16-10. LITTER BAG.--The council shall design and produce a litter bag bearing the state anti-litter symbol, Dusty Roadrunner, and a statement of the penalties prescribed for littering. Litter bags shall be distributed by the motor vehicle division of the taxation and revenue department and the department of game and fish at no charge at the time and place of the issuance of licenses or renewal thereof. The state may provide litter bags at no charge to tourists and visitors at points of entry into the state. The council may establish a distribution system with the aid of private industry."

## Section 5. Section 67-16-12 NMSA 1978 (being Laws 1985, Chapter 23, Section 12, as amended) is amended to read:

"67-16-12. FURTHER DUTIES OF DEPARTMENT.--

A. The department shall:

(1) serve as the coordinating agency between various industry and business organizations seeking to aid in the anti-litter effort;

(2) cooperate with all local governments to accomplish coordination of local anti-litter efforts;

(3) encourage voluntary local anti-litter campaigns seeking to focus the attention of the public on programs to control and remove litter;

(4) encourage voluntary recycling programs and aid in identifying programs and available markets for recycled materials;

(5) apply for funds available from any other source for use in the administration of the Litter Control and Beautification Act;

(6) adopt rules to enter into contracts for making either direct or matching grants with other state agencies, cities or counties or with an Indian nation, tribe or pueblo government for the purpose of promoting local keep America beautiful system programs; and

(7) aid in the adoption and enforcement of model anti-litter statutes and ordinances and improve state and local litter control programs.

B. The department shall also allocate funds appropriated to it from the litter control and beautification fund according to the following formula:

(1) no more than fifteen percent of the fees received in a year for operating expenses directly related to the administration of the council, including:

(a) research, development and implementation of a statewide evaluation system;

(b) professional services provided to the state by representatives of keep America beautiful, incorporated; and

(c) the promotion of and encouragement of private recycling efforts for all recyclable items;

(2) no more than twenty percent of the fees received in a year to purchase litter bags and receptacles and to conduct a public awareness and media campaign to include brochures, literature and educational materials, production of public service announcements and other expenses relating to public relations;

(3) no more than fifty percent of the fees received in a year to local governments to establish and help continue local keep America beautiful system programs;

(4) no more than sixty percent of the fees received in a year to local governments to establish a summer youth employment program to aid in litter control and beautification projects; and

(5) no more than ten percent of fees received in a year to keep New Mexico beautiful, incorporated to further beautification and educational programs."

## Section 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On the effective date of this act:

A. all personnel, appropriations, money, records, equipment, supplies and other property and money necessary for the activities of the Litter Control and Beautification Act shall be transferred to the tourism department;

B. all contracts related to the Litter Control and Beautification Act shall be binding and effective on the tourism department; and

C. with respect to the Litter Control and Beautification Act, all references in law to the state highway and transportation department shall be deemed to be references to the tourism department.

## Section 7. REPEAL.--Section 67-16-13 NMSA 1978 (being Laws 1985, Chapter 23, Section 13) is repealed.

## Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL 338 WITH EMERGENCY CLAUSE

SIGNED APRIL 2, 2001

# CHAPTER 141

**CHAPTER 141, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING CREDIT FOR AN UNEXPIRED PORTION OF AN EXTENDED REGISTRATION PERIOD FEE.

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

## Section 1. Section 66-3-20.1 NMSA 1978 (being Laws 1988, Chapter 94, Section 1, as amended) is amended to read:

"66-3-20.1. PROVIDING FOR EXTENDED REGISTRATION PERIODS FOR CERTAIN MOTOR VEHICLES--CREDIT FOR UNEXPIRED PORTION OF FEE.--

A. Registrations of vehicles, motorcycles or trucks with a declared gross weight of twenty-six thousand pounds or less may be for a period of up to two years; provided, the extended registration period shall begin on the first day of any month and expire on the last day of any month.

B. The fee for an extended registration period shall be the fee for a registration for one year divided by four and multiplied by the number of calendar quarters in the registration period with any fraction of a quarter year to be considered a full quarter.

C. If a registration expires by operation of law prior to the end of the extended registration period, no portion of the registration fee shall be refunded.

D. If the owner of a vehicle that is registered for an extended registration period sells, transfers or assigns title or interest to the vehicle and applies to have the registration number assigned to another vehicle, upon assignment, a credit amount representing the unexpired portion of the registration fee plus an administrative fee to be determined by the department shall be applied, on a pro rata basis, to the registration fee for the vehicle to which the registration number is assigned."

## Section 2. Section 66-3-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 48, as amended) is amended to read:

"66-3-101. TRANSFER BY OWNER--RECORDATION OF MILEAGE OF VEHICLE.--

A. When the owner of a registered vehicle sells, transfers or assigns his title or interest in, and delivers the possession of, the vehicle to another, the registration of the vehicle shall expire, except as provided in Subsection B of this section. The previous owner shall notify the division of the sale or transfer giving the date thereof, the name and address of the new owner and such description of the vehicle as may be required in the appropriate form provided for such purpose by the division. In the case of any transfer, including but not limited to a transfer resulting from a sale, lease, gift or auction of any vehicle, the person making the transfer shall sign and shall record on the

document evidencing the transfer of the vehicle the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of the transfer.

B. The owner shall remove the registration plates from the vehicle except as provided in Subsection C of this section and, within thirty days from the date of transfer, forward the registration plates to the division or its authorized agent to be destroyed or may apply to have the plate and the registration number assigned to another vehicle, as provided for in Section 66-3-104 NMSA 1978, upon the payment of the difference, if any, between the paid registration fee and the new registration fee less a credit amount, if applicable, representing the unexpired portion of the registration fee as provided in Section 66-3-20.1 NMSA 1978 and the transfer fee provided by law and subject to the rules of the division.

C. When the owner of a vehicle bearing a current registration plate of a foreign state, territory or country transfers or assigns his title or interest in the vehicle, the foreign registration plate shall be delivered, together with the title to the vehicle and evidence of registration, to the division or its authorized agent at the time application is made for a New Mexico registration plate, except when the assignment or transfer of the title is to a bona fide resident of the foreign state, territory or country in which the vehicle is registered."

## Section 3. Section 66-3-104 NMSA 1978 (being Laws 1978, Chapter 35, Section 51, as amended) is amended to read:

"66-3-104. USE OF PLATE AND REGISTRATION NUMBER ON ANOTHER VEHICLE--TRANSFER OF REGISTRATION.--

A. When the owner of a registered vehicle assigns title or interest to the vehicle, the registration of that vehicle expires, unless the vehicle is registered for an extended registration period and the owner applies to have the registration number assigned to another vehicle as provided in Subsection B of this section.

B. When the owner of a registered vehicle assigns title or interest to the vehicle, he shall remove and retain the registration plate from the vehicle and, within thirty days of the transfer, either make application to have the registration number assigned to another vehicle of the same class or forward the plate to the department or its authorized agent to be destroyed. The transfer of the registration plate shall be permitted only if the application for transfer is made in the name of the original registered owner unless the owner's name has been changed by marriage, divorce or court order.

C. The registration plate shall not be displayed upon the newly acquired vehicle until the registration of the vehicle has been completed and a new registration certificate issued. However, the temporary retail-sale permit issued for the vehicle by the dealer pursuant to the provisions of Section 66-3-6 NMSA 1978 may be securely

attached to the plate to be transferred and displayed in accordance with Subsection A of Section 66-3-18 NMSA 1978."

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HOUSE BILL 416, AS AMENDED

# CHAPTER 142

**CHAPTER 142, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING SECTION 12-6-4 NMSA 1978 (BEING LAWS 1969, CHAPTER 68, SECTION 4) PROVIDING FOR THE COST OF ANNUAL STATE AGENCY AUDITS.

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

## Section 1. Section 12-6-4 NMSA 1978 (being Laws 1969, Chapter 68, Section 4) is amended to read:

"12-6-4. AUDITING COSTS.--The reasonable cost of all audits shall be borne by the agency audited, except that the administrative office of the courts shall bear the cost of auditing the magistrate courts. A metropolitan court shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to the metropolitan court. The district courts of all counties within a judicial district shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to each judicial district. The court clerk trust account and the state treasurer account of each county's district court shall be included within the scope of the judicial district audit."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 432, AS AMENDED

# CHAPTER 143

**CHAPTER 143, LAWS 2001**

AN ACT

RELATING TO WATER; PROVIDING AUTHORITY TO THE STATE ENGINEER TO ISSUE COMPLIANCE ORDERS AND OTHER ENFORCEMENT POWERS; PROVIDING A PENALTY.

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

## Section 1. STATE ENGINEER--ENFORCEMENT--COMPLIANCE ORDERS--PENALTY.--

A. When a person, pursuant to a finding of fact, violates a requirement or prohibition of Chapter 72 NMSA 1978, a rule adopted by the state engineer pursuant to those laws, a condition of a permit or license issued by the state engineer pursuant to those laws or an order entered by a court adjudicating a water right, the state engineer may, in addition to any other remedies available under law, issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance within a specified time period.

B. This section shall not be construed to affect or interfere with the jurisdiction of an irrigation district, a federal court or an Indian nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.

C. A compliance order may include an order to cease the violation of a permit or license or portion of a permit or license issued by the state engineer. A compliance order issued for overdiversion or illegal diversion of water may require repayment of water in an amount up to double the amount of the overdiversion or illegal diversion and installation of a measuring device prior to any future diversion of water. In determining the amount of repayment of water, the state engineer shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

D. The state engineer shall provide for the person named in the compliance order an opportunity to contest informally the alleged violation with the office of the state engineer and a public hearing pursuant to Sections 72-2-16 and 72-2-17 NMSA 1978. If the person wants a public hearing, he shall submit a written request no later than thirty days after issuance of a compliance order by certified mail, return receipt requested, or serve a notice of appeal upon the state engineer, in accordance with Section 72-7-1 NMSA 1978, within thirty days after receipt of a compliance order. A compliance order is final upon action by the state engineer within thirty days after a public hearing or within thirty days of an appeal pursuant to Section 72-7-1 NMSA 1978.

E. The state engineer shall not seek enforcement of a compliance order until it is final. Any appeal to district court shall be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

F. The state engineer may assess a civil penalty of up to one hundred dollars ($100) per day for violation of a final compliance order.

G. If a final compliance order is issued and the person does not comply, the state engineer may file a civil action to enforce the compliance order and receive any of the remedies provided in this section, including injunctive relief.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 445, AS AMENDED

# CHAPTER 144

**CHAPTER 144, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; INCREASING THE PENALTY FOR THE CRIMINAL OFFENSE OF BATTERY AGAINST A HOUSEHOLD MEMBER; AMENDING THE ELEMENTS OF THE CRIMINAL OFFENSE OF AGGRAVATED BATTERY AGAINST A HOUSEHOLD MEMBER; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 30-3-15 NMSA 1978 (being Laws 1995, Chapter 221, Section 6) is amended to read:

"30-3-15. BATTERY AGAINST A HOUSEHOLD MEMBER.--

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is guilty of a misdemeanor."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 460, AS AMENDED

# CHAPTER 145

**CHAPTER 145, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENTAL IMPROVEMENT BOARD; INCREASING MEMBERSHIP; LOWERING THE NUMBER FOR A QUORUM.

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

## Section 1. Section 74-1-4 NMSA 1978 (being Laws 1971, Chapter 277, Section 5, as amended) is amended to read:

"74-1-4. ENVIRONMENTAL IMPROVEMENT BOARD--CREATION--ORGANIZATION.--

A. There is created the "environmental improvement board". The board shall consist of seven members appointed by the governor, by and with the advice and consent of the senate. The members of the board shall be appointed for overlapping terms, with no term exceeding five years. No more than four members shall be appointed from any political party. At least a majority of the membership of the board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the federal Clean Air Act or the Air Quality Control Act. Any vacancy occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term.

B. The members of the board shall be reimbursed as provided in the Per Diem and Mileage Act.

C. The board shall elect from its membership a chairman, vice chairman and secretary and shall establish the tenure of these offices. The board shall convene upon the call of the chairman or a majority of its members. Four members shall constitute a quorum."

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HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 522, AS AMENDED

# CHAPTER 146

**CHAPTER 146, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; AMENDING AND UPDATING ARTICLE 5 OF THE ELECTION CODE; INCREASING FINES.

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

## Section 1. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended) is amended to read:

"1-5-2. DEFINITIONS.--As used in the Election Code:

A. "county" means any county in this state;

B. "county register" means an official file of original certificates of registration of the county or any precinct thereof;

C. "voter list" means any prepared list of voters;

D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;

E. "active data processing media" means magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by computer for the eventual preparation of voter lists;

F. "intermediate records" means records on active data processing media;

G. "voter file" means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;

H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;

I. "mailing labels" means prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means prepared lists of selected voters arranged in the order in which requested;

K. "statistical data" means information derived from the voter file;

L. "voter data" means selected information derived from the voter file;

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any prepared listing that reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results;

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file;

S. "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government; and

T. "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision-making of a federal, state or local government."

## Section 2. Section 1-5-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 107, as amended by Laws 1993, Chapter 314, Section 34 and also by Laws 1993, Chapter 316, Section 34) is amended to read:

"1-5-5. ENTRY OF DATA INTO DATA PROCESSING SYSTEM--COUNTY REGISTER--MAINTENANCE.--

A. The county clerk, upon receipt of a proper certificate of registration within the period prescribed for registration, shall immediately enter in the proper spaces thereon the precinct of the voter.

B. All information required shall then be entered into the voter file and evidenced by the file maintenance list. A new certificate of registration, or change of information to an existing certificate of registration, shall not be inserted into the county register until the county clerk has had all pertinent information necessary for the preparation of voter files and voter lists transcribed from it to a record appropriate for use for preparation of such lists.

C. After entry of data into the data processing system, the county clerk shall insert each original certificate of registration in its proper order in the county register.

D. A certificate of registration shall not be removed from the county register pursuant to a cancellation of registration until the county clerk has entered into the voter file all deletions and changes and such deletions and changes are evidenced by the file maintenance list."

## Section 3. Section 1-5-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 108, as amended by Laws 1993, Chapter 314, Section 35 and also by Laws 1993, Chapter 316, Section 35) is amended to read:

"1-5-6. VOTER LISTS--SIGNATURE ROSTER PREPARATION.--The county clerk shall provide for preparation of voter lists and signature rosters for any precincts. The voter lists and signature rosters shall be used at any election for which registration of voters is required in lieu of bound original certificates of registration and poll books."

## Section 4. Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended by Laws 1993, Chapter 314, Section 37 and also by Laws 1993, Chapter 316, Section 37) 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 National Voter Registration Act of 1993.

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 an emergency paper ballot, provided he has first signed or marked both the signature roster and checklist of registered voters.

C. The emergency 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 no voter shall 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. No verbal authorization from the county clerk to allow a person to vote shall be permitted."

## Section 5. Section 1-5-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 118, as amended by Laws 1995, Chapter 124, Section 7 and also by Laws 1995, Chapter 166, Section 4) is amended to read:

"1-5-14. FILE MAINTENANCE LISTS.--

A. At least once a month the county clerk shall have made from the voter file a file maintenance list of additions, deletions and changes, if any, to the county register.

B. The county clerk shall be furnished with two copies of the file maintenance lists.

C. One copy of the list shall be stored by the county clerk for at least one year.

D. The county clerk shall also be furnished with copies of the list to give to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall indicate whether each item is an addition, deletion or change. The file maintenance list shall not include the voter's social security number, codes used to identify the agency where the voter registered, voter's day and month of birth or voter's telephone number, if prohibited by the voter.

E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks shall furnish the secretary of state with a copy of the voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the voter file to the secretary of state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration."

## Section 6. Section 1-5-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 122, as amended) is amended to read:

"1-5-17. PROGRAM RECORDS--INSTRUCTIONS--STATUS--PROTECTION.--

A. Program records and instructions for their use in controlling the processing of information derived from the voter file shall be verified functionally, identified and approved by the secretary of state.

B. Program records and instructions for their use shall remain the property of the designated data processor.

C. Verified, identified and approved program records and instructions shall be safeguarded at all times against loss or damage. The designated data processor shall be in charge of these safeguards subject to approval by the secretary of state."

## Section 7. Section 1-5-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 124) is amended to read:

"1-5-18. LIST AND ROSTER PREPARATION--COMPATIBLE DUPLICATE MEANS.--

A. The county clerk shall employ such means for preparation of voter lists and signature rosters as can be functionally duplicated elsewhere with reasonable cost and convenience.

B. At least one compatible duplicate means shall be provided for on a standby basis, and it shall be capable of performing the preparation of voter lists and signature rosters with minimum delay in case the original means is unable to perform.

C. The county clerk shall procure and preserve sufficient duplicate program information and operating instructions with each duplicate program record so that in case of disaster the duplicate master record, the duplicate program record and the duplicate additional program information and operating instructions will be all that will be required for another compatible facility to prepare registered voter lists and signature rosters with minimum delay."

## Section 8. Section 1-5-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 125, as amended) is amended to read:

"1-5-19. REGISTRATION--FORM.--

A. The secretary of state shall prescribe the form and assure that the certificate of registration to be used in any county is compatible with the data processing systems.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county of former registration, social security number, date of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk."

## Section 9. Section 1-5-25 NMSA 1978 (being Laws 1975, Chapter 255, Section 79) is amended to read:

"1-5-25. UNLAWFUL USE OF STATISTICAL DATA--UNLAWFUL USE OF VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS--PENALTIES.--

A. Unlawful use of statistical data consists of use of statistical data in such a manner as to derive information, the use or possession of which would be otherwise prohibited under the Automated Voter Records System Act.

B. Unlawful use of voter data, mailing labels or special voter lists consists of the knowing and willful use of such information for purposes prohibited by the Automated Voter Records System Act.

C. Any person, organization or corporation or agent, officer, representative or employee thereof who commits unlawful use of statistical data, voter data, mailing labels or special voter lists is guilty of a fourth degree felony and upon conviction shall be fined one hundred dollars ($100) for each and every line of voter information which was unlawfully used.

D. Each and every unlawful use of statistical data, voter data, mailing labels or special voter lists constitutes a separate offense."

## Section 10. Section 1-5-29 NMSA 1978 (being Laws 1975, Chapter 255, Section 83, as amended by Laws 1993, Chapter 314, Section 41

**and also by Laws 1993, Chapter 316, Section 41) is amended to read:**

"1-5-29. AUTOMATED VOTER RECORDS SYSTEM ADVISORY COMMITTEE--COMPENSATION--MEETINGS.--

A. Members of the automated voter records system advisory committee, except the director of the bureau of elections, shall be paid per diem and mileage as provided in the Per Diem and Mileage Act for nonsalaried state officers.

B. No fewer than one meeting shall be called annually by the secretary of state.

C. Each odd-numbered year, the committee shall review the certificate of registration and the automated voter records system format and make recommendations for necessary revisions to the secretary of state."

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HOUSE BILL 532, AS AMENDED

# CHAPTER 147

**CHAPTER 147, LAWS 2001**

AN ACT

RELATING TO COUNTIES; CLARIFYING THAT A COUNTY MAY ISSUE CHECKS AS WELL AS WARRANTS FOR PAYMENT OF MONEY FROM THE COUNTY TREASURY; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 4-43-2 NMSA 1978 (being Laws 1851-1852, Page 170, as amended) is amended to read:

"4-43-2. DUTIES.--The county treasurer shall keep:

A. account of all money received and disbursed;

B. regular accounts of all checks and warrants drawn on the treasury and paid; and

C. the books, papers and money pertaining to his office ready for inspection by the board of county commissioners at all times."

## Section 2. Section 4-45-4 NMSA 1978 (being Laws 1876, Chapter 1, Section 21, as amended) is amended to read:

"4-45-4. COUNTY ORDERS FOR PAYMENT FROM TREASURY--FORM AND SIGNATURE.--County orders shall be signed by the chairman of the board of county commissioners or his designee and attested by the county clerk and shall specify the nature of the claim of service for which they were issued, and the money shall be paid from the county treasury on such orders and not otherwise. Money may be paid from the county treasury by check or warrant. If money is paid by check, the check must be signed by the chairman of the board of county commissioners or his designee and the county treasurer."

## Section 3. Section 6-6-6 NMSA 1978 (being Laws 1957, Chapter 250, Section 6) is amended to read:

"6-6-6. APPROVED BUDGETS--CLAIMS OR WARRANTS IN EXCESS OF BUDGET--LIABILITY.--When any budget for a local public body has been approved and received by a local public body, it is binding upon all officials and governing authorities, and no governing authority or official shall allow or approve claims in excess thereof, and no official shall pay any check or warrant in excess thereof, and the allowances or claims or checks or warrants so allowed or paid shall be a liability against the officials so allowing or paying those claims or checks or warrants, and recovery for the excess amounts so allowed or paid may be had against the bondsmen of those officials."

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HOUSE BILL 565, AS AMENDED

# CHAPTER 148

**CHAPTER 148, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; EXPANDING TESTING AND REPORTING REQUIREMENTS OF THE DEPARTMENT OF ENVIRONMENT.

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

## Section 1. NONTRANSIENT NONCOMMUNITY PUBLIC WATER SYSTEMS--DEFINITION--TESTING AND NOTICE REQUIREMENTS.--

A. The department of environment shall test nontransient noncommunity water systems for arsenic, fluoride and radionuclides and adopt rules for reporting and public notification for those contaminants comparable to reporting and notification

requirements for community water systems. Money in the water conservation fund may be used to fulfill the requirements of this subsection.

B. As used in this section:

(1) "community water system" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents; and

(2) "nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year including but not limited to schools and factories.

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HOUSE BILL 403, AS AMENDED

# CHAPTER 149

**CHAPTER 149, LAWS 2001**

AN ACT

RELATING TO CEMETERIES; REVISING THE ENDOWED CARE CEMETERY ACT TO UPDATE IT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 58-17-1 NMSA 1978 (being Laws 1961, Chapter 156, Section 1) is amended to read:

"58-17-1. DECLARATION OF POLICY.--It is declared to be necessary in the public interest that cemeteries advertising or selling "endowed care or perpetual care" in connection with the sale of cemetery lots or burial spaces be subject to sufficient regulation by the state to ensure the establishment of sound business practices necessary to furnish the endowed care or perpetual care guaranteed. The provisions of the Endowed Care Cemetery Act shall be liberally construed to carry out its purposes."

## Section 2. Section 58-17-2 NMSA 1978 (being Laws 1961, Chapter 156, Section 2) is amended to read:

"58-17-2. SHORT TITLE.--Chapter 58, Article 17 NMSA 1978 may be cited as the "Endowed Care Cemetery Act"."

## Section 3. Section 58-17-3 NMSA 1978 (being Laws 1961, Chapter 156, Section 3) is repealed and a new Section 58-17-3 NMSA 1978 is enacted to read:

"58-17-3. DEFINITIONS.--As used in the Endowed Care Cemetery Act:

A. "affiliate" means a corporation that is related to another corporation by shareholdings or other means of control and includes a subsidiary, parent or sibling corporation;

B. "burial park" means a tract of land that has been dedicated to the purposes of and used, and intended to be used, for the interment of remains in graves;

C. "care funds" means realty or personalty impressed with a trust by the terms of a gift, grant, contribution, payment, devise, bequest or contract, and income accumulated therefrom where legally so directed by the terms of the transaction by which the principal was established;

D. "cemetery" means a place dedicated to and used and intended to be used for the permanent interment of remains;

E. "cemetery authority" means a person that owns, operates, controls or manages a cemetery or holds lands for burial purposes;

F. "columbarium" means a structure or space in a structure used, or intended to be used, to contain cremated remains;

G. "cremated remains" means remains after incineration in a crematory;

H. "cremation" means the irreversible process of reducing remains to bone fragments through intense heat and evaporation in a specifically designed furnace or retort and includes a mechanical or thermal process whereby the bone fragments are pulverized, or otherwise further reduced in size or quantity;

I. "crematory" means a structure of most durable and lasting fireproof construction containing one or more specifically designed furnaces or retorts, used, or intended to be used, for cremation of remains;

J. "crypt" means the chamber in a mausoleum of sufficient size to entomb the remains;

K. "depository institution" means an insured bank, thrift institution or credit union;

L. "director" means the director of the financial institutions division of the regulation and licensing department;

M. "endowed care" means the general maintenance of the cemetery area dedicated to endowed care, including the cutting and trimming of lawns, shrubs and trees at reasonable intervals, keeping all places where interments have been made in proper order, keeping in repair the drains, waterlines, roads, buildings, fences and other structures consistent with a well-maintained cemetery; "endowed care" includes overhead expenses necessary for the foregoing purposes, including maintenance of machinery, tools and equipment, compensation of employees for the performance of duties related to endowed care, including reasonable payments for employees' pension and other benefit plans, payment of reasonable and necessary insurance premiums, the maintenance of necessary records of lot ownership, transfers and burials and the administration of care funds in those instances where those administering the funds fail or refuse to act;

N. "endowed or perpetual care cemetery" means a cemetery or that designated portion of a cemetery for the benefit of which a care fund is established;

O. "entombment" means the permanent interment of remains in a crypt or vault;

P. "fraternal cemetery" means a cemetery owned, operated, controlled or managed by any fraternal organization or its auxiliary organizations, in which the sale of burial space is restricted principally to its members;

Q. "grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of remains;

R. "interment" means the permanent disposition of the remains by inurnment, entombment or burial;

S. "inurnment" means placing cremated remains in an urn;

T. "lot", "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment of the remains of one or more deceased persons and includes adjoining graves, adjoining crypts or adjoining niches;

U. "mausoleum" means a structure or building of most durable and lasting fireproof construction used or intended to be used for the permanent interment in crypts of remains;

V. "municipal cemetery" means a cemetery owned, operated, controlled or managed by a incorporated or unincorporated political subdivision;

W. "niche" means a recess in a columbarium used, or intended to be used, for the permanent interment of cremated remains;

X. "no endowed care cemetery" means a cemetery for the benefit of which no care fund has been established;

Y. "plot owner", "owner" or "lot proprietor" means a person in whose name a burial plot is recorded in the office of the cemetery authority as owner of the exclusive right of burial, or who holds from the authority a conveyance of the exclusive rights of burial or a certificate of ownership of the exclusive right of burial;

Z. "religious cemetery" means a cemetery owned, operated, controlled or managed by a recognized church, religious society, association or denomination, or by a cemetery authority or a corporation administering, or through which is administered the secular matters of a recognized church, religious society, association or denomination;

AA. "remains" means the body of a deceased person; and

BB. "vault" means a container that is designed for placement in a grave space around a casket or urn."

## Section 4. Section 58-17-4 NMSA 1978 (being Laws 1961, Chapter 156, Section 4) is amended to read:

"58-17-4. GIFTS AND CONTRIBUTIONS--CARE FUNDS--TRUST FUNDS.--

A. A cemetery authority is authorized and empowered to accept care funds and hold them in trust in perpetuity for the care of its cemetery; for the care of any lot, grave, crypt or niche in its cemetery; for the special care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche or of any family mausoleum or memorial, marker or monument in its cemetery. Creation of care funds shall not be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the funds. If care funds accepted by a cemetery authority include nonincome producing property, the authority may sell that property and invest the funds obtained in accordance with the provisions of this section.

B. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing care funds, the cemetery authority or trustee of the funds shall exercise the judgment and care under the circumstances then prevailing that men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of this standard, the cemetery authority or the trustee of the care funds is authorized to acquire and retain every kind of property and every kind of investment that men of prudence, discretion and intelligence acquire or retain for their own account. Within the limitations of this standard, the cemetery authority or trustee is authorized to retain property properly acquired, without limitation as to time and without regard as to the suitability for original purpose.

C. Care funds may be commingled with other trust funds received by the cemetery authority for the care of its cemetery or for the care or special care of any lot, grave, crypt, niche, marker or monument in its cemetery, whether received by gift, grant, devise, bequest, contribution, payment, contract or other conveyance made to the cemetery authority. The net income only from the investment of the care funds shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested.

D. With the prior written approval of the director, care funds may be commingled with trust funds of other cemetery authorities received by those authorities pursuant to this section. Net income only from the investment of those care funds shall be allocated to each cemetery authority and used for the purposes specified in the transaction by which the principal was established in the proportion that each authority's contribution bears to the entire sum invested."

## Section 5. Section 58-17-5 NMSA 1978 (being Laws 1961, Chapter 156, Section 5) is amended to read:

"58-17-5. LOANS BY CEMETERIES.--Except upon written approval of the director, no loan or investment of care funds accepted by a cemetery authority shall be made:

A. to any officer, director or trustee of the cemetery authority or to any person in which any officer, director or trustee of the cemetery authority has a controlling interest;

B. on or in real estate or in a note, bond, mortgage or deed of trust in which any officer, director or trustee of the cemetery authority has any financial interest; or

C. on or in any unproductive real estate or real estate outside this state or permanent improvements of the cemetery or any of its facilities unless specifically authorized by the instrument by which the principal fund was created. No commission or brokerage fee for the purchase or sale of property shall be paid in excess of that usual and customary at the time and in the locality where the purchase or sale is made, and all commissions and brokerage fees shall be fully reported in the next annual statement of the cemetery authority or trustee."

## Section 6. Section 58-17-6 NMSA 1978 (being Laws 1961, Chapter 156, Section 6, as amended) is amended to read:

"58-17-6. INSTRUMENT REGARDING CARE TO BE FURNISHED BY CEMETERY AUTHORITY.--If a cemetery authority accepts care funds, either in connection with the sale of a lot, grave, crypt or niche or in pursuance of a contract, or if, as a condition precedent to the purchase of a lot, grave, crypt or niche, the cemetery

authority requires the establishment of a care fund or a deposit in an already existing care fund, the cemetery authority shall execute and deliver to the person from whom it receives care funds an instrument in writing that shall specifically state:

A. the nature and extent of the care to be furnished;

B. that the care shall be furnished only insofar as the net income derived from the amount deposited in trust will permit, and that the income from the amount so deposited less necessary expenditures of administering the trust constitutes net income;

C. that the cemetery is operated as an endowed care cemetery, which means that a care fund for its maintenance has been established in conformity with the Endowed Care Cemetery Act and the definition of endowed care in that act; and

D. that not less than the following amounts will be set aside and deposited in trust:

(1) for graves, twenty-five percent of the lot or land sales price unless a lesser amount is approved by the director;

(2) for a crypt or niche, ten percent of the sales price; and

(3) for the special care of any lot, grave, crypt or niche or the family mausoleum, memorial, marker or monument, the full amount received.

E. The setting aside and deposit pursuant to Subsection D of this section shall be made by the cemetery authority not later than thirty days after the close of the month in which a payment was received from any source on the purchase price of each lot, grave, crypt or niche or a payment was received from any source for the general or special care of a lot, grave, crypt or niche or of a family mausoleum, memorial, marker or monument. If payments are made in installments, only the applicable pro rata share of the payments shall be deposited. Amounts deposited shall be held by the trustee of the care funds of the cemetery authority in trust in perpetuity for the specific purpose stated in the written instrument."

## Section 7. Section 58-17-7 NMSA 1978 (being Laws 1961, Chapter 156, Section 7) is amended to read:

"58-17-7. REPRESENTATIONS REGARDING CARE AND MAINTENANCE TO BE FURNISHED.--A cemetery authority, agent, servant or employee of it or another person shall not advertise, represent, guarantee, promise or contract that perpetual care, permanent care, perpetual or permanent maintenance, care forever, continuous care, eternal care, everlasting care, endowed care or any similar or equivalent care or care for any number of years of any cemetery or of any lot, grave, crypt or niche or of any family mausoleum, memorial, marker or monument will be furnished until he has complied with the provisions of the Endowed Care Cemetery Act."

## Section 8. Section 58-17-8 NMSA 1978 (being Laws 1961, Chapter 156, Section 8) is amended to read:

"58-17-8. CARE FUNDS NOT SUBJECT TO TAX.--The care funds authorized in the Endowed Care Cemetery Act and all sums paid into those funds or contributed to those funds are expressly permitted and are for charitable and eleemosynary purposes. Care funds are provided for the discharge of the duty due from the person contributing to those funds to the persons interred and to be interred in the cemetery and likewise are a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disorder, reproach and desolation in the communities in which they are situated. The care funds authorized in the Endowed Care Cemetery Act and the income from those funds and funds received under a contract to furnish care of burial space shall be exempt from taxation. No payment, gift, grant, bequest or other contribution for general endowed care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust nor shall care funds or a contribution to them be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property."

## Section 9. Section 58-17-9 NMSA 1978 (being Laws 1961, Chapter 156, Section 9) is amended to read:

"58-17-9. COMPLIANCE WITH LAW REQUIRED.--

A. It is unlawful for a cemetery to hold out to the public or sell endowed care in connection with the sale of burial space until it has complied with the requirements of the Endowed Care Cemetery Act. Endowed care cemeteries shall establish and maintain with a state or federally chartered depository institution or trust company doing business in the state an irrevocable trust fund, the income only of that fund to be available to the cemetery in the furnishing of endowed care. Provided, however, that when the cemetery authority certifies to the director that the services of a state or federally chartered depository institution or trust company are not available, the cemetery may appoint as trustee one or more individuals, none of whom shall be an officer, director, representative, employee or relative of an officer, director or employee of the cemetery authority, which trustee shall have all powers of investment as provided in this section. Endowed care cemeteries may pool their care funds pursuant to Subsection D of Section 58-17-4 NMSA 1978 as approved by the director upon request by the cemeteries. The net income from the investment of care funds shall never be used for the improvement or embellishment of unsold property to be offered for sale.

B. In establishing its care funds, the cemetery authority may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery, and if the cemetery originally sold cemetery lots without provision for endowed care, it shall have the right to accept deposits from those lot owners for the purpose of establishing endowed care on those lots, provided that the deposits are disposed of in the same manner as regular care funds."

## Section 10. Section 58-17-10 NMSA 1978 (being Laws 1961, Chapter 156, Section 10, as amended) is amended to read:

"58-17-10. REGISTRATION WITH DIRECTOR.--

A. After the initial registration a cemetery authority shall register with the director by filing an annual registration statement, upon forms furnished by the director, which shall show as of the end of the preceding calendar year:

(1) the amount of the principal of the care funds held by the trustee of the care funds of the cemetery authority at the beginning of the year and in addition thereto all money or property received during the year:

(a) under and by virtue of the sale of a lot, grave, crypt or niche;

(b) under and by virtue of the terms of any contract authorized by law; or

(c) under and by virtue of any gift, grant, devise, bequest, payment or other contribution made either prior to or subsequent to the effective date of the Endowed Care Cemetery Act;

(2) the securities in which the care funds are invested and the cash on hand as of the date of the report;

(3) the income received from the care funds during the preceding calendar year; and

(4) the amount expended in furnishing endowed care during the preceding calendar year.

B. If any of the care funds of a cemetery authority are held by a trustee, the annual registration statement filed by a cemetery authority shall contain a certificate signed by the trustee of the care funds of the cemetery authority certifying to the truthfulness of the statements in the report as to:

(1) the total amount of principal of the care funds held by the trustee;

(2) the securities in which the care funds are invested and the cash on hand as of the date of the report; and

(3) the income received from the care funds during the preceding calendar year.

C. Annual registration statements shall be filed by the cemetery authority on or before June 30 of each calendar year in the office of the director. The registration statement shall be made under oath. Each registration statement shall be accompanied by a fee of fifty dollars ($50.00), and the director shall not accept a registration statement unless it is accompanied by the payment of the fee.

D. The director shall charge and collect a fee of ten dollars ($10.00) per day for late filings of registration statements up to a maximum of three hundred dollars ($300). This late charge shall also apply when the cemetery authority is required by the director to revise a registration by a specified date and fails to file the revised registration on or before that date."

## Section 11. Section 58-17-11 NMSA 1978 (being Laws 1961, Chapter 156, Section 11, as amended) is amended to read:

"58-17-11. DEPOSIT OR BOND OF ENDOWED CARE

CEMETERIES.--If a cemetery authority is duly organized and desires to accept care funds authorized by the Endowed Care Cemetery Act, it shall make an initial deposit to the care fund of twenty-five thousand dollars ($25,000). In lieu of the initial deposit, the cemetery authority may furnish a surety bond issued by a bonding company or insurance company authorized to do business in this state in the face amount of thirty-five thousand dollars ($35,000), and the bond shall run to the trustee for the benefit of the care funds held by the trustee. This bond shall be for the purpose of guaranteeing an accumulation of twenty-five thousand dollars ($25,000) in the care fund and also for the purpose of assuring that the cemetery authority shall provide annual endowed care in an amount equal to the annual reasonable return on a secured cash investment of twenty-five thousand dollars ($25,000) until that amount is accumulated in the care funds, and these shall be the conditions of the surety bond; provided, however, the liability of the principal and surety on the bond shall in no event exceed thirty-five thousand dollars ($35,000). Provided further that whenever a cemetery authority which has made an initial deposit to the care fund demonstrates to the satisfaction of the director that more than twenty-five thousand dollars ($25,000) has been accumulated in the care fund, the cemetery authority may petition the director for an order allowing the cemetery authority to begin to withdraw its deposit from the care fund, so long as at least twenty-five thousand dollars ($25,000) always remains in the care fund."

## Section 12. Section 58-17-12 NMSA 1978 (being Laws 1961, Chapter 156, Section 12) is amended to read:

"58-17-12. DISPLAY OF SIGNS.--A cemetery authority authorized to accept care funds shall post in a conspicuous place at or near each entrance of the cemetery a clearly legible sign containing letters not less than six inches in height stating "Endowed Care Cemetery". Those cemeteries that furnish endowed care to some portions and no endowed care to other portions shall display appropriate signs of the same size letters designating which part is subject to endowed care and which part is not. Cemeteries

that do not furnish endowed care shall display a sign containing letters not less than six inches in height stating "No Endowed Care"."

## Section 13. Section 58-17-13 NMSA 1978 (being Laws 1961, Chapter 156, Section 13, as amended) is amended to read:

"58-17-13. ENFORCEMENT OF PROVISIONS OF ACT BY DIRECTOR.--

A. The duty of administering and enforcing the provisions of the Endowed Care Cemetery Act is imposed on the director, who shall approve all forms of contract for endowed care and shall have authority to subpoena witnesses, conduct hearings and investigations and issue orders reasonably necessary to regulate endowed care cemeteries in the public interest.

B. At the same time the registration statement is due, the director shall require the cemetery authority to submit an audit prepared by a certified public accountant. The audit shall cover in detail the information required in the annual registration statement required by law. In addition, the director may examine each endowed care cemetery to ensure that endowed care is being furnished in the manner required by law.

C. The cost of examining any cemetery authority and any endowed care cemetery shall be paid by the responsible authority, and it shall not exceed the actual cost of conducting such an examination.

D. If the director deems it necessary to hold a hearing pursuant to the power vested in him by the Endowed Care Cemetery Act, the hearing may be held in Santa Fe, New Mexico or at any other location within New Mexico designated by the director.

E. In the conduct of any examination, investigation or hearing, the director may:

(1) compel the attendance of any person or obtain any documents by subpoena;

(2) administer oaths; and

(3) examine any person under oath concerning the business of any person subject to the provisions of the Endowed Care Cemetery Act and in connection therewith require the production of any books, records or papers relevant to the inquiry.

F. In case of refusal to obey a subpoena issued to any person, the district court of the first judicial district for Santa Fe county, upon application by the director,

may issue to the person an order requiring him to appear before the director or the staff member designated by the director, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court."

## Section 14. Section 58-17-14 NMSA 1978 (being Laws 1961, Chapter 156, Section 14, as amended) is amended to read:

"58-17-14. PROCEEDINGS IN CASE OF LAW VIOLATIONS.--If a cemetery authority refuses or neglects to make a required report or to file an annual registration statement or willfully disobeys a valid order of the director or violates any provisions of the Endowed Care Cemetery Act or rule of the director, or if it appears to the director from any report or examination that a cemetery authority has committed a violation of law, that the care funds have not been administered properly or that it is unsafe or inexpedient for the cemetery authority or the trustee of the care funds of the cemetery authority to continue to administer those funds or that any officer of the cemetery authority or of the trustee of the care fund of the cemetery authority has abused his trust or has been guilty of misconduct in his official position injurious to the cemetery authority or that the cemetery authority has suffered as to its care funds a serious loss by larceny, embezzlement, burglary, repudiation or otherwise, the director may:

A. conduct an investigation or hold a hearing to investigate any allegations pertaining to violations of the provisions of the Endowed Care Cemetery Act;

B. issue any order in furtherance of the duty imposed on him by the Endowed Care Cemetery Act;

C. institute a lawsuit in the district court of the first judicial district for Santa Fe county to recover any amounts due to the care funds; or

D. apply to the district court of the first judicial district for Santa Fe county for other relief consistent with the duty imposed on him by the Endowed Care Cemetery Act."

## Section 15. Section 58-17-15 NMSA 1978 (being Laws 1961, Chapter 156, Section 15) is amended to read:

"58-17-15. DISPOSITION OF CARE FUNDS UPON

DISSOLUTION.--Where any cemetery authority owning, operating, controlling or managing a cemetery or any trustee for the cemetery authority has accepted care funds pursuant to the Endowed Care Cemetery Act and dissolution is sought by the cemetery authority in any manner, by resolution of the cemetery authority or the trustees of the cemetery authority, notice shall be given to the director of the intentions to dissolve. It is

the director's duty to see that proper disposition is made of the care funds held by or for the benefit of the cemetery authority, as provided by law or in accordance with the trust provisions of any gift, grant, contribution, payment, devise or bequest or pursuant to any contracts whereby the funds were created. The director may apply to the district court for the appointment of any receiver, trustee or successor in trust or for direction of the court as to the proper disposition to be made of the care funds, to the end that the uses and purposes for which the trust or care funds were created may be accomplished."

## Section 16. Section 58-17-16 NMSA 1978 (being Laws 1961, Chapter 156, Section 16, as amended) is amended to read:

"58-17-16. VIOLATIONS--PUNISHMENT.--Whoever violates any provision of the Endowed Care Cemetery Act, fails to establish an irrevocable trust fund, encroaches upon the principal of an irrevocable trust, refuses to cooperate in an examination or investigation or violates the provisions of a trust instrument by willfully failing to deposit to a cemetery's trust fund the amounts provided within the time provided by Section 58-17-6 NMSA 1978, or any greater amounts if the trust instrument provides for greater amounts to be deposited, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

## Section 17. Section 58-17-17 NMSA 1978 (being Laws 1961, Chapter 156, Section 17) is amended to read:

"58-17-17. EXEMPTION.--The provisions of the Endowed Care Cemetery Act do not apply to municipal cemeteries, fraternal cemeteries, religious cemeteries or family burial grounds that provide burial only for members."

## Section 18. A new section of the Endowed Care Cemetery Act is enacted to read:

"ESTABLISHING A CEMETERY AUTHORITY.--

A. A person establishing or acquiring a cemetery subject to the Endowed Care Cemetery Act shall file an initial registration with the director that contains the following information:

(1) a detailed financial statement of the proposed owners;

(2) a current credit report of the person establishing or acquiring the cemetery and a resume for each principal;

(3) the full name and address of the registrant, if an individual; of every member, if the registrant is a partnership or an association; of every officer, if the registrant is a corporation; and of any person owning ten percent or more of the cemetery;

(4) a plot plan that identifies the endowed care sections of the cemetery and all plans for future expansion of the cemetery;

(5) a copy of the form of contracts or instruments to be used in the sales of endowed care lots, graves, crypts or niches;

(6) proof of ability to make the initial deposit or secure a surety bond as required by Section

58-17-11 NMSA 1978;

(7) a registration fee in the amount of fifty dollars ($50.00); and

(8) any other information requested by the director.

B. Failure to submit the information specified in Subsection A of this section shall result in the denial of the registration to sell endowed care. Until a registration to operate a cemetery is approved by the director, a person establishing or acquiring a cemetery authority shall not advertise, represent, guarantee, promise or contract that perpetual care, endowed care or any similar care will be furnished."

## Section 19. A new section of the Endowed Care Cemetery Act is enacted to read:

"TRANSFER OF OWNERSHIP.--

A. An endowed care cemetery's registration is not transferable. When any cemetery authority subject to the provisions of the Endowed Care Cemetery Act is transferred, the person acquiring the cemetery shall register with the director as required by Section 58-17-18 NMSA 1978.

B. A transfer of ownership cannot take place and no endowed care can be sold until the director has approved the registration required by Subsection A of this section."

## Section 20. A new section of the Endowed Care Cemetery Act is enacted to read:

"DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION.--

A. The director may deny, suspend or revoke any registration if the registrant, or any director, officer, employee or affiliate of the registrant:

(1) lacks a good business reputation;

(2) has violated any provision of the Endowed Care Cemetery Act;

(3) has committed fraud in connection with any transaction subject to the Endowed Care Cemetery Act;

(4) has made any misrepresentations or false statements to or concealed any essential or material fact from any person in the course of the cemetery business;

(5) has knowingly made or caused to be made any false representation of material fact or has suppressed or withheld from the director any information that the applicant or registrant possesses and that if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Endowed Care Cemetery Act;

(6) has refused to permit an examination by the director of his books and records or has refused or failed, within a reasonable time, to furnish any information, make any report or attend a hearing that may be required by the director under the provisions of the Endowed Care Cemetery Act;

(7) has not completed the annual registration requirements or paid the registration fee; or

(8) has been convicted of a felony or any misdemeanor involving moral turpitude, subject, however, to the provisions of the Criminal Offender Employment Act.

B. If the director decides that action resulting in the denial, suspension or revocation of a registration is warranted, the director shall notify the registrant or cemetery authority in writing of the reasons for the refusal and shall advise the registrant or cemetery authority of the right to a hearing before a final decision on the registration is made."

## Section 21. A new section of the Endowed Care Cemetery Act is enacted to read:

"JUDICIAL REVIEW.--A person aggrieved by the decision of the director in the enforcement of the Endowed Care Cemetery Act may obtain judicial review pursuant to Section 39-3-1.1 NMSA 1978."

## Section 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 585

# CHAPTER 150

**CHAPTER 150, LAWS 2001**

AN ACT

RELATING TO PIPELINES AND UNDERGROUND UTILITY LINES; AMENDING STATUTES PROVIDING FOR REGULATION OF EXCAVATION NEAR OR OF PIPELINES AND UNDERGROUND UTILITY LINES; INCREASING PENALTIES.

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

## Section 1. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--For purposes of Chapter 62, Article 14 NMSA 1978:

A. "advance notice" means two working days;

B. "blasting" means the use of an explosive to excavate;

C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

D. "commission" means the public regulation commission;

E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;

F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. "excavator" means a person that excavates;

H. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;

I. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

J. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice information and distributing that information to owners and operators of pipelines and other underground facilities;

K. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

L. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, oil or gas products and byproducts, but does not include gathering lines or systems operated exclusively for the gathering of oil or gas, oil and gas products and their byproducts in any field or area, lines or systems constituting a part of any tank farm, plant facilities of any processing plant or underground storage projects unless it is located within a municipality or in the boundaries of an established easement or right of way or within the limits of any unincorporated city, town or village or within any designated residential or commercial area such as a subdivision, business or shopping center or community development;

M. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

N. "underground facility" means any tangible property described in Subsections C, L and O of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and

O. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water.

## Section 2. Section 62-14-3 NMSA 1978 (being Laws 1973, Chapter 252, Section 3, as amended) is amended to read:

"62-14-3. EXCAVATION.--Every person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call notification system operating in the intended excavation area, or the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate and mark the location of the underground facility described in Section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area and shall request reaffirmation of line location every ten working days after the initial locate request;

D. prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting edge or point of any mechanical excavating equipment utilized in the excavation and continue excavation in a manner necessary to prevent damage;

E. provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for preexisting underground facilities in or near the excavation area;

G. immediately notify by telephone the owner of any underground facilities which may have been damaged or dislocated during the excavation work; and

H. not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978."

## Section 3. Section 62-14-5 NMSA 1978 (being Laws 1973, Chapter 252, Section 5, as amended) is amended to read:

"62-14-5. MARKING OF FACILITIES.--

A. Every person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within twelve inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

B. If the owner or operator of the underground facility finds he has no underground facilities in the proposed area of excavation, the owner or operator shall contact the appropriate one-call notification center or mark in the appropriate color code as specified in Section 62-14-5.1 NMSA 1978 the area as "Clear" or "No Underground Facilities". If the area is not marked as "Clear" or "No Underground Facilities", the excavator shall contact the one-call notification system operating in the intended excavation area or the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center in order to verify the area as "Clear" or "No Underground Facilities".

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978."

## Section 4. A new Section 62-14-5.1 NMSA 1978 is enacted to read:

"62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF UNDERGROUND FACILITIES.--In marking the location of underground facilities, an owner or operator shall use the following uniform color code:

A. blue for water;

B. green for sewer;

C. orange for communications/coaxial cable;

D. pink for survey;

E. purple for reclaimed water;

F. red for electric;

G. white for proposed excavation area; and

H. yellow for gas."

## Section 5. Section 62-14-6 NMSA 1978 (being Laws 1973, Chapter 252, Section 6, as amended) is amended to read:

"62-14-6. LIABILITY FOR DAMAGE TO UNDERGROUND FACILITIES.--

A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of the damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars ($300,000) for each occurrence.

B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in Section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of damage to the underground facility, including the cost of restoration of service.

C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.

D. It is not the intent of Chapter 62, Article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section."

## Section 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997, Chapter 30, Section 1) is amended to read:

"62-14-7.1. PIPELINE ONE-CALL NOTIFICATION SYSTEM.--

A. Every owner or operator of a pipeline facility shall be a member of a one-call notification system. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

(1) an owner or operator of pipeline facilities;

(2) a private contractor;

(3) a state or local government agency; or

(4) a person who is otherwise eligible under state law to operate a one-call notification system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:

(1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities shall locate and mark their pipeline facilities in the intended excavation area.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promoting awareness by excavators of one-call notification systems."

## Section 7. Section 62-14-8 NMSA 1978 (being Laws 1973, Chapter 252, Section 8, as amended) is amended to read:

"62-14-8. PENALTIES.--In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars ($25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978 and whose failure contributes to the damage of any pipeline or underground utility line shall be subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978 has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars ($25,000) per violation consistent with federal law. No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund."

**Section 8. ALTERNATIVE DISPUTE RESOLUTION.--The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to Section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.**

**Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 587, AS AMENDED

# CHAPTER 151

**CHAPTER 151, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; CLARIFYING ENFORCEMENT PROVISIONS IN THE NIGHT SKY PROTECTION ACT.

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

## Section 1. Section 74-12-8 NMSA 1978 (being Laws 1999, Chapter 197, Section 8) is amended to read:

"74-12-8. CONSTRUCTION INDUSTRIES DIVISION--

DUTIES.--The construction industries division of the regulation and licensing department shall review the outdoor lighting provisions in the uniform building codes used in New Mexico and make recommendations for appropriate changes to comply with the provisions of the Night Sky Protection Act and shall permit and inspect, to the standards set forth in the Night Sky Protection Act, all construction of and on state-owned buildings that is subject to permit and inspection under the Construction Industries Licensing Act."

## Section 2. A new section of the Night Sky Protection Act is enacted to read:

"ENFORCEMENT.--In the exercise of any of the powers and duties conferred by law, a governing body of a political subdivision of the state may enforce the provisions of the Night Sky Protection Act."

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HOUSE BILL 613, AS AMENDED

# CHAPTER 152

**CHAPTER 152, LAWS 2001**

AN ACT

RELATING TO THE STATE FAIR; ALTERING THE STATE FAIR DEBT LIMIT; CHANGING THE EFFECTIVE DATE OF AN AMENDMENT TO SECTION 16-6-16 NMSA 1978 (BEING LAWS 1935, CHAPTER 69, SECTION 4, AS AMENDED).

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

## Section 1. Section 16-6-16 NMSA 1978 (being Laws 1935, Chapter 69, Section 4, as amended) is amended to read:

"16-6-16. ISSUANCE OF NEGOTIABLE BONDS--TERMS.--The New Mexico state fair, with the prior approval of the state board of finance, is authorized from time to time to issue negotiable bonds. The bonds shall be authorized by resolution of the state fair commission. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times not exceeding thirty years from the respective dates thereof, may mature in such amount or amounts, shall bear interest in accordance with the Public Securities Act, may be in such form as the state fair commission may determine and may be executed in such manner, may be payable in such medium of payment at such place or places and may be subject to such terms of redemption with or without premium as such resolution or other resolutions may provide. The bonds may be sold at public sale or may be sold at a private sale to the New Mexico finance authority. The bonds shall be negotiable instruments notwithstanding the form or tenor thereof. The New Mexico state fair may issue refunding bonds to refund, refinance, pay or discharge outstanding bonds, notes, loans or other obligations of the state fair on the same terms and conditions as provided for the issuance of other bonds by the New Mexico state fair."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 709, AS AMENDED

# CHAPTER 153

**CHAPTER 153, LAWS 2001**

AN ACT

RELATING TO CORRECTIONS; PROVIDING FOR FIVE-YEAR AGREEMENTS FOR PRIVATE INDEPENDENT JAIL CONTRACTORS.

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

## Section 1. Section 33-3-27 NMSA 1978 (being Laws 1984, Chapter 22, Section 18) is amended to read:

"33-3-27. JAIL AGREEMENTS--APPROVAL--LIABILITY--TERMINATION--VENUE.--

A. Agreements with a private independent contractor for the operation of a jail or for the incarceration of prisoners therein shall be made for a period of up to five years, but such agreements may allow for additional one-year extensions not to exceed a total of five extensions. Agreements binding on future governing bodies for construction, purchase or lease of a jail facility for not more than fifteen years are authorized.

B. All agreements with private independent contractors for the operation or provision and operation of jails shall include a performance bond and be approved in writing, prior to their becoming effective, by the local government division of the department of finance and administration and the office of the attorney general. Disapproval may be based on any reasonable grounds, including but not limited to adequacy or appropriateness of the proposed plan or standards; suitability or qualifications of the proposed contractor or his employees; absence of required or desirable contract provisions; unavailability of funds; or any other reasonable grounds whatsoever, whether like or unlike the foregoing. No agreement shall be valid or enforceable without prior approval.

C. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for the independent contractor to provide and pay for training for jailers to meet minimum training standards which shall be specified in the contract.

D. All agreements with private independent contractors for the operation or provision and operation of jails shall set forth comprehensive standards for conditions of incarceration, either by setting them forth in full as part of the contract or by reference to known and respected compilations of such standards.

E. All agreements with private independent contractors for the operation or provision and operation of jails shall be approved in writing, prior to their becoming effective, by the risk management division of the general services department. Approval shall be conditioned upon contractual arrangements satisfactory to the risk management division for:

(1) the contractor's assumption of all liability caused by or arising out of all aspects of the provision and operation of the jail; and

(2) liability insurance covering the contractor and its officers, jailers, employees and agents in an amount sufficient to cover all liability caused by or arising

out of all aspects of the provision and operation of the jail. A copy of the proposed insurance policy for the first year shall be submitted for approval with the contract.

F. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for termination for cause by the local public body parties upon ninety days' notice to the independent contractor. Such termination shall be allowed for at least the following reasons:

(1) failure of the independent contractor to meet minimum standards and conditions of incarceration, which standards and conditions shall be specified in the contract; or

(2) failure to meet other contract provisions when such failure seriously affects the operation of the jail.

The reasons for termination set forth in this subsection are not exclusive and may be supplemented by the parties.

G. Venue for the enforcement of any agreement entered into pursuant to the provisions of this section shall be in the district court of the county in which the facility is located or in Santa Fe county."

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HOUSE BILL 765, AS AMENDED

# CHAPTER 154

**CHAPTER 154, LAWS 2001**

AN ACT

RELATING TO AVIATION; INCREASING THE LIMITS ON AIRPORT FACILITIES ELIGIBLE FOR AVIATION FUNDING.

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

## Section 1. Section 64-1-13 NMSA 1978 (being Laws 1963, Chapter 314, Section 5, as amended) is amended to read:

"64-1-13. AVIATION DIVISION--POWERS AND DUTIES.--The division shall:

A. cooperate with all public and private agencies and organizations, state, local and federal, to encourage and advance aviation in this state;

B. assemble and distribute to the public information relating to aviation, landing fields, beacons and other matters pertaining to aviation and may accept federal money made available for the advancement of aviation;

C. authorize expenditures of money from the state aviation fund for construction, development and maintenance of public-use airport facilities, except airports serving regularly scheduled interstate airlines using aircraft with a maximum passenger capacity of more than sixty seats or a maximum payload capacity of more than fifteen thousand pounds, including rural landing fields and airstrips. Expenditures shall be made according to the need for airport facilities as determined by the division;

D. operate under a director, appointed by the secretary, with the approval of the governor, who shall have an aviation background and meet other qualifications prescribed by the secretary;

E. establish policies for operation of the division;

F. promulgate rules for proper enforcement of aviation laws, except for those relating to common carriers;

G. provide for a surety bond, paid from the state aviation fund, issued by a corporate surety company licensed to do business in New Mexico, in an amount set by the state board of finance on a form approved by the attorney general, conditioned upon the faithful performance of the duties of the personnel of the division who expend or authorize the expenditure of state funds;

H. have the following powers with respect to state airports:

(1) the division may, on behalf of and in the name of the state, out of appropriations and other money made available for such purposes, plan, construct, enlarge, improve, maintain, equip and operate airports and air navigation facilities, including the construction, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes, the division may, in the name of the state, by purchase, gift, devise, lease, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or air navigation facilities. The division may enter into any contracts necessary to the execution of the powers granted it by this paragraph; and

(2) the division may accept, receive, receipt for, disburse and expend federal money and other money, public or private, made available to accomplish, in whole or in part, any of the purposes of this subsection. All federal money accepted under this subsection shall be accepted and expended by the division upon such terms and conditions as are prescribed by the United States. The division, on behalf of the state, may enter into contracts with the United States or with any person

that may be required in connection with a grant or loan of federal money for airport or air navigation facility purposes. All money received by the division pursuant to this subsection is appropriated for the purpose for which the money was made available, to be disbursed or expended in accordance with the terms and conditions upon which the money was made available; provided that nothing contained in this section shall affect the power of a local government to contract with the United States or any person in connection with a grant or loan of money for airports or air navigation facilities in accordance with the terms and conditions upon which the funds were made available; and

I. have the power to engage in planning for the development of a system of public airports within the state."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 776

# CHAPTER 155

**CHAPTER 155, LAWS 2001**

AN ACT

RELATING TO LANDSCAPE ARCHITECTS; AMENDING THE LANDSCAPE ARCHITECTS ACT TO COMPLY WITH CURRENT PRACTICES OF OTHER PROFESSIONAL DISCIPLINES, TO DELETE OBSOLETE LANGUAGE AND TO MAKE OTHER REVISIONS.

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

## Section 1. Section 61-24B-3 NMSA 1978 (being Laws 1985, Chapter 151, Section 3) is amended to read:

"61-24B-3. DEFINITIONS.--As used in the Landscape Architects Act:

A. "board" means the board of landscape architects;

B. "general administration of a construction contract" means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to facilitate consistency with the general intent of the construction documents;

C. "landscape architect" means any individual registered under the Landscape Architects Act to practice landscape architecture; and

D. "landscape architecture" means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts.

Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined by Chapter 61, Articles 15 and 23 NMSA 1978."

## Section 2. Section 61-24B-4 NMSA 1978 (being Laws 1985, Chapter 151, Section 4) is amended to read:

"61-24B-4. REGISTRATION REQUIRED.--No person shall practice landscape architecture or represent himself as a landscape architect unless he has a certificate of registration issued pursuant to the Landscape Architects Act."

## Section 3. Section 61-24B-5 NMSA 1978 (being Laws 1985, Chapter 151, Section 5, as amended) is amended to read:

"61-24B-5. EXEMPTIONS.--

A. The following shall be exempt from the provisions of the Landscape Architects Act as long as they do not hold themselves out as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act:

(1) landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act; provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country;

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or a multi-family residential complex of four units or less except when it is part of a larger complex.

B. Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his licensure.

C. Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent the draftsmen, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the landscape architect or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of landscape architects by whom the plans and specifications of any landscape architectural services were prepared."

## Section 4. 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 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 such 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 such 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 any member from the board for neglect of any 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. No board member shall serve more than two consecutive full terms, and any 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 5. 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. employ such persons as necessary to carry out the provisions of the Landscape Architects Act;

C. provide for the examination, registration and re-registration of all applicants;

D. adopt and use a seal;

E. administer oaths and take testimony on matters within the board's jurisdiction;

F. 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;

G. conduct hearings upon charges relating to discipline of a registrant or the denial, suspension or revocation of a certificate of registration; and

H. 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 6. Section 61-24B-8 NMSA 1978 (being Laws 1985, Chapter 151, Section 8) is amended to read:

"61-24B-8. QUALIFICATIONS FOR REGISTRATION.--A person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

A. has graduated from an accredited program in landscape architecture at a school, college or university offering an accredited minimum four-year curriculum and has a minimum of three years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect. A master's degree in landscape architecture from an accredited college or university may be accepted in lieu of one year of practical experience;

B. has graduated from a nonaccredited program of landscape architecture or a related field at a school, college or university offering an accredited minimum four-year curriculum and has a minimum of four years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect. A master's degree from a nonaccredited program of landscape architecture or a related field may be accepted in lieu of one year of practical experience; or

C. has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, provided that:

(1) each satisfactorily completed year of study in an accredited program of landscape architecture in an accredited school, college or university may be accepted in lieu of one year of practical experience required under this subsection;

(2) a baccalaureate degree from an accredited college or university in a related field may be accepted in lieu of two years of practical experience required under this subsection; or

(3) a master's degree from an accredited school, college or university in a related field may be accepted in lieu of three years of practical experience required under this subsection."

## Section 7. Section 61-24B-9 NMSA 1978 (being Laws 1985, Chapter 151, Section 9) is amended to read:

"61-24B-9. REGISTRATION OF LANDSCAPE ARCHITECTS--EXAMINATIONS--EXEMPTIONS.--

A. Applicants for certificates of registration shall be required to pass the board's examination for landscape architects. An applicant who passes the examination may be issued a certificate of registration to practice as a landscape architect.

B. The board shall conduct examinations of applicants for certificates of registration as landscape architects at least once each year. The examination shall

determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.

C. An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rules established by the board.

D. The board may issue a certificate to practice as a landscape architect without an examination to an applicant who holds a current certificate of registration or license as a landscape architect issued by another state if the standards of the other state are as stringent as those established by the board and if the applicant meets the qualifications required of a landscape architect in this state."

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HOUSE BILL 779, AS AMENDED

# CHAPTER 156

**CHAPTER 156, LAWS 2001**

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; AMENDING A SECTION OF THE CONSTRUCTION INDUSTRIES LICENSING ACT PERTAINING TO STATE INSPECTORS.

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

## Section 1. Section 60-13-41 NMSA 1978 (being Laws 1967, Chapter 199, Section 49, as amended) is amended to read:

"60-13-41. INSPECTORS--DESIGNATED INSPECTION AGENCIES.--

A. State inspectors shall be employed by the director.

B. Qualifications and job descriptions for inspectors for the state, municipalities and all other political subdivisions shall be prescribed by the commission.

C. The division may appoint inspection agencies to inspect the construction, installation, alteration or repair of manufactured commercial units, modular homes and premanufactured homes, including those manufacturers whose business premises are without the state, to ensure that the New Mexico standards of construction

and installation are adhered to and that the quality of construction meets all New Mexico codes and standards. If the inspection agency has no place of business within the state, it shall file a written statement with the secretary of state setting forth its name and business address and designating the secretary of state as its agent for the service of process.

D. The division may enter into reciprocal agreements with other jurisdictions having comparable codes, standards and inspection requirements for the inspection of the construction, alteration or repair of modular homes, premanufactured homes and manufactured commercial units.

E. The division may, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction."

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HOUSE BILL 802

# CHAPTER 157

**CHAPTER 157, LAWS 2001**

AN ACT

RELATING TO ORGANIC COMMODITIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE ORGANIC COMMODITY ACT; IMPOSING A CIVIL PENALTY.

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

## Section 1. Section 76-22-4 NMSA 1978 (being Laws 1990, Chapter 122, Section 4, as amended) is amended to read:

"76-22-4. DEFINITIONS.--As used in the Organic Commodity Act:

A. "advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag or oral statement;

B. "agricultural commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class in its natural or processed state;

C. "assessment" means funds collected by the commission as provided for in the Organic Commodity Act;

D. "certification" means formal verification by a certifying agent that food articles are organically produced;

E. "certification handbook" means a collection of production and handling standards and rules adopted and promulgated by the commission;

F. "certifying agent" means the commission and any other person designated as a certifying agent by the United States department of agriculture;

G. "commission" means the organic commodity commission;

H. "food article" means any raw or processed agricultural commodity or product derived from livestock, including any fruits, vegetables, berries, eggs, seeds or dairy or grain products marketed in New Mexico for human or animal consumption;

I. "handle" means to sell, process, transport or package organically produced food articles;

J. "handler" means any individual in the business of handling organically produced food articles;

K. "handling operation" means any operation or portion of an operation that:

(1) receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles;

(2) prepares organically produced food articles for market; or

(3) processes, packages, transports or stores organically produced food articles;

L. "label" means a commercial message in a printed medium that is affixed by any method to a receptacle, including a container or package;

M. "materials list" means a list of approved and prohibited substances to be determined by the commission, in compliance with the national materials list, and set forth in the certification handbook;

N. "ombudsman" means a member of the commission, who has the function of facilitating communication between certified persons and the commission by addressing certified persons' complaints, participating in the fact-finding process, investigating complaints, arbitrating when possible and advocating for the certified person when necessary; except that the ombudsman shall not represent a certified person before the commission or any other fact-finding body;

O. "organic certification program" means a program designed to ensure that a product is produced, handled, transported and marketed in compliance with the Organic Commodity Act and the federal Organic Foods Production Act of 1990;

P. "organically certified farm" means a farm or portion of a farm that is certified by the commission as utilizing organic productive techniques as set forth by the commission in the certification handbook provided for in the Organic Commodity Act;

Q. "organically certified handling operation" means any handling operation or portion of any handling operation that is certified by the commission and operated by organically certified handlers;

R. "organically produced label" means a label established for the purpose of indicating compliance with the certification standards promulgated pursuant to provisions of the Organic Commodity Act;

S. "organically produced" means food articles produced using organic productive techniques on an organically certified farm and handled by an organically certified handling operation;

T. "organic productive technique" means a system of farming that substitutes appropriate farm management practices for chemical and technological methods and enhances rather than replaces existing biological systems to ensure minimum adverse effects on human health and the environment;

U. "person" means any individual, group of individuals, corporation, association, cooperative or other entity;

V. "processing" means cooking, baking, heating, drying, mixing, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing food articles and includes packaging, canning, jarring or otherwise enclosing such food articles in a container;

W. "producer" means a person who engages in the business of growing or producing organically produced agricultural commodities; and

X. "steward" means an individual appointed by the commission to oversee the verification component of the certification program."

## Section 2. Section 76-22-7 NMSA 1978 (being Laws 1990, Chapter 122, Section 7, as amended) is amended to read:

"76-22-7. ORGANIC COMMODITY COMMISSION--DUTIES.--The commission:

A. shall adopt and promulgate certification standards for the production and handling of organically produced food articles in the state. The certification

standards shall include agricultural commodities used but not consumed as foods by humans and animals. The standards shall be compiled in a certification handbook to be included in the annual report to the legislature;

B. shall conduct studies to increase commercial value of and discover new markets for organically produced food articles;

C. shall disseminate reliable information relative to market conditions, current prices and sources of supply and demand for organically produced food articles;

D. may sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred by the Organic Commodity Act;

E. may enter into contracts;

F. may appoint subordinate officers and employees of the commission, prescribe their duties and fix their compensation;

G. shall cooperate with local, state or national organizations or government agencies engaged in activities similar to that of the commission;

H. shall adopt, rescind, modify or amend regulations, orders and resolutions for the exercise of its powers and duties after providing public notice and the opportunity for public comment on the action;

I. shall adopt the federal materials list upon its promulgation and shall prepare a registration program for all purveyors of these materials and an assessment schedule for the purveyors of the class of materials appearing on that list; and

J. is designated as the "state organic program" pursuant to the United States department of agriculture's national organic program and, in that capacity, may:

(1) regulate all aspects of the organic agriculture marketplace in New Mexico;

(2) take all actions necessary to ensure that all agricultural products in New Mexico that are labeled or represented as "certified organic", "organic" or "made with organic ingredients" have been produced under a valid certification issued by a certifying agent; and

(3) assume investigative and enforcement responsibilities relating to such labeled agricultural products, including products certified by a certifying agent other than the commission and labeled products not certified."

## Section 3. Section 76-22-26 NMSA 1978 (being Laws 1990, Chapter 122, Section 26, as amended) is amended to read:

"76-22-26. LABELING.--

A. The commission shall establish a label to be affixed to agricultural products that have been produced on organically certified farms and have been handled by organically certified handlers.

B. The label shall state that a food article has been organically produced and shall bear the seal of the commission.

C. Except as otherwise provided in the Organic Commodity Act, the terms "organic", "organically produced", "certified organic", "certified organically grown", "natural", "naturally grown", "pesticide-residue free" or derivatives of these terms shall not be used by any person for advertising, labeling or otherwise affixing the terms to a food article or its container, unless the food article has been produced and marketed in compliance with the provisions of the Organic Commodity Act and certified by a certifying agent.

D. The commission shall have the exclusive authority under the state certification program to approve the affixing of labels to food articles."

## Section 4. Section 76-22-27 NMSA 1978 (being Laws 1990, Chapter 122, Section 27, as amended) is amended to read:

"76-22-27. VIOLATIONS AND ENFORCING AUTHORITY--CIVIL PENALTY.--

A. In addition to a civil penalty that may be enforced pursuant to Subsection D of this section, any producer or handler of organically produced food articles who issues a false certification, attempts to have an organically produced label affixed to a food article that the producer or handler knows, or should have known, to have been produced in a manner that is not in compliance with the Organic Commodity Act or otherwise violates the purposes of the certification program, as determined by the commission, shall be subject to the following procedures and penalties:

(1) the commission shall cause notice of the violations to be given to the producer or handler having responsibility for the violation in the form of a complaint; any person so notified shall be given an opportunity to be heard under the rules prescribed by the commission. If the commission finds no violation has occurred, it shall dismiss the complaint and notify the parties to the complaint;

(2) if at the conclusion of the hearing the commission finds that a violation has occurred, either in the presence or absence of the person notified, it shall enter findings to that effect and notify the parties to the complaint. If such a finding is

made, the person shall not be eligible to receive certification for a period of five years with respect to any farm or handling operation in which the producer has an interest; and

(3) notwithstanding Paragraph (2) of this subsection, the commission may reduce or eliminate the period of ineligibility if the commission determines that modification or waiver would be in the best interest of the certification program.

B. No person shall be subject to the penalties and procedures described in Subsection A of this section for having violated the provisions of the Organic Commodity Act or the standards contained in the certification handbook if he possesses a guaranty that states that the food article is labeled in compliance with the Organic Commodity Act and the standards contained in the certification handbook.

C. The commission may apply for, and the court may grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Organic Commodity Act or any certification standard adopted and promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

D. Any person who, except in accordance with the provisions of the Organic Commodity Act and rules adopted pursuant to that act, knowingly represents, labels or sells a product as "certified organic", "organic", "made with organic ingredients" or similar language intended to convey the impression that the product is organically produced is subject to a civil penalty of not more than five thousand dollars ($5,000) for each violation. Any penalties collected pursuant to this subsection shall be deposited in the organic market development fund."

## Section 5. A new section of the Organic Commodity Act is enacted to read:

"CERTIFYING AGENTS--REPORTS TO COMMISSION.--A certifying agent, other than the commission, that certifies any food article in New Mexico as being organically produced shall:

A. simultaneous with its issuance, report to the commission any information regarding denials of certification, notifications of noncompliance, notifications of noncompliance correction, notifications of proposed suspension or revocation and notifications of suspension or revocation sent to any person in New Mexico; and

B. on January 2 of each year, submit to the commission a list, including the name, address and telephone number of each operation granted certification in New Mexico during the preceding year."

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HOUSE BILL 821

# CHAPTER 158

**CHAPTER 158, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLE REGISTRATION; PROVIDING A REGISTRATION EXEMPTION FOR MOTOR VEHICLES THAT ARE MOVED BY CERTAIN TOWING SERVICES.

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

## Section 1. Section 66-3-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 21, as amended) is amended to read:

"66-3-1. VEHICLES SUBJECT TO REGISTRATION--

EXCEPTIONS.--

A. Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway is subject to the registration and certificate of title provisions of the Motor Vehicle Code except:

(1) any such vehicle driven or moved upon a highway in conformance with the provisions of the Motor Vehicle Code relating to manufacturers, dealers, lien-holders or nonresidents;

(2) any such vehicle that is driven or moved upon a highway only for the purpose of crossing the highway from one property to another;

(3) any implement of husbandry that is only incidentally operated or moved upon a highway;

(4) any special mobile equipment;

(5) any vehicle that is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(6) freight trailers if they are:

(a) properly registered in another state;

(b) identified by a proper base registration plate that is properly displayed; and

(c) identified by other registration documents that are in the possession of the operator and exhibited at the request of a police officer;

(7) freight trailers or utility trailers owned and used by:

(a) a nonresident solely for the transportation of farm products purchased by the nonresident from growers or producers of the farm products and transported in the trailer out of the state;

(b) farmers and ranchers who transport to market only the produce, animals or fowl produced by them or who transport back to their farms and ranches supplies for use thereon; or

(c) persons who transport animals to and from fairs, rodeos or other places, except racetracks, where the animals are exhibited or otherwise take part in performances, in trailers drawn by a motor vehicle or truck of less than ten thousand pounds gross vehicle weight rating bearing a proper registration plate, but in no case shall the owner of an unregistered trailer described in this paragraph perform such uses for hire; and

(8) any such vehicle moved on a highway by a towing service as defined in Section 59A-50-2 NMSA 1978.

B. No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States.

C. Every manufactured home shall be subject to the registration and certificate of title provisions of the Motor Vehicle Code, and each manufactured home shall at all times bear a current registration plate."

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HOUSE BILL 840, AS AMENDED

# CHAPTER 159

**CHAPTER 159, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; MAKING AN APPROPRIATION FOR FEDERAL LITIGATION FOR PROTECTION OF THE PECOS RIVER AND THE RIO GRANDE.

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

**Section 1. APPROPRIATION.--Two million sixty-five thousand two hundred dollars ($2,065,200) is appropriated from the general fund to the office of the state engineer for expenditure in fiscal years 2002 through 2005 to pay for expenses associated with litigation and negotiations over Pecos River and Rio Grande management pursuant to federal natural resource policies. No money in this appropriation may be used in water rights adjudications involving political subdivisions of the state. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.**

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HOUSE AGRICULTURE AND WATER RESOURCES

COMMITTEE SUBSTITUTE FOR HOUSE BILL 962

# CHAPTER 160

**CHAPTER 160, LAWS 2001**

AN ACT

RELATING TO TAXATION; AUTHORIZING A WAIVER OF INTEREST DUE WITH RESPECT TO CERTAIN INCOME TAX RETURNS FILED BY CERTAIN PERSONS AFFECTED BY A PRESIDENTIAL DISASTER DECLARATION; DECLARING AN EMERGENCY.

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

**Section 1. TEMPORARY PROVISION--WAIVER OF INTEREST FOR CERTAIN INCOME TAX RETURNS.--Notwithstanding any other provision of the Tax Administration Act, the secretary of taxation and revenue is authorized to waive interest that would otherwise be due for any period prior to the date of the federal extension with respect to any income tax return for the 2000 taxable year filed by a person if the person's federal income tax return for the same period was subject to the federal filing extension granted to persons affected by the presidential disaster declaration of May 13, 2000.**

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

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SENATE BILL 862, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 161

**CHAPTER 161, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; CHANGING THE ELEMENTS OF CERTAIN CRIMINAL OFFENSES PERPETRATED AGAINST MINORS; AMENDING SECTIONS OF THE NMSA.

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

## Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975, Chapter 109, Section 1, as amended) is amended to read:

"30-9-10. DEFINITIONS.--As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

(1) the use of physical force or physical violence;

(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;

(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;

(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition

that renders the victim incapable of understanding the nature or consequences of the act; or

(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion;

B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

(1) licensed physician who practices psychotherapy;

(2) licensed psychologist;

(3) licensed social worker;

(4) licensed nurse;

(5) counselor;

(6) substance abuse counselor;

(7) psychiatric technician;

(8) mental health worker;

(9) marriage and family therapist;

(10) hypnotherapist; or

(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. "psychotherapy" means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. "school" means any public or private school, including the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center and the Carrie Tingley crippled children's hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. "School" does not include a college or university; and

I. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce."

## Section 2. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) on a child thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.

E. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

F. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

(1) not defined in Subsections C through E of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or

(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony."

## Section 3. Section 30-9-13 NMSA 1978 (being Laws 1975, Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

A. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

(1) on a child under thirteen years of age; or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(b) the perpetrator uses force or coercion which results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony.

B. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

(1) not defined in Subsection A of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or

(2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony."

## Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 76, AS AMENDED

# CHAPTER 162

**CHAPTER 162, LAWS 2001**

AN ACT

RELATING TO ADOPTIONS; EXPANDING DEFINITIONS WITHIN THE ADOPTION ACT; CHANGING PLACEMENT REQUEST AND ORDER PROCEDURES IN INDEPENDENT ADOPTIONS; AMENDING POST-PLACEMENT REPORTING REQUIREMENTS; CHANGING THE REQUIREMENTS REGARDING APPOINTMENT OF A GUARDIAN AD LITEM IN OPEN ADOPTIONS; CHANGING THE JURISDICTION REQUIREMENTS IN OPEN ADOPTIONS.

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

## Section 1. 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. "adoptee" means a person who is the subject of an adoption petition;

B. "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;

C. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;

D. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; 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;

E. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as provided for in Section 32A-5-20 NMSA 1978;

F. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

G. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

H. "department adoption" means an adoption when the child is in the custody of the department;

I. "former parent" means a parent whose parental rights have been terminated or relinquished;

J. "full disclosure" means mandatory and continuous disclosure by the investigator, agency, department or petitioner throughout the adoption proceeding and after finalization of the adoption of all known, nonidentifying information regarding the adoptee, including:

(1) health history;

(2) psychological history;

(3) mental history;

(4) hospital history;

(5) medication history;

(6) genetic history;

(7) physical descriptions;

(8) social history;

(9) placement history; and

(10) education;

K. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

L. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

M. "office" means a place for the regular transaction of business or performance of particular services;

N. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

O. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all

adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or parental consent is implied;

P. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

Q. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

R. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

S. "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;

T. "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;

U. "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

V. "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 2. Section 32A-5-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 140, as amended) is amended to read:

"32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

A. When a placement order is required, the petitioner shall file a request with the court to allow the placement. An order permitting the placement shall be obtained prior to actual placement.

B. A pre-placement study approving the petitioner as an appropriate adoptive parent shall be filed with the court prior to issuance of a placement order, except as provided in Subsection C of Section 32A-5-12 NMSA 1978.

C. In order for a person to be certified to conduct pre-placement studies, the person shall meet the standards promulgated by the department. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978.

D. The pre-placement study shall be conducted by an agency or a person certified by the department to conduct the study. A person or agency that wants to be certified to perform pre-placement studies shall file documents verifying their qualifications with the department. The department shall publish a list of persons or agencies certified to conduct a pre-placement study. If necessary to defray additional costs associated with compiling the list, the department may assess and charge a reasonable administrative fee to the person or agency listed.

E. When a person or agency that wants to be certified to perform pre-placement studies files false documentation with the department, the person or agency shall be subject to the provisions of Section 32A-5-42 NMSA 1978.

F. A request for placement shall be filed and verified by the petitioner and shall allege:

(1) the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage;

(2) the date and place of birth of the adoptee, if known, or the anticipated date and place of birth of the adoptee;

(3) a detailed statement of the circumstances and persons involved in the proposed placement;

(4) if the adoptee has been born, the address where the adoptee is residing at the time of the request for placement;

(5) if the adoptee has been born, the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived. If the adoptee is in the custody of an agency or the department, the address shall be the address of the agency or the county office of the department from which the child was placed;

(6) the existence of any court orders that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

(7) that the petitioner desires to establish a parent and child relationship between the petitioner and the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the federal Indian Child Welfare Act of 1978, and, if so, the petition shall allege the actions taken to comply with the federal Indian Child Welfare Act of 1978 and all other allegations required pursuant to that act;

(10) whether the adoption is subject to the Interstate Compact on the Placement of Children and what specific actions have been taken to comply with the Interstate Compact on the Placement of Children; and

(11) the name, address and telephone number of the agency or investigator who has agreed to do the pre-placement study.

G. The request for placement shall be served on all parties entitled to receive notice of the filing of a petition for adoption, as provided in Section 32A-5-27 NMSA 1978. An order allowing placement may be entered prior to service of the request for placement.

H. A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request.

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32A-5-14 NMSA

1978 and that the time requirements concerning placement set forth in this section have been met."

## Section 3. Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143, as amended) is amended to read:

"32A-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) an agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem in another action, a foster parent, a relative of the child or the child.

B. A petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) that the petition is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, including the names, addresses, titles

and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, the individuals with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall request a hearing on the petition. The hearing date shall be at least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any

attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

## Section 4. Section 32A-5-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 146, as amended) is amended to read:

"32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED.--The consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act shall not be required from:

A. a parent whose rights with reference to the adoptee have been terminated pursuant to law;

B. a parent who has relinquished the child to an agency for an adoption;

C. a biological father of an adoptee conceived as a result of rape or incest;

D. a person who has failed to respond when given notice pursuant to the provisions of Section 32A-5-27 NMSA 1978; or

E. an alleged father who has failed to register with the putative father registry within ten days of the child's birth and is not otherwise the acknowledged father."

## Section 5. Section 32A-5-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 154) is amended to read:

"32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

A. The petition for adoption shall be served by the petitioner on the following, unless it has been previously waived in writing:

(1) the department, by providing a copy to the court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

(2) any person, agency or institution whose consent or relinquishment is required by Section 32A-5-17 NMSA 1978, unless the notice has been previously waived;

(3) any acknowledged father of the adoptee;

(4) the legally appointed custodian or guardian of the adoptee;

(5) the spouse of any petitioner who has not joined in the petition;

(6) the spouse of the adoptee;

(7) the surviving parent of a deceased parent of the adoptee;

(8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;

(9) any person in whose home the child has resided for at least two months within the preceding six months;

(10) the agency or individual authorized to investigate the adoption under Section 32A-5-13 NMSA 1978; and

(11) any other person designated by the court.

B. Notice shall not be served on the following:

(1) an alleged father; and

(2) a person whose parental rights have been relinquished or terminated.

C. The petitioner shall provide the clerk of the court with a copy of the petition for adoption, to be mailed to the department pursuant to the provisions of Section

32A-5-7 NMSA 1978.

D. In an adoption in which the adoptee is an Indian child, in addition to the notice required pursuant to Subsection A of this section, notice of pendency of the adoption proceeding shall be served by the petitioner on the appropriate Indian tribe and on an "Indian custodian" pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

E. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall state that the failure to so respond shall be treated as a default and the person's consent to the adoption shall not be required. Provided, however, that this provision shall not apply to an agency, the department or an investigator preparing the

post-placement report pursuant to Section 32A-5-31 NMSA 1978. If an agency, the department or an investigator preparing the post-placement report wants to contest the adoption, it shall notify the court within twenty days after completion of the post-placement report.

F. Service shall be made pursuant to the Rules of Civil Procedure for the District Courts. If the whereabouts of a parent whose consent is required is unknown, the investigator, department or agency charged with investigating the adoption under Section 32A-5-13 NMSA 1978 shall investigate the whereabouts of the parent and shall file by affidavit the results of the investigation with the court. Upon a finding by the court that information as to the whereabouts of a parent has been sufficiently investigated and is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall issue an order providing for service by publication.

G. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, shall be sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

H. The notice required by this section may be waived in writing by the person entitled to notice.

I. Proof of service of the notice on all persons for whom notice is required by this section shall be filed with the court before any hearing adjudicating the rights of the persons."

## Section 6. Section 32A-5-31 NMSA 1978 (being Laws 1993, Chapter 77, Section 158) is amended to read:

"32A-5-31. POST-PLACEMENT REPORT.--

A. An agency or an individual with the credentials set out in Subsection C of Section 32A-5-13 NMSA 1978 shall file with the court its post-placement report of the prospective adoptive home and the adoptee. The

post-placement report shall be completed as prescribed by department regulations and shall include the following:

(1) the expressed desires of the parents as to the kind of adoptive family sought;

(2) the interaction between the adoptee and petitioner;

(3) the adjustment of the adoptee since placement;

(4) the integration and acceptance of the adoptee in the petitioner's family;

(5) the petitioner's ability to meet the physical and emotional needs of the adoptee;

(6) whether the adoptive home is a suitable home for the proposed adoption;

(7) whether the adoption is in the best interest of the adoptee;

(8) the type and frequency of post-placement services given to the petitioner;

(9) orders, judgments or decrees affecting the adoptee or children of the petitioner;

(10) property owned by the adoptee;

(11) full disclosure;

(12) the costs, expenses and professional fees connected with the adoption;

(13) other circumstances that are relevant to the adoption of the adoptee by the petitioner; and

(14) when the adoptee is placed by an agency, an itemized agency statement of all payments made to any person or entity in connection with the adoption, including the date paid, the amount paid, the payee and the purpose of the payment.

B. The post-placement report shall contain an evaluation of the proposed adoption with a recommendation as to the granting of the petition for adoption and other information required by the court.

C. Unless directed by the court, a post-placement report is not required in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to Section 32A-5-12 NMSA 1978.

D. The investigation for the post-placement report shall be conducted by the department, an agency or an investigator. The department, agency or investigator conducting the post-placement report may be the same as the agency or individual

conducting the pre-placement study and they shall be maintained on the same list as that compiled for pre-placement studies under Subsection D of Section

32A-5-13 NMSA 1978.

E. The department, agency or investigator shall observe the adoptee and interview the petitioner in the petitioner's home as specified in department regulations as soon as possible after the receipt of notice of the action, but in any event within thirty days after receipt of the notice.

F. For an adoptee who is under one year of age at the time of placement, the department, agency or investigator shall complete and file the written report with the court within sixty days from receipt of notice of the proceeding and for an adoptee who is one year of age or older at the time of placement, the written report shall be filed with the court within one hundred twenty days from the receipt of notice of the proceeding. Concurrently, the deliverer shall forward a copy of the report to the petitioner's attorney or to the petitioner, if not represented by counsel, and to the department if the report is not generated by the department. Upon a showing of good cause and after notice to the petitioner, the court may grant extensions of time to the department, agency or investigator to file the post-placement report so long as the report is filed at least thirty days before the hearing for the decree of adoption."

## Section 7. Section 32A-5-34 NMSA 1978 (being Laws 1993, Chapter 77, Section 161) is amended to read:

"32A-5-34. FEES AND CHARGES--DAMAGES.--

A. Prior to the final hearing on the petition, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report shall be signed under penalty of perjury. The accounting report shall be itemized in detail and shall show the services relating to the adoption or to the placement of the child for adoption that were received by the parents of the child, by the child or by or on behalf of the petitioner. The report shall also include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed adoption agency or other person or organization who received any funds or any other thing of value from the petitioner in connection with the adoption or the placement of the child with him or who participated in any way in the handling of the funds, either directly or indirectly.

B. A prospective adoptive parent, or another person acting on behalf of a prospective adoptive parent, shall make payments for services relating to the adoption or to the placement of the adoptee for adoption for allowed expenses only to third party vendors, as reasonably practical. These payments shall consist of reasonable and actual fees or charges for:

(1) the services of an agency in connection with an adoption;

(2) medical, hospital, nursing, pharmaceutical, traveling or other similar expenses incurred by a mother or the adoptee in connection with the birth or any illness of an adoptee;

(3) reasonable counseling services relating to the adoption;

(4) living expenses of a mother and her dependent children, including the adoptee, for a reasonable time before the birth or placement of the adoptee and for no more than six weeks after the birth or placement of the adoptee;

(5) expenses incurred for the purposes of full disclosure;

(6) legal services, court costs and traveling or other administrative expenses connected with an adoption, including any legal service performed for a parent who consents to the adoption of a child or relinquishes the child to an agency;

(7) preparation of a pre-placement study and of a post-placement report during the pendency of the adoption proceeding; or

(8) any other service or expense the court finds is reasonably necessary for services relating to the adoption or to the placement of the adoptee for adoption.

C. Any person who makes payments that are not permitted pursuant to the provisions of this section shall be in violation of this article and subject to the penalties set forth in Section 32A-5-42 NMSA 1978.

D. Any person who threatens or coerces a parent to complete the relinquishment of parental rights or to complete the consent to an adoption, by demanding repayment of expenses or by any other threat or coercion, shall be liable to the parent for compensatory and punitive damages.

E. The accounting required in Subsection A of this section is not applicable to stepparent adoptions or to adoptions under the provisions of the Abuse and Neglect Act, unless ordered by the court.

F. Nothing in this section shall be construed to permit payment to a woman for conceiving and carrying a child."

## Section 8. Section 32A-5-35 NMSA 1978 (being Laws 1993, Chapter 77, Section 162, as amended) is amended to read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more

of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The contact may include exchange of identifying or nonidentifying information or visitation between the parents or the parents' relatives and the petitioner or visitation between the parents or the parents' relatives and the adoptee.

B. The court may appoint a guardian ad litem for the adoptee. The court shall appoint a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is included in an agreement. When an adoptive placement is made voluntarily through an agency or pursuant to Section 32A-5-13 NMSA 1978, the court may, in its discretion, appoint a guardian ad litem. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian ad litem.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee. The provision of this subsection shall not apply to a biological parent who has voluntarily relinquished parental rights and consented to the adoption.

E. The court shall retain jurisdiction after the decree of adoption is entered, if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests."

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SENATE BILL 113, AS AMENDED

# CHAPTER 163

**CHAPTER 163, LAWS 2001**

AN ACT

RELATING TO REAL ESTATE LICENSES; CHANGING CERTAIN PROVISIONS FOR LICENSING, FEES AND MISCONDUCT OF BROKERS.

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

## Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959, Chapter 226, Section 1, as amended) is amended to read:

"61-29-1. PROHIBITION.--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 broker or real estate salesperson within this state without a license issued by the commission. A person who engages in the business or acts in the capacity of a broker or real estate salesperson in this state, except as otherwise provided in Section 61-29-2 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 commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978."

## Section 2. Section 61-29-5 NMSA 1978 (being Laws 1959, Chapter 226, Section 4) is amended to read:

"61-29-5. ORGANIZATION OF COMMISSION.--The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings, a register of persons licensed as real estate brokers and as real estate salespersons, showing the name, place of business of each and the date and number of his or her certificate, and a record of all licenses or certificates issued, refused, removed, suspended or revoked. This record shall be open to public inspection at all reasonable times."

## 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 one hundred eighty dollars ($180) and for each renewal thereof, a fee not to exceed one hundred eighty dollars ($180);

(3) for each salesperson's license issued, a fee not to exceed one hundred eighty dollars ($180) and for each renewal thereof, a fee not to exceed one hundred eighty dollars ($180);

(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); and

(10) when a license must be reissued for a 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, the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue fee an amount not to exceed twenty dollars ($20.00); but if there are eleven or more affected salespersons in the licensed broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars ($200).

B. All fees set by the commission shall be set by rule 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, have reached the age of majority and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico. 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.

C. Each applicant for a 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 61-29-10 NMSA 1978 (being Laws 1959, Chapter 226, Section 9, as amended) is amended to read:

"61-29-10. APPLICATION FOR LICENSE AND EXAMINATION.--

A. All applications for licenses to act as real estate brokers and real estate salespersons shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass satisfactorily a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. No applicant is permitted to engage in the real estate business until he has satisfactorily passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to him.

D. Notice of passing or failing to pass the examination shall be given by the commission to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become brokers or salespersons or desiring to improve their proficiency as brokers or salespersons. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission."

## Section 6. Section 61-29-10.3 NMSA 1978 (being Laws 1999, Chapter 127, Section 4) is amended to read:

"61-29-10.3. BROKERAGE NONAGENCY RELATIONSHIPS.--

A. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage, without creating an agency relationship, and no agency duties will be imposed.

B. The commission shall promulgate rules governing the rights and responsibilities of clients and customers and the rights, responsibilities and duties of the brokerage in a nonagency relationship. All licensees will perform the duties of licensees as prescribed by the commission."

## Section 7. 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 of one hundred dollars ($100). If during a period of one year from the date the license expires the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person'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 will be reactivated without charge if granted during the three-year renewal cycle.

D. Each resident licensed broker shall maintain a fixed office within this state, which shall be so located as to conform with local regulations. Every office operated by a licensed broker shall have a licensed broker in charge who is a natural person. The license of the broker and each 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 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 8. Section 61-29-12 NMSA 1978 (being Laws 1959, Chapter 226, Section 11, as amended) is amended to read:

"61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE FOR CAUSES ENUMERATED.--

A. The commission may refuse to issue or may suspend or revoke a license if the licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

(1) made a substantial misrepresentation;

(2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except his principal or other party to the transaction, and then only with his principal's written consent;

(4) represented or attempted to represent a broker other than a broker with whom he is associated without the express knowledge and consent of that broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into his possession that belongs to others, commingled funds of others with his own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated directly or indirectly a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed broker or licensed salesperson; provided, however, that a licensed broker may pay a commission to a licensed broker of another state; provided further that the nonresident broker shall not conduct in this state any of the negotiations for which a fee, compensation or commission is paid except in cooperation with a licensed broker of this state;

(8) failed, if a broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by him in a real estate transaction in a custodial, trust or escrow account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a broker from depositing any deposit money or other money received by him in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if a salesperson, to place as soon after receipt as is practicably possible in the custody of his broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to him by any person dealing with him as the representative of his broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a broker or real estate salesperson and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by a real estate salesperson, employee, partner or associate of a licensed broker shall not be cause for the revocation of a license of the broker unless it appears to the satisfaction of the commission that the broker had guilty knowledge of the unlawful act or violation."

## Section 9. Section 61-29-14 NMSA 1978 (being Laws 1959, Chapter 226, Section 13, as amended) is amended to read:

"61-29-14. NONRESIDENT BROKERS.--

A. An application for issuance of a license or renewal of an existing license shall be accepted from a nonresident applicant who is a broker licensed in another state only if the other state extends the privilege of reciprocal licensure to licensees in New Mexico. A qualifying nonresident may become a New Mexico nonresident licensee by conforming to all the conditions of Chapter 61, Article 29 NMSA 1978.

B. In its discretion, the commission may recognize, in lieu of the recommendations and certificates required to accompany an application for a license, the license issued to a nonresident in another state, provided the other state extends the privilege of licensure to licensees in New Mexico. The license shall be issued upon payment of the license fee, verification that the applicant has complied with his resident state's current education requirements, of which ninety classroom hours for a nonresident broker must be approved by the commission and thirty of which shall have been a broker basics course, and the filing by the applicant with the commission of a certified copy of the applicant's license issued by the other state, if the applicant:

(1) maintains an active place of business in the state by which he is licensed and meets the licensing requirements of Section 61-29-10 NMSA 1978; and

(2) files with the commission 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 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."

## Section 10. Section 61-29-15 NMSA 1978 (being Laws 1959, Chapter 226, Section 14) is amended to read:

"61-29-15. MAINTENANCE OF LIST OF LICENSEES.--The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request."

## Section 11. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"UNLICENSED ACTIVITY--CIVIL PENALTY.--The commission may impose a civil penalty in an amount not to exceed one thousand dollars ($1,000) for each violation and assess administrative costs for any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of Chapter 61, Article 29 NMSA 1978."

## Section 12. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"REGULATION AND LICENSING DEPARTMENT--ADMINISTRATIVELY ATTACHED.--The commission is administratively attached to the regulation and licensing department."

## Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE CORPORATIONS AND TRANSPORTATION

COMMITTEE SUBSTITUTE FOR

SENATE BILL 164, AS AMENDED

# CHAPTER 164

**CHAPTER 164, LAWS 2001**

AN ACT

RELATING TO WATER; ENACTING THE WATER PROJECT FINANCE ACT; PROVIDING FOR THE FUNDING OF WATER PROJECTS; CREATING A BOARD; CREATING THE WATER TRUST FUND AND THE WATER PROJECT FUND; 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 "Water Project Finance Act".

## Section 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 the scarce resource to all users.

## Section 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 or soil and water conservation district; and

D. "qualifying water project" means a project recommended by the board for funding by the legislature.

## Section 4. WATER TRUST BOARD CREATED.--

A. The "water trust board" is created. The board is composed of the following fifteen members:

(1) the state engineer or his designee, who shall be the chairman of the board;

(2) the executive director of the New Mexico finance authority;

(3) the secretary of environment or his designee;

(4) the secretary of energy, minerals and natural resources or his designee;

(5) the director of the department of game and fish or his designee;

(6) the director of the New Mexico department of agriculture or his designee;

(7) the executive director of the New Mexico municipal league or his designee;

(8) the executive director of the New Mexico association of counties or his designee;

(9) five public members appointed by the governor and confirmed by the senate and who represent:

(a) the environmental community;

(b) an irrigation or conservancy district that uses surface water;

(c) an irrigation or conservancy district that uses ground water;

(d) acequia water users; and

(e) soil and water conservation districts;

(10) one public member appointed by the commission on Indian affairs; and

(11) the president of the Navajo Nation or his designee.

B. The board shall meet at the call of the chairman or whenever three members submit a request in writing to the chairman, but not less often than once each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the board.

C. Each public member of the board appointed by the governor shall be appointed to a four-year term. To provide for staggered terms, two of the initially governor-appointed public members shall be appointed for terms of two years and three members for terms of four years. Thereafter, all governor-appointed members shall be appointed for four-year terms. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Public members of the board shall be reimbursed for attending meetings of the board as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Water Project Finance Act.

## Section 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 Endangered Species Act collaborative programs;

(3) restoration and management of watersheds; or

(4) flood prevention.

## Section 6. AUTHORITY--DUTIES.--The authority shall:

A. provide staff support for the board;

B. develop application procedures and forms for political subdivisions to apply for grants and loans from the water project fund; and

C. make loans or grants to political subdivisions for qualifying water projects authorized by the legislature.

## Section 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.

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 8. WATER TRUST FUND--CREATED--INVESTMENT--DISTRIBUTION.--

A. The "water trust fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accrued to the fund. 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. Earnings from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, but an annual distribution shall be made to the water project fund in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2003 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the water trust fund to the water project fund in the amount of four million dollars ($4,000,000) 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 water trust 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 water trust fund for the immediately preceding five calendar years.

## Section 9. WATER PROJECT FUND--CREATED--PURPOSE.--

A. The "water project fund" is created in the New Mexico finance authority and shall consist of distributions made to the fund from the water trust fund and payments of principal of and interest on loans for approved water projects. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of supporting water projects pursuant to provisions of the Water Project Finance Act. The fund shall be administered by the authority. Income from investment of the water project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The water project fund may consist of such sub-accounts 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 and to recover from the fund costs of administering the fund and originating grants and loans.

B. Money in the water project fund may be used to make loans or grants to qualified entities for any project approved by the legislature.

C. The authority is authorized to issue revenue bonds payable from the proceeds of loan repayments made into the water project fund upon a determination by the authority that issuance of the bonds is necessary to replenish the principal balance of the fund. The net proceeds from the sale of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act.

**Section 10. REPORT TO LEGISLATURE.--The board shall report to the legislature no later than October 1 of each calender year the total expenditures from the water project fund, their purposes, an analysis of the accomplishments of the expenditures and recommendations for legislative action.**

**Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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SENATE BILL 169, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 165

**CHAPTER 165, LAWS 2001**

AN ACT

RELATING TO EDUCATION; REQUIRING PUBLIC SCHOOLS TO PROVIDE READING ENHANCEMENT FOR STUDENTS WHO DO NOT READ AT GRADE LEVEL.

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

## Section 1. A new section of Chapter 22, Article 2 NMSA 1978 is enacted to read:

"READING ENHANCEMENT FOR PUBLIC SCHOOL STUDENTS NOT READING AT GRADE LEVEL.--

A. A school district shall provide reading enhancement in grades two through ten, designed to improve a student's reading proficiency to his grade level.

B. Before the end of the school year, the reading proficiency of all students in grades one through nine shall be determined based upon a combination of state-mandated assessments and local school or district reading assessments. A student who is determined not to be reading at grade level shall be provided reading enhancement."

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SENATE BILL 180, AS AMENDED

# CHAPTER 166

**CHAPTER 166, LAWS 2001**

AN ACT

RELATING TO PUBLIC PROPERTY; AUTHORIZING THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO ACQUIRE VARIOUS OFFICE BUILDINGS AND LAND IN SANTA FE COUNTY FOR USE AS STATE OFFICE BUILDINGS; MAKING AN APPROPRIATION; AUTHORIZING THE ISSUANCE OF STATE OFFICE BUILDING TAX REVENUE BONDS; DECLARING AN EMERGENCY.

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

## Section 1. AUTHORIZATION TO ACQUIRE PROPERTY--APPROPRIATION.--

A. In order to acquire the following properties for use as state agency offices in Santa Fe county, the property control division of the general services department may:

(1) purchase and renovate, equip and furnish the national education association building on South Capitol street;

(2) plan, design, construct, equip and furnish a new office building with integrated parking at the west capitol complex on Cerrillos road, pursuant to the design funded by Subsection I of Section 14 of Chapter 118 of Laws 1998, at a price not to exceed twenty-five million dollars ($25,000,000);

(3) purchase and renovate, equip and furnish the public employees retirement association building on Paseo de Peralta; and

(4) purchase land adjacent to the district five office of the state highway and transportation department on Cerrillos road.

B. The acquisitions of property pursuant to Subsection A of this section shall be made in the priority order listed in that subsection. Purchases authorized in Paragraphs (1), (2) and (4) of Subsection A of this section shall be made at a price not to exceed the value of the property established by the taxation and revenue department using generally accepted appraisal techniques for the type of property purchased. The

purchase authorized in Paragraph (3) of Subsection A of this section shall be made at a price negotiated with the retirement board of the public employees retirement association that is not less than the fair market value of the property and building.

C. If state office building tax revenue bonds issued pursuant to Section 2 of this act are outstanding, then, as amounts become available in the property control reserve fund, as much of the property control reserve fund as is necessary to pay the debt service and other payments on the bonds plus any amount needed for any required reserves shall be transferred from the property control reserve fund to the state office building bonding fund.

D. If state office building tax revenue bonds have not been issued pursuant to Section 2 of this act or if the bonds have been issued but are no longer outstanding, then, as amounts become available in the property control reserve fund, as much of the property control reserve fund as is necessary to comply with the provisions of Subsection A of this section is appropriated to the property control division of the general services department for expenditure in fiscal year 2001 and subsequent fiscal years.

## Section 2. STATE OFFICE BUILDING TAX REVENUE BONDS--AUTHORIZATION--CONTINGENCY.--

A. The New Mexico finance authority may issue and sell state office building tax revenue bonds in compliance with the State Office Building Acquisition Bonding Act in a total amount not to exceed seventy-five million dollars ($75,000,000) when the director of the property control division of the general services department certifies to the authority that the proceeds from the state office building tax revenue bonds are needed to acquire one or more of the properties specified in Section 1 of this act. 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 acquisition 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 property control division of the general services department for expenditure in fiscal year 2001 and subsequent fiscal years for the purpose of making the acquisitions pursuant to Section 1 of this act.

B. The authorization made in Subsection A of this section is contingent upon the enactment into law of the State Office Building Acquisition Bonding Act by the first session of the forty-fifth legislature.

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

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SENATE BILL 182, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 167

**CHAPTER 167, LAWS 2001**

AN ACT

RELATING TO MINORS; PROVIDING FOR KINSHIPGUARDIANSHIPOF MINORS; ENACTING THE KINSHIPGUARDIANSHIPACT.

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

## Section 1. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Kinship Guardianship Act"."

## Section 2. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"POLICY--PURPOSE.--

A. It is the policy of the state that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance and supervision to a child, it is the policy of the state that, whenever possible, a child should be raised by family members or kinship caregivers.

B. The Kinship Guardianship Act is intended to address those cases where a parent has left a child or children in the care of another for ninety consecutive days and that arrangement leaves the child or children without appropriate care, guidance or supervision.

C. The purposes of the Kinship Guardianship Act are to:

(1) establish procedures to effect a legal relationship between a child and a kinship caregiver when the child is not residing with either parent; and

(2) provide a child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child's parents are not willing or able to do so."

## Section 3. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Kinship Guardianship Act:

A. "caregiver" means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;

B. "child" means an individual who is a minor;

C. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

D. "parent" means a biological or adoptive parent of a child whose parental rights have not been terminated; and

E. "relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of the persons specified."

## Section 4. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"JURISDICTION AND VENUE.--

A. The district court has jurisdiction of proceedings pursuant to the Kinship Guardianship Act.

B. Proceedings pursuant to the Kinship Guardianship Act shall be in the district court of the county of the child's legal residence or the county where the child resides, if different from the county of legal residence."

## Section 5. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"PETITION--WHO MAY FILE--CONTENTS.--

A. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached his

twenty-first birthday, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached his fourteenth birthday; or

(3) a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:

(a) the purpose and effect of the guardianship;

(b) that he has the right to be served with the petition and notices of hearings in the action; and

(c) that he may appear in court to contest the guardianship.

B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:

(1) facts that if proved will meet the requirements of Subsection B of Section 8 of the Kinship Guardianship Act;

(2) the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;

(3) the legal residence of the child and the place where he resides, if different from the legal residence;

(4) the marital status of the child;

(5) the name and address of the petitioner;

(6) the kinship, if any, between the petitioner and the child;

(7) the names and addresses of the parents of the child;

(8) the names and addresses of persons having legal custody of the child;

(9) the existence of any matters pending involving the custody of the child;

(10) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;

(11) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the children, youth and families department consents to the relief requested in the petition;

(12) whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents; and

(b) the specific actions taken by the petitioner to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted, and copies of correspondence with the tribe; and

(13) other facts in support of the guardianship sought."

## Section 6. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"SERVICE OF PETITION--NOTICE--PARTIES.--

A. At the time of filing the petition, the petitioner shall obtain an order of the court setting a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

B. The petition and a notice of the hearing shall be served upon:

(1) the children, youth and families department if there is any pending matter relating to the child pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

(2) the child if he has reached his fourteenth birthday;

(3) the parents of the child;

(4) a person having custody of the child or visitation rights pursuant to a court order; and

(5) if the child is an Indian child as defined in the federal Indian Child Welfare Act of 1978, the appropriate Indian tribe and any "Indian custodian", together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

C. Service of process required by Subsection A of this section shall be made in accordance with the requirements for giving notice of a hearing pursuant to Subsection A of Section 45-1-401 NMSA 1978.

D. The persons required to be served pursuant to Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to Rule 1-024 NMRA."

## Section 7. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"TEMPORARY GUARDIANSHIPPENDING HEARING.--

A. After the filing of the petition, upon motion of the petitioner or a person required to be served pursuant to Subsection B of Section 6 of the Kinship Guardianship Act, or upon its own motion, the court may appoint a temporary guardian to serve for not more than one hundred eighty days or until the case is decided on the merits, whichever occurs first.

B. A motion for temporary guardianship shall be heard within twenty days of the date the motion is filed. The motion and notice of hearing shall be served on all persons required to be served pursuant to Subsection B of Section 6 of the Kinship Guardianship Act.

C. An order pursuant to Subsection A of this section may be entered ex parte upon good cause shown. If the order is entered ex parte, a copy of the order shall be served on the persons required to be served pursuant to Subsection B of Section 6 of the Kinship Guardianship Act. If a person files an objection to the order, the court immediately shall schedule a hearing to be held within ten days of the date the objection is filed. Notice of the hearing shall be given to the petitioner and all persons required to be served pursuant to Subsection B of Section 6 of the Kinship Guardianship Act."

## Section 8. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--JUDGMENT--CHILD SUPPORT.--

A. Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of Subsection B of this section have been proved and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the minor.

B. A guardian may be appointed pursuant to the Kinship Guardianship Act only if:

(1) a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;

(2) a parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or

(3) the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and

(4) no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code.

C. The burden of proof shall be by clear and convincing evidence, except that in those cases involving an Indian child as defined in the federal Indian Child Welfare Act of 1978, the burden of proof shall be proof beyond a reasonable doubt.

D. As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. The court may use the child support guidelines set forth in

Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

E. The court may order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child."

## Section 9. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"GUARDIAN AD LITEM--APPOINTMENT.--

A. In a proceeding to appoint a guardian pursuant to the Kinship Guardianship Act, the court may appoint a guardian ad litem for the child upon the motion of a party or solely in the court's discretion. The court shall appoint a guardian ad litem if a parent of the child is participating in the proceeding and objects to the appointment requested.

B. In a proceeding in which a parent of the child has petitioned for the revocation of a guardianship established pursuant to the Kinship Guardianship Act and the guardian objects to the revocation, the court shall appoint a guardian ad litem.

C. The court may order all or some of the parties to a proceeding to pay a reasonable fee of a guardian ad litem. If all of the parties are indigent, the court may award a reasonable fee to the guardian ad litem to be paid out of funds of the court."

## Section 10. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"GUARDIAN AD LITEM--POWERS AND DUTIES.--A guardian ad litem appointed by the court in a proceeding pursuant to the Kinship Guardianship Act shall:

A. in connection with a petition for guardianship, make a diligent investigation of the circumstances surrounding the petition, including visiting the child in the home, interviewing the person proposed as guardian and interviewing the parents of the child if available;

B. in connection with a petition or motion for revocation of a guardianship, recommend an appropriate transition plan in the event the guardianship is revoked; and

C. at a hearing held in connection with proceedings described in Subsection A or B of this section, report to the court concerning the best interests of the child and the child's position on the requested relief."

## Section 11. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"NOMINATION OBJECTION BY CHILD.--In a proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act:

A. the court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child; and

B. the court shall not appoint a person as guardian if a child who has reached his fourteenth birthday files a written objection in the proceeding before the person accepts appointment as guardian."

## Section 12. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"REVOCATION OF GUARDIANSHIP.--

A. Any person, including a child who has reached his fourteenth birthday, may move for revocation of a guardianship created pursuant to the Kinship Guardianship Act. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a

parent or a new guardian. A transition plan shall take into consideration the child's age, development and any bond with the guardian.

B. If the court finds that a preponderance of the evidence proves a change in circumstances and the revocation is in the best interests of the child, it shall grant the motion and:

(1) adopt a transition plan proposed by a party or the guardian ad litem;

(2) propose and adopt its own transition plan; or

(3) order the parties to develop a transition plan by consensus if they will agree to do so."

## Section 13. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"RIGHTS AND DUTIES OF GUARDIAN.--

A. A guardian appointed for a child pursuant to the Kinship Guardianship Act has the legal rights and duties of a parent except the right to consent to adoption of the child and except for parental rights and duties that the court orders retained by a parent.

B. Unless otherwise ordered by the court, a guardian appointed pursuant to the Kinship Guardianship Act has authority to make all decisions regarding visitation between a parent and the child.

C. A certified copy of the court order appointing a guardian pursuant to the Kinship Guardianship Act shall be satisfactory proof of the authority of the guardian, and letters of guardianship need not be issued."

## Section 14. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"CONTINUING JURISDICTION OF THE COURT.--The court appointing a guardian pursuant to the Kinship Guardianship Act retains continuing jurisdiction of the matter."

## Section 15. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"CAREGIVER'S AUTHORIZATION AFFIDAVIT.--

A. A caregiver who executes a caregiver's

authorization affidavit substantially in the form contained

in Subsection J of this section by completing Items 1 through 4 of the form and who subscribes and swears to it before a notary public, is authorized to enroll the named child in school and consent to school-related medical care for the child.

B. A caregiver who is a relative of the child, who executes a caregiver's authorization affidavit substantially in the form set forth in Subsection J of this section by completing Items 1 through 8 and who subscribes and swears to the affidavit before a notary public, has the same authority to authorize medical care, dental care and mental health care for the child as a guardian appointed pursuant to the Kinship Guardianship Act.

C. A caregiver's authorization affidavit executed pursuant to this section is not valid for more than one year after the date of its execution.

D. The decision of a caregiver to consent to or refuse medical, dental or mental health care pursuant to a caregiver's authorization affidavit is superseded by a contravening decision of a parent or other person having legal custody of the child if the contravening decision does not jeopardize the life, health or safety of the child.

E. No person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical, dental or mental health care to a child without actual knowledge of facts contrary to those stated in the affidavit is subject to criminal culpability, civil liability or professional disciplinary action if the affidavit complies with the requirements of this section. The foregoing exclusions apply even though a parent having parental rights or person having legal custody of the child has contrary wishes as long as the provider of the care has no actual knowledge of the contrary wishes.

F. A person who relies upon a caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

G. If a child stops living with the caregiver, the caregiver shall give notice of that fact to a school, health care provider, mental health care provider, health insurer or other person who has been given a copy of the caregiver's authorization affidavit.

H. A caregiver's authorization affidavit is invalid unless it contains the warning statement set out in the form contained in Subsection J of this section in not less that ten-point boldface type, or a reasonable equivalent thereof, enclosed in a box with three-point rule lines.

I. As used in this section, "school-related medical care" means medical care that is required by the state or a local government authority as a condition for school enrollment.

J. The caregiver's authorization affidavit shall be in substantially the following form:

"Caregiver's Authorization Affidavit

Use of this affidavit is authorized by the Kinship Guardianship Act.

Instructions:

A. Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care.

B. Completion of Items 5-8 is additionally required to authorize any other medical care.

Print clearly:

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____.

2. Minor's birth date: _____.

3. My name (adult giving authorization): _____.

4. My home address: _____.

5. ( ) I am a grandparent, aunt, uncle or other qualified relative of the minor (see back of this form for a definition of "qualified relative").

6. Check one or both (for example, if one parent was advised and the other cannot be located):

( ) I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

( ) I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

7. My date of birth: _____.

8. My NM driver's license or other identification card number: _____.

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the laws of the state of New Mexico that the foregoing is true and correct.

Signed: _____

The foregoing affidavit was subscribed, sworn to and acknowledged before me this _____ day of _____, 20_____, by _____.

My commission expires: _____ _____

Notary Public

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor, and does not mean that the caregiver has legal custody of the minor.

2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative", for purposes of Item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, godparent, member of the child's tribe or clan, an adult with whom the child has a significant bond or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of any of the persons specified in this definition.

2. If the minor stops living with you, you are required to notify any school, health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.

3. If you do not have the information requested in Item 8, provide another form of identification such as your social security number or medicaid number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to

any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes."."

_____

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 185

# CHAPTER 168

**CHAPTER 168, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR EVEN START FAMILY LITERACY PROGRAMS; PROVIDING FOR BENCHMARKS, PERFORMANCE STANDARDS AND EVALUATIONS.

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:

"EVEN START FAMILY LITERACY PROGRAM--CREATED--GUIDELINES--BENCHMARKS, PERFORMANCE STANDARDS AND EVALUATIONS.--

A. The "even start family literacy program" is created in the department of education to provide funding for preschool reading readiness and parenting education. The purpose of the program is to support the educational and developmental needs of students in preschool; address cultural diversity; and provide family support that leads to improved literacy, improved ability for students to succeed in school and economic self-sufficiency. Priority for funding shall be provided to those public schools that have the highest proportion of limited English proficient students, students living in poverty and Native American students.

B. The department of education shall develop even start family literacy program benchmarks and performance standards, guidelines for program approval and funding approval criteria. The department shall disseminate the program information in all public schools and shall provide technical assistance to public schools in developing proposals.

C. The department of education shall distribute money to public schools with approved even start family literacy programs that meet the specified criteria based upon actual program costs to ensure the implementation of performance based budgeting measures.

D. Public schools that receive even start family literacy program funds shall annually evaluate and report to the department of education the results of the program, including the number of children and families served, the services provided and the gains achieved by the children and their families.

E. If the department of education determines that a local even start family literacy program is not meeting benchmarks and performance standards, the department shall notify the public school that continued failure to meet benchmarks and performance standards will result in cessation of funding for the program for the next school year.

F. The department of education shall compile the results of the even start family literacy program and report annually to the legislative education study committee."

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HOUSE BILL 33, AS AMENDED

# CHAPTER 169

**CHAPTER 169, LAWS 2001**

AN ACT

RELATING TO PRIVATELY OPERATED CORRECTIONAL FACILITIES; ENACTING THE PRIVATELY OPERATED CORRECTIONAL FACILITIES OVERSIGHT ACT; IMPOSING MINIMUM STANDARDS; PROVIDING FOR A CLASSIFICATION REVIEW OF OUT-OF-STATE INMATES IN PRIVATELY OPERATED CORRECTIONAL FACILITIES; ASSESSING A FEE.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Privately Operated Correctional Facilities Oversight Act".

## Section 2. DEFINITIONS.--As used in the Privately Operated Correctional Facilities Oversight Act:

A. "out-of-state inmate" means a person incarcerated in a privately operated correctional facility within this state who is being incarcerated on behalf of a state other than New Mexico or a governmental entity whose jurisdiction is outside the state of New Mexico. "Out-of-state inmate" does not include a person who is being incarcerated on behalf of an Indian tribe or pueblo whose lands are located wholly or partially within New Mexico, or on behalf of the United States;

B. "privately operated correctional facility" means a correctional facility or jail that has all or substantially all of its security operations performed by persons employed by, or engaged by, a private entity to perform security functions; and

C. "secretary" means the secretary of corrections or his designee.

## Section 3. INCARCERATION OF OUT-OF-STATE INMATES IN PRIVATELY OPERATED CORRECTIONAL FACILITIES--MINIMUM STANDARDS--SECRETARY'S AUTHORITY TO ADOPT RULES.--

A. A privately operated correctional facility shall have statutory authority, other than this section, in order to operate or house inmates. In addition to satisfying requirements set forth in a statute other than this section, a privately operated correctional facility shall meet the following minimum standards before housing ten or more out-of-state inmates:

(1) all correctional officers and other persons, employed or engaged by a privately operated correctional facility, whose primary function is to provide security shall, before being assigned to provide the security functions, successfully complete a screening, background check and training course approved by the secretary. The secretary may offer to provide services to the privately operated correctional facility, including qualifying screening, background checks and a training program at the corrections academy at a reasonable cost;

(2) a privately operated correctional facility shall provide immediate oral notice, followed by a written report, to the secretaries of public safety and corrections, the local county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees, whenever any of the following events occur at the privately operated correctional facility:

(a) discharge of a firearm other than for training purposes;

(b) discharge of a chemical agent, gas or munitions to control the behavior of two or more inmates;

(c) a hostage situation;

(d) the death of an inmate, staff member, visitor or other person;

(e) a disturbance involving five or more inmates;

(f) an escape or attempted escape; or

(g) the commission of a felony offense;

(3) a privately operated correctional facility shall obtain and maintain current accreditation by the American correctional association regarding standards for prisons or standards for jails. As to any new privately operated correctional facility, the secretary may allow the facility a period of two years from the date the facility becomes operational to obtain accreditation or may require the facility to apply for and receive provisional accreditation;

(4) a privately operated correctional facility shall prepare an emergency response plan deemed satisfactory by the secretary. A copy of the emergency response plan shall be provided to the secretaries of public safety and corrections, the local county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees;

(5) a privately operated correctional facility shall ensure that an out-of-state inmate released from the privately operated correctional facility is released to his state of origin; and

(6) the owner or operator of a privately operated correctional facility shall enter into a written contract with the entity that proposes to house ten or more out-of-state inmates in the facility, and the contract shall contain provisions that require compliance with the minimum standards set forth in this subsection.

B. The secretary shall review all contracts and proposed contracts between the owner or operator of a privately operated correctional facility and the entity that proposes to house ten or more out-of-state inmates in the facility. The secretary shall prepare and submit to the county a written report summarizing his review of each contract.

C. The secretary shall inspect and monitor a privately operated correctional facility that houses or proposes to house ten or more out-of-state inmates to ensure compliance with the minimum standards set forth in this section and to ensure compliance with standards and rules adopted by the secretary pursuant to this section. The secretary shall be provided with the classification records and other relevant records pertaining to the out-of-state inmates who are proposed to be incarcerated at the privately operated correctional facility. The secretary shall have subpoena authority as to all present and former employees and other personnel of the privately operated

correctional facility, as well as to all records pertaining to the facility, for the purposes of inspecting and monitoring the facility. Upon completion of an inspection, the secretary shall submit a report with findings and recommendations to the privately operated correctional facility, the board of county commissioners for the county where the facility is located, the county sheriff of the county where the facility is located and the legislative corrections oversight committee. The secretary shall allow the facility a reasonable period of time to address any deficiencies and recommendations set forth in the report. The secretary may conduct additional inspections to determine compliance with minimum standards, rules and any recommendations. If a privately operated correctional facility that houses or proposes to house out-of-state inmates fails to comply with the standards and rules authorized pursuant to this section, the secretary shall notify the county of the deficiencies and recommend corrective action.

## Section 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 seventy-five cents ($0.75) per inmate per day for each out-of-state inmate who is incarcerated in the privately operated correctional facility.

## Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILLS 24, 274 AND 413, AS AMENDED

# CHAPTER 170

**CHAPTER 170, LAWS 2001**

AN ACT

RELATING TO JAILS; CHANGING THE RATE AT WHICH REDUCTIONS IN FINES, PENALTIES OR COSTS ARE COMPUTED; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 33-3-11 NMSA 1978 (being Laws 1889, Chapter 9, Section 1, as amended) is amended to read:

"33-3-11. JAIL FOR NONPAYMENT OF FINE.--

A. Whenever any person is committed to jail for nonpayment of any fine or costs or both, he shall be credited with eight times the federal hourly minimum wage a day in reduction thereof for each day or portion of a day of incarceration. When the person has remained incarcerated a sufficient length of time to extinguish the fine or cost or both, computed at this rate, or has paid to the sentencing court the amount of the fine or costs or both, remaining after deducting credit allowed by this section and obtaining from the court an order of release from commitment, the officer having the prisoner in custody shall discharge him from custody under commitment.

B. If the person in custody makes an affidavit that he has no property out of which he can pay the fine and costs, either or any part, the prisoner shall not be retained in custody longer than sixty days even though the fine and costs or either exceeds the amount credited toward repayment during those sixty days. The affidavit shall be delivered to the sheriff or jail administrator as defined in Section 4-44-19 NMSA 1978 having custody of the prisoner."

## Section 2. Section 35-15-3 NMSA 1978 (being Laws 1884, Chapter 39, Section 19, as amended) is amended to read:

"35-15-3. PROCEDURE--COMMITMENT.--

A. In any action for the violation of any ordinance in which an arrest has not been made, a warrant for the arrest of the defendant may issue in the first instance upon the affidavit of any person making a complaint that he has reasonable grounds to believe the party charged is guilty. Any person arrested upon such warrant shall, without unnecessary delay, be taken before the proper officer to be tried for the alleged offense or be allowed to post an appropriate bond.

B. Any municipality may provide by ordinance that the first process shall be a citation or summons in cases involving violations of any municipal ordinance not amounting to a breach of the peace, requiring the party charged to appear before the municipal court at a time fixed in the citation or summons. The ordinance may also provide that, upon the failure of the party charged to appear, a warrant for his arrest shall immediately issue by the municipal judge for the offense specified in the citation or

summons, commanding that the party charged shall be arrested and proceedings had as in the case when arrest is made upon a warrant issued upon affidavit as provided in Subsection A of this section.

C. Any person upon whom any fine or penalty is imposed may, upon order of the court convicting him, be committed to the county jail, municipal jail, detention facility or other place provided by the municipality for the incarceration of offenders until the fine or penalty is fully paid. The period of incarceration shall not exceed sixty days for any one offense except as authorized in Subsection C of Section 3-17-1 NMSA 1978. The municipal governing body may provide by ordinance that every person so committed shall work for the municipal corporation, at such labor as his strength will permit, within or without the jail or other place provided for the incarceration, not exceeding ten hours each working day. Each offender shall be credited with eight times the federal hourly minimum wage per day in reduction of any fine."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 143, AS AMENDED

# CHAPTER 171

**CHAPTER 171, LAWS 2001**

AN ACT

RELATING TO THE DISTRIBUTION OF GASOLINE TAXES TO MUNICIPALITIES AND COUNTIES; PROVIDING AN EXCEPTION FOR CERTAIN SMALL MUNICIPALITIES AND COUNTIES; AMENDING A SECTION OF THE NMSA 1978.

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

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

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

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

B. Except as provided in Subsection D of this section, the amount determined in Subsection A of this section shall be distributed as follows:

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

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

C. This distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges.

D. This distribution may be paid into a separate road fund or the general fund of the municipality or county if the municipality has a population less than three thousand or the county has a population less than four thousand."

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HOUSE BILL 210, AS AMENDED

# CHAPTER 172

**CHAPTER 172, LAWS 2001**

AN ACT

RELATING TO TAXATION; AUTHORIZING THE IMPOSITION OF A MUNICIPAL CAPITAL OUTLAY GROSS RECEIPTS TAX AND A COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX FOR LOCAL INFRASTRUCTURE PURPOSES BY ELIGIBLE MUNICIPALITIES AND COUNTIES FOR A CERTAIN PERIOD; REQUIRING VOTER APPROVAL; 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 Municipal Local Option Gross Receipts Taxes Act is enacted to read:

"MUNICIPAL CAPITAL OUTLAY GROSS RECEIPTS TAX--PURPOSES--REFERENDUM.--

A. Prior to July 1, 2005, the majority of the members of the governing body of an eligible municipality may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of any person engaging in business in the municipality 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-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal capital outlay 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 any municipal infrastructure purpose, including:

(1) the design, construction, acquisition, improvement, renovation, rehabilitation, equipping or furnishing of public buildings or facilities, including parking facilities, the acquisition of land for the public buildings or facilities and the acquisition or improvement of the grounds surrounding public buildings or facilities;

(2) acquisition, construction or improvement of water, wastewater or solid waste systems or facilities and related facilities, including water or sewer lines and storm sewers and other drainage improvements;

(3) acquisition, rehabilitation or improvement of firefighting equipment;

(4) construction, reconstruction or improvement of municipal streets, alleys, roads or bridges, including acquisition of rights of way;

(5) design, construction, acquisition, improvement or equipping of airport facilities, including acquisition of land, easements or rights of way for airport facilities;

(6) acquisition of land for open space, public parks or public recreational facilities and the design, acquisition, construction, improvement or equipping of parks and recreational facilities; and

(7) payment of gross receipts tax revenue bonds issued pursuant to Chapter 3, Article 31 NMSA 1978 for infrastructure purposes.

D. An ordinance imposing the municipal capital outlay gross receipts tax shall not go into effect until after an election is held on the question of imposing the tax for the purpose for which the revenue is dedicated and a majority of the voters in 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 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 question of imposing the municipal capital outlay 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 capital outlay 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.

E. For purposes of this section, "eligible municipality" means a municipality that has imposed all increments of the municipal gross receipts tax pursuant to Section 7-19D-9 NMSA 1978 and all increments of the municipal infrastructure gross receipts tax pursuant to Section 7-19D-11 NMSA 1978 and has not imposed after January 1, 2001 any increment of the supplemental municipal gross receipts tax pursuant to the Supplemental Municipal Gross Receipts Tax Act."

## Section 2. A new section of the County Local Option Gross Receipts Taxes Act is enacted to read:

"COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX--PURPOSES--REFERENDUM.--

A. Prior to July 1, 2005, the majority of the members of the governing body of an eligible county may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth of one percent of the gross receipts of any person engaging in business in the county 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-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county capital outlay 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) the design, construction, acquisition, improvement, renovation, rehabilitation, equipping or furnishing of public buildings or facilities, including parking facilities, the acquisition of land for the public buildings or facilities and the acquisition or improvement of the grounds surrounding public buildings or facilities;

(2) acquisition, construction or improvement of water, wastewater or solid waste systems or facilities and related facilities, including water or sewer lines and storm sewers and other drainage improvements;

(3) design, construction, acquisition, improvement or equipping of a county jail, juvenile detention facility or other county correctional facility or multipurpose regional adult jail or juvenile detention facility;

(4) construction, reconstruction or improvement of roads, streets or bridges, including acquisition of rights of way;

(5) design, construction, acquisition, improvement or equipping of airport facilities, including acquisition of land, easements or rights of way for airport facilities;

(6) acquisition of land for open space, public parks or public recreational facilities and the design, acquisition, construction, improvement or equipping of parks and recreational facilities; and

(7) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978 for infrastructure purposes.

D. An ordinance imposing the county capital outlay gross receipts tax shall not go into effect until after an election is held on the question of imposing the tax for the purpose for which the revenue is dedicated and a majority of the voters in the county 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 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 question of imposing the county capital outlay 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 capital outlay 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.

E. For purposes of this section, "eligible county" means a county that has imposed all increments of the county gross receipts tax pursuant to Section 7-20E-9

NMSA 1978 and all increments of the county infrastructure gross receipts tax pursuant to Section 7-20E-19 NMSA 1978."

## Section 3. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through K 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 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, the county infrastructure gross receipts tax and the 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, the county infrastructure gross receipts tax or the 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, the county infrastructure gross receipts tax or the 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 may not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of 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 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. 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.

M. 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.

N. 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, 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.

O. As used in this section:

(1) "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;

(2) "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;

(3) "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;

(4) "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;

(5) "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;

(6) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

(7) "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.

P. 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."

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HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE

FOR HOUSE BILLS 224, 668, 675 AND 888

# CHAPTER 173

**CHAPTER 173, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING SECTION 7-38-38.1 NMSA 1978 (BEING LAWS 1986, CHAPTER 20, SECTION 116, AS AMENDED) TO REQUIRE THAT EXPENDITURES FROM THE COUNTY PROPERTY VALUATION FUND BE MADE PURSUANT TO AN APPROVED PROPERTY VALUATION PROGRAM AND TO CHANGE CERTAIN PROVISIONS PERTAINING TO COUNTY ADMINISTRATIVE CHARGES.

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

## Section 1. Section 7-38-38.1 NMSA 1978 (being Laws 1986, Chapter 20, Section 116, as amended) is amended to read:

"7-38-38.1. RECIPIENTS OF REVENUE PRODUCED THROUGH AD VALOREM LEVIES REQUIRED TO PAY COUNTIES ADMINISTRATIVE CHARGE TO OFFSET COLLECTION COSTS.--

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including but not limited to money resulting from the authorization of rates and impositions under Subsection B and Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA 1978, special levies for special purposes and benefit assessments, but the term does not include any money resulting from the imposition of taxes imposed under the provisions of the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas Production Equipment Ad Valorem Tax Act or the Copper Production Ad Valorem Tax Act or money resulting from impositions under Paragraph (3) of Subsection C of Section 7-37-7 NMSA 1978; and

(2) "revenue recipient" means the state and any of its political subdivisions, excluding institutions of higher education located in class A counties and class B counties having more than three hundred million dollars ($300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to one percent of the revenue received.

C. The "county property valuation fund" is created. All administrative charges deducted by the county treasurer shall be distributed to the county property valuation fund.

D. Expenditures from the county property valuation fund shall be made pursuant to a property valuation program presented by the county assessor and approved by the majority of the county commissioners."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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# CHAPTER 174

**CHAPTER 174, LAWS 2001**

AN ACT

RELATING TO PUBLIC WORKS; AMENDING THE DEFINITION OF RESIDENT CONTRACTOR.

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

## Section 1. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended by Laws 1997, Chapter 1, Section 3 and also by Laws 1997, Chapter 2, Section 3) is amended to read:

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

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

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

(1) if the bidder is a corporation, it shall be incorporated in New Mexico and maintain its principal office and place of business in New Mexico;

(2) if the bidder is a partnership, general or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico;

(3) if the bidder is an individual, he shall maintain his principal office and place of business in

New Mexico; or

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

a court order, is entitled to credit for qualifying contributions paid by the previously qualified New Mexico contractor or resident contractor.

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

D. For purposes of this section, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that entity.

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

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

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

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

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

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

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HOUSE BILL 89

# CHAPTER 175

**CHAPTER 175, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE CIGARETTE TAX ACT TO ELIMINATE THE FEE FOR A LICENSE TO AFFIX STAMPS OUTSIDE NEW MEXICO.

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

## Section 1. Section 7-12-5 NMSA 1978 (being Laws 1971, Chapter 77, Section 5, as amended) is amended to read:

"7-12-5. AFFIXING STAMPS.--

A. All cigarettes, the sale, gift or consumption of which is subject to the cigarette tax, shall be placed in packages or containers to which a stamp may be affixed.

B. Packages or containers to which a stamp is required to be affixed and which contain cigarettes that are not in multiples of five cigarettes shall have affixed a stamp of the next higher multiple of five cigarettes.

C. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a stamp shall be affixed to each package or container of cigarettes, the sale, gift or consumption of which is subject to the cigarette tax. The stamp shall be affixed by any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys unstamped cigarettes for sale, gift or consumption in New Mexico.

D. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico.

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HOUSE BILL 106

# CHAPTER 176

**CHAPTER 176, LAWS 2001**

AN ACT

RELATING TO REAL PROPERTY; CHANGING PROVISIONS OF THE DEVELOPMENT FEES ACT TO PERMIT WAIVER OF IMPACT FEE REQUIREMENTS FOR AFFORDABLE HOUSING PROJECTS.

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

## Section 1. Section 5-8-3 NMSA 1978 (being Laws 1993, Chapter 122, Section 3) is amended to read:

"5-8-3. AUTHORIZATION OF FEE.--

A. Unless otherwise specifically authorized by the Development Fees Act, no municipality or county may enact or impose an impact fee.

B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.

C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement, but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.

D. A municipality or county may waive impact fee requirements for affordable housing projects."

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HOUSE BILL 334

# CHAPTER 177

**CHAPTER 177, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC LIABILITY FUND; AMENDING SECTION

41-4-23 NMSA 1978 (BEING LAWS 1977, CHAPTER 386, SECTION 17, AS AMENDED) TO RAISE THE SETTLEMENT AMOUNT THAT CAN BE MADE BEFORE FIRST BEING APPROVED BY THE DIRECTOR OF THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT.

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

## Section 1. Section 41-4-23 NMSA 1978 (being Laws 1977, Chapter 386, Section 17, as amended) is amended to read:

"41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

A. There is created the "public liability fund". The fund and any income from the fund shall be held in trust, deposited in a segregated account and invested by the general services department with the prior approval of the state board of finance.

B. Money deposited in the public liability fund may be expended by the risk management division of the general services department:

(1) to purchase tort liability insurance for state agencies and their employees and for any local public body participating in the public liability fund and its employees;

(2) to contract with one or more consulting or claims adjusting firms pursuant to the provisions of Section 41-4-24 NMSA 1978;

(3) to defend, save harmless and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body for any claim or liability covered by a valid and current certificate of coverage to the limits of such certificate of coverage;

(4) to pay claims and judgments covered by a certificate of coverage;

(5) to contract with one or more attorneys or law firms on a per-hour basis, or with the attorney general, to defend tort liability claims against governmental entities and public employees acting within the scope of their duties;

(6) to pay costs and expenses incurred in carrying out the provisions of this section;

(7) to create a retention fund for any risk covered by a certificate of coverage;

(8) to insure or provide certificates of coverage to school bus contractors and their employees, notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for any comparable risk for which immunity has been waived for public employees pursuant to Section 41-4-5 NMSA 1978, if the coverage is commercially unavailable; except that coverage for exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978 shall be provided to its member public school districts and participating other educational entities of the public school insurance authority, by the authority, and except that coverage shall be provided to a contractor and his employees only through the public school insurance authority or its successor, unless the district to which the contractor provides services has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services; and

(9) to insure or provide certificates of coverage for any ancillary coverage typically found in commercially available liability policies provided to governmental entities, if the coverage is commercially unavailable.

C. No settlement of any claim covered by the public liability fund in excess of twenty-five thousand dollars ($25,000) shall be made unless the settlement has first been approved in writing by the director of the risk management division of the general services department. This subsection shall not be construed to limit the authority of an insurance carrier, covering any liability under the Tort Claims Act, to compromise, adjust and settle claims against governmental entities or their public employees.

D. Claims against the public liability fund shall be made in accordance with rules or regulations of the director of the risk management division of the general services department. If the director of the risk management division has reason to believe that the fund would be exhausted by payment of all claims allowed during a particular state fiscal year, pursuant to regulations of the risk management division, the amounts paid to each claimant and other parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage his own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years."

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HOUSE BILL 501

# CHAPTER 178

**CHAPTER 178, LAWS 2001**

AN ACT

RELATING TO DISTRICT ATTORNEYS; AUTHORIZING A DISTRICT ATTORNEY TO CONTRACT WITH AN INDIAN NATION, TRIBE OR PUEBLO FOR THE PURPOSE OF SERVING AS A PROSECUTOR IN TRIBAL COURT; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 36-1-8 NMSA 1978 (being Laws 1913, Chapter 54, Section 3, as amended) is amended to read:

"36-1-8. DISTRICT ATTORNEYS--PAYMENTS OF SALARIES AND EXPENSES.--

A. The salaries of all district attorneys, assistant district attorneys and other employees of their offices shall be paid from the time when the district attorney or assistant district attorney qualifies and from the time when other employees begin their duties.

B. All salaries and expenses of the offices of the district attorneys, except the expenses of maintenance and upkeep of quarters occupied by the district attorneys and their staffs, shall be paid from funds appropriated to the district attorneys in the respective judicial districts upon warrants drawn by the secretary of finance and administration in accordance with budgets approved by the state budget division of the department of finance and administration.

C. Nothing in this section shall be construed to prevent an agreement between an incorporated municipality or a county and a district attorney whereby the district attorney agrees to assign an assistant to the municipality or county and the municipality or county agrees to reimburse the department of finance and administration to the credit of the district attorney's budget for all or a portion of the assistant's salary or expenses.

D. The provisions of this section shall not be interpreted to prevent a district attorney from contracting with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

(1) serve as a tribal prosecutor; or

(2) prosecute alleged violations of tribal codes by tribal members in tribal courts.

E. If a district attorney enters into a contract, as provided in Subsection D of this section, the district attorney shall be reasonably compensated for the expenses of staff and equipment."

## Section 2. Section 36-1-18 NMSA 1978 (being Laws 1909, Chapter 22, Section 2, as amended) is amended to read:

"36-1-18. DUTIES OF DISTRICT ATTORNEY.--

A. Each district attorney shall:

(1) prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested;

(2) represent the county before the board of county commissioners of any county in his district in all matters before the board whenever requested to do so by the board, and he may appear before the board when sitting as a board of equalization without request;

(3) advise all county and state officers whenever requested; and

(4) represent any county in his district in all civil cases in which the county may be concerned in the supreme court or court of appeals, but not in suits brought in the name of the state.

B. A district attorney may contract with an Indian nation, tribe or pueblo within the boundaries of the district attorney's judicial district for the purpose of authorizing the district attorney or his staff to:

(1) serve as a tribal prosecutor; or

(2) prosecute alleged violations of tribal codes by tribal members in tribal courts."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 621

# CHAPTER 179

**CHAPTER 179, LAWS 2001**

AN ACT

RELATING TO MUNICIPAL UTILITIES; AUTHORIZING MUNICIPALITIES TO ESTABLISH A MUNICIPAL UTILITY PERMANENT FUND; PROVIDING FOR AN ELECTION FOR VOTER APPROVAL FOR EXPENDITURE FROM THE PERMANENT FUND; PROVIDING FOR BUDGET AND APPROPRIATION OF THE EARNINGS FROM INVESTMENT OF THE PERMANENT FUND FOR MUNICIPAL UTILITY PURPOSES.

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

## Section 1. A new section of Chapter 3, Article 23 NMSA 1978 is enacted to read:

"MUNICIPAL UTILITY PERMANENT FUND.--

A. The governing body of a municipality may by ordinance establish a municipal utility permanent fund for each utility owned and operated by the municipality.

B. The municipal utility permanent fund shall be a fund in the municipal treasury into which may be deposited money from the sale of municipal utility assets or any portion of the unappropriated utility fund cash surplus that is in excess of fifty percent of the prior fiscal year's municipal utility budget. Money in the fund may be invested by the municipal board of finance as provided in Sections 6-10-10, 6-10-36 and 6-10-44 NMSA 1978.

C. Earnings from investment of a municipal utility permanent fund may be budgeted and appropriated by the governing body of the municipality for expenditure for any purpose related to the operation, maintenance and improvement of the municipal utility or deposited in the municipal utility permanent fund.

D. Money in the municipal utility permanent fund may be appropriated or expended only pursuant to approval of the voters of the municipality. The municipality may adopt a resolution calling for an election on the question of the expenditure of a specified amount of the municipal utility permanent fund for a specified purpose. The election shall be held within sixty days after the adoption of the resolution by the governing body. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for special municipal elections pursuant to the Municipal Election Code. If a majority of the voters of the municipality voting on the question vote to approve the expenditure, that amount of money shall be available for appropriation from the municipal utility permanent fund for expenditure by the municipality for the specified purpose. If a majority of the voters of the municipality voting on the question vote against the expenditure, no money in the municipal utility permanent fund may be appropriated or expended for that purpose. Following an election at which the question was not approved, that question shall not again be submitted to the voters of the municipality for at least one year from the date of that election."

HOUSE BILL 644

# CHAPTER 180

**CHAPTER 180, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING THE ISSUANCE OF SPECIAL MOTORCYCLE REGISTRATION PLATES FOR DISABLED PERSONS; ENACTING A NEW 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:

"SPECIAL MOTORCYCLE REGISTRATION PLATES FOR DISABLED PERSONS.--

A. The department shall issue a distinctive motorcycle registration plate to a disabled person who requests the plate for use on a motorcycle owned by the person and who proves satisfactorily to the department that he has suffered the loss, or the complete and total loss of use of, one or both legs at or above the ankle or of one or both arms at or above the wrist. The department shall not collect a fee in addition to regular motorcycle registration fees for issuance of a special motorcycle registration plate.

B. A person shall not falsely represent himself to be disabled in order to be eligible for a special motorcycle registration plate when he is in fact not disabled.

C. A special motorcycle registration plate issued to a disabled person by another state or foreign jurisdiction shall be honored until the person establishes residency in this state."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

HOUSE BILL 672

# CHAPTER 181

**CHAPTER 181, LAWS 2001**

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING THE UTILITY OPERATORS CERTIFICATION ACT DEFINITION OF PUBLIC WATER SUPPLY SYSTEM.

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

## Section 1. Section 61-33-2 NMSA 1978 (being Laws 1992, Chapter 44, Section 2) is amended to read:

"61-33-2. DEFINITIONS.--As used in the Utility Operators Certification Act:

A. "certified operator" means a person who is certified by the commission as being qualified to operate one of the classifications of water supply systems or wastewater facilities;

B. "certified supervisor" means a person who is certified as an operator by the commission as qualified to operate one of the classifications of water supply systems or wastewater facilities and who performs on-site coordinations, direction and inspection of the operation of a public wastewater facility or a public water supply facility;

C. "commission" means:

(1) the water quality control commission; or

(2) the department, when used in connection with any activity or function under the Utility Operators Certification Act, the administration and enforcement of which the commission has delegated to the department;

D. "department" means the department of environment;

E. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

F. "domestic liquid waste treatment unit" means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including aerobic treatment units and septic tanks;

G. "person" means any agency, department or instrumentality of the United States and any of their officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation;

H. "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit; or

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirements of the federal Clean Water Act of 1977; and

I. "public water supply system" means:

(1) a system for the provision through pipes or other constructed conveyances to the public of water for human consumption or domestic purposes if the system:

(a) has at least fifteen service connections; or

(b) regularly serves an average of at least twenty-five individuals at least sixty days of the year; and

(2) includes any water supply source and any treatment, storage and distribution facilities under control of the operator of the system."

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HOUSE BILL 679

# CHAPTER 182

**CHAPTER 182, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; PROVIDING FOR ALLOCATION OF EARNINGS AND REALIZED AND UNREALIZED GAINS AND LOSSES ON ALL ACCOUNTS AND FUNDS IN THE CUSTODY OF THE STATE TREASURER.

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

## Section 1. Section 6-10-2.1 NMSA 1978 (being Laws 1989, Chapter 324, Section 41) is amended to read:

"6-10-2.1. STATE TREASURER--DUTY.--The state treasurer shall identify and allocate to the general fund all earnings on and realized and unrealized gains and losses from the investment of all accounts or funds in his custody unless the allocation of the earnings and realized and unrealized gains and losses are:

A. otherwise specifically provided by law;

B. prohibited by federal law creating the fund or the account or by specific court order; or

C. from the investment of a permanent fund and the use of the interest and income from the fund is restricted by constitutional or statutory provisions to particular purposes."

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HOUSE BILL 696

# CHAPTER 183

**CHAPTER 183, LAWS 2001**

AN ACT

RELATING TO EDUCATION; RAISING THE AGE OF COMPULSORY SCHOOL ATTENDANCE TO SEVENTEEN.

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

## Section 1. Section 22-12-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 170, as amended) is amended to read:

"22-12-2. COMPULSORY SCHOOL ATTENDANCE--RESPONSIBILITY.--

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

(1) the person is specifically exempted by law from the provisions of this section;

(2) the person has graduated from a high school;

(3) the person is at least seventeen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents; or

(4) with consent of the parent, guardian or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age.

B. A person subject to the provisions of the Compulsory School Attendance Law shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent, guardian or person having custody and control of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person."

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HOUSE BILL 781

# CHAPTER 184

**CHAPTER 184, LAWS 2001**

AN ACT

RELATING TO TAXATION; MODIFYING THE QUALIFYING JOB REQUIREMENTS FOR ELIGIBILITY FOR THE RURAL JOB TAX CREDIT; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 7-2E-1 NMSA 1978 (being Laws 1999, Chapter 183, Section 1) is amended to read:

"7-2E-1. TAX CREDIT--RURAL JOB TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "rural job tax credit". Until June 30, 2006, every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the

employer creates in the period beginning July 1, 2000 and ending June 30, 2005. The maximum tax credit amount with respect to each qualifying job is equal to:

(1) twenty-five percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job if the job is performed or based at a location in a tier one area; or

(2) twelve and one-half percent of the first sixteen thousand dollars ($16,000) in wages paid if the qualifying job is performed or based at a location in a tier two area.

B. As used in this section:

(1) "eligible employee" means any 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 any 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, of any 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) "eligible employer" means an employer

who has been approved for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(3) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978

together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "qualifying job" means a job established by the employer that is occupied by an eligible employee for at least forty-eight weeks of a qualifying period;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(7) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(8) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not within the exterior boundaries of a municipality;

(9) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(10) "wages" means wages as defined by Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).

C. The amount of the rural job tax credit shall be six and one-fourth percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job in a qualifying period. The rural job tax credit may be claimed for each qualifying job for a maximum of:

(1) four qualifying periods for each qualifying job performed or based at a location in a tier one area; and

(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the respective qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. Such tax credit documents may be sold, exchanged or otherwise transferred and can be carried forward for a period of three years from the date of issuance. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

G. The holder of the tax credit document may apply all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of labor or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 837

# CHAPTER 185

**CHAPTER 185, LAWS 2001**

AN ACT

RELATING TO NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY; ALLOWING CLASSROOM FACILITIES OUTSIDE THE CITY OF SOCORRO; REPEALING A SECTION OF THE NMSA 1978.

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

**Section 1. REPEAL.--Section 21-11-27 NMSA 1978 (being Laws 1947, Chapter 119, Section 13) is repealed.**

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HOUSE BILL 838

# CHAPTER 186

**CHAPTER 186, LAWS 2001**

AN ACT

RELATING TO DWI GRANTS; PROVIDING FOR DESIGNEES TO THE DWI GRANT COUNCIL.

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

## Section 1. Section 11-6A-4 NMSA 1978 (being Laws 1993, Chapter 65, Section 4) is amended to read:

"11-6A-4. DWI GRANT COUNCIL--MEMBERSHIP--DUTIES.--

A. The "DWI grant council" is created and shall consist of the president of the New Mexico municipal league or his designee, the president of the New Mexico association of counties or his designee, the secretary of health or the secretary's designee, the secretary of finance and administration or the secretary's designee, the chief of the traffic safety bureau of the state highway and transportation department and two representatives of local governing bodies who shall be appointed by the governor so as to provide geographic diversity.

B. Appointed members shall be appointed to a two-year term. In the event of a vacancy, the governor shall appoint a member for the remainder of the term.

C. The council shall meet as necessary to receive applications, consider grant requests and award DWI grants pursuant to the Local DWI Grant Program Act. All actions of the council require the affirmative vote of a majority of the members of the council.

D. Members of the council shall be reimbursed for per diem and mileage in accordance with the Per Diem and Mileage Act."

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SENATE BILL 146

# CHAPTER 187

**CHAPTER 187, LAWS 2001**

AN ACT

RELATING TO MISSING CHILDREN; PROVIDING FOR LAW ENFORCEMENT NOTIFICATION OF THE STATE REGISTRAR WITHIN TWENTY-FOUR HOURS.

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

## Section 1. Section 32A-14-3 NMSA 1978 (being Laws 1987, Chapter 25, Section 3) is amended to read:

"32A-14-3. MISSING CHILD REPORTS--LAW ENFORCEMENT AGENCIES--DUTIES.--

A. Upon receiving a report of a child believed to be missing, a law enforcement agency shall:

(1) immediately enter identifying and descriptive information about the child into the national crime information center computer. Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies that do not have direct access to the system; and

(2) notify the state registrar within twenty-four hours, by telephone, facsimile or electronic transmission, of the missing child. Within three days of this initial notification, the law enforcement agency shall make a written notification in a manner and form prescribed by the state registrar. Both notifications shall include the missing child's name, date of birth, county and state of birth, the mother's maiden name, the name of the noncustodial parent if the parents are not married, the name and telephone number of a contact person at the law enforcement agency reporting and any other information required by the state registrar.

B. Immediately after a missing child is located, the law enforcement agency that located or returned the missing child shall notify the law enforcement agency having jurisdiction over the investigation, and the originating agency shall clear the entry from the national crime information center computer and shall, within twenty-four hours, notify the state registrar in writing that the missing child has been located."

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SENATE BILL 155

# CHAPTER 188

**CHAPTER 188, LAWS 2001**

AN ACT

RELATING TO LICENSURE; CHANGING, EXPANDING AND CLARIFYING LICENSING AND ADMINISTRATIVE PROVISIONS FOR RESPIRATORY CARE PROVIDERS; ADDING GROUNDS FOR DISCIPLINARY ACTION; CHANGING THE QUALIFICATIONS FOR BOARD MEMBERSHIP; CLARIFYING THE MEANING OF "BOARD" IN THE IMPAIRED HEALTH CARE PROVIDER 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 61-7-2 NMSA 1978 (being Laws 1976, Chapter 3, Section 2, as amended) is amended to read:

"61-7-2. DEFINITION.--As used in the Impaired Health Care Provider Act, "board" means a board or department that licenses, registers or certifies health care providers."

## Section 2. Section 61-12B-1 NMSA 1978 (being Laws 1984, Chapter 103, Section 1) is amended to read:

"61-12B-1. SHORT TITLE.--Chapter 61, Article 12B NMSA 1978 may be cited as the "Respiratory Care Act"."

## Section 3. Section 61-12B-2 NMSA 1978 (being Laws 1984, Chapter 103, Section 2) is amended to read:

"61-12B-2. PURPOSE OF ACT.--In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of respiratory care, it is necessary to provide laws and rules to govern the practice of respiratory care. The primary purpose of the Respiratory Care Act is to safeguard life and health and to promote the public welfare by licensing and regulating the practice of respiratory care in the state."

## Section 4. Section 61-12B-3 NMSA 1978 (being Laws 1984, Chapter 103, Section 3, as amended) is amended to read:

"61-12B-3. DEFINITIONS.--As used in the Respiratory Care Act:

A. "board" means the advisory board of respiratory care practitioners;

B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities that affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;

D. "practice of respiratory care" includes:

(1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;

(2) cardiopulmonary care services, including the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;

(3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;

(4) observation, assessment and monitoring of signs and symptoms, general behavior, general physical response to cardiopulmonary care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;

(5) implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a physician authorized to practice medicine or other person authorized by law to prescribe, or the initiation of emergency procedures or as otherwise permitted in the Respiratory Care Act;

(6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support assessment and evaluation; and

(7) the practice performed in a clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the department;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has been prepared through a formal training program to function beyond the scope of practice of respiratory care as defined by rule of the department;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico;

G. "respiratory care protocols" means a predetermined, written medical care plan, which can include standing orders;

H. "respiratory therapy training program" means an education course of study as defined by rule of the department; and

I. "superintendent" means the superintendent of regulation and licensing."

## Section 5. Section 61-12B-4 NMSA 1978 (being Laws 1984, Chapter 103, Section 4, as amended) is amended to read:

"61-12B-4. LICENSE REQUIRED--EXCEPTIONS.--

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed pursuant to the provisions of the Respiratory Care Act, except as otherwise provided by that act.

B. A respiratory care practitioner may transcribe and implement the written or verbal orders of a physician or other person authorized by law to prescribe pertaining to the practice of respiratory care and respiratory care protocols.

C. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with:

(1) the practices of other persons and health providers licensed by appropriate agencies of New Mexico;

(2) self-care by a patient;

(3) gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner; or

(4) respiratory care services rendered in case of an emergency.

D. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform those functions that he is qualified by examination to perform; provided that the examining body or testing entity is recognized nationally for expertise in evaluating the competency of persons performing those functions covered by that act or department rules. The department shall establish by rule those certifying agencies and testing entities that are acceptable to the department.

E. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to the provisions of the federal Clinical Laboratories Improvement Act of 1967, as amended, or accredited by the college of American pathologists or the joint commission on accreditation of healthcare organizations from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified."

## Section 6. 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. A member shall serve no more than two consecutive three-year terms.

C. 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.

D. 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.

E. 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.

F. A majority of the board members currently serving constitutes a quorum of the board.

G. The board shall meet at least twice a year and at such other times as it deems necessary.

H. The board shall annually elect officers as deemed necessary to administer its duties."

## Section 7. Section 61-12B-6 NMSA 1978 (being Laws 1984, Chapter 103, Section 6, as amended) is amended to read:

"61-12B-6. DEPARTMENT--DUTIES AND POWERS.--

A. The department, in consultation with the board, shall:

(1) evaluate the qualifications of applicants and review the required examination results of applicants. The department may recognize the entry level examination written by the national board for respiratory care or a successor board;

(2) promulgate rules as may be necessary to implement the provisions of the Respiratory Care Act;

(3) issue and renew licenses and temporary permits to qualified applicants who meet the requirements of the Respiratory Care Act; and

(4) administer, coordinate and enforce the provisions of the Respiratory Care Act and investigate persons engaging in practices that may violate the provisions of that act.

B. The department, in consultation with the board, may:

(1) conduct examinations of respiratory care practitioner applicants as required by rules of the department;

(2) reprimand, fine, deny, suspend or revoke a license or temporary permit to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act;

(3) for the purpose of investigating complaints against applicants and licensees, issue investigative subpoenas prior to the issuance of a notice of contemplated action as set forth in the Uniform Licensing Act;

(4) enforce and administer the provisions of the Impaired Health Care Provider Act and promulgate rules pursuant to that act;

(5) promulgate rules or disciplinary guidelines relating to impaired practitioners;

(6) promulgate rules to allow the interstate transport of patients; and

(7) promulgate rules to determine and regulate the scope and qualifications for expanded practice for respiratory care practitioners."

## Section 8. Section 61-12B-7 NMSA 1978 (being Laws 1984, Chapter 103, Section 7, as amended) is amended to read:

"61-12B-7. LICENSING BY TRAINING AND EXAMINATION.--A person desiring to become licensed as a respiratory care practitioner shall make application to the department on a written form and in such manner as the department prescribes, pay all

required application fees and certify and furnish evidence to the department that the applicant:

A. has successfully completed a training program as defined in the Respiratory Care Act and set forth by rules of the department;

B. has passed an entry level examination, as specified by rules of the department, for respiratory care practitioners administered by the national board for respiratory care or a successor board;

C. is of good moral character; and

D. has successfully completed other training or education programs and passed other examinations as set forth by rules of the department."

## Section 9. Section 61-12B-8 NMSA 1978 (being Laws 1984, Chapter 103, Section 8, as amended) is amended to read:

"61-12B-8. LICENSING WITHOUT TRAINING AND EXAMINATION.--The department shall waive the education and examination requirements for an applicant who presents proof that he is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Respiratory Care Act."

## Section 10. Section 61-12B-9 NMSA 1978 (being Laws 1984, Chapter 103, Section 9, as amended) is amended to read:

"61-12B-9. OTHER LICENSING PROVISIONS.--

A. The department, in consultation with the board, shall adopt rules for mandatory continuing education requirements that shall be completed as a condition for renewal of a license issued pursuant to the provisions of the Respiratory Care Act.

B. The department, in consultation with the board, may adopt rules for issuance of temporary permits to students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules shall be adopted defining the terms "student" and "direct supervision".

C. A license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".

D. Unless licensed as a respiratory care practitioner pursuant to the provisions of the Respiratory Care Act, no person shall use the title "respiratory care

practitioner", the abbreviation "R.C.P." or any other title or abbreviation to indicate that the person is a licensed respiratory care practitioner.

E. A copy of a valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's or temporary permittee's place of employment.

F. A respiratory care practitioner license shall expire on September 30, annually or biennially, as provided by rules of the department."

## Section 11. Section 61-12B-10 NMSA 1978 (being Laws 1984, Chapter 103, Section 10) is amended to read:

"61-12B-10. LICENSURE--DATE REQUIRED.--The provisions of the Criminal Offender Employment Act shall govern consideration of criminal records required or permitted by the Respiratory Care Act."

## Section 12. Section 61-12B-11 NMSA 1978 (being Laws 1984, Chapter 103, Section 11, as amended) is amended to read:

"61-12B-11. FEES.--

A. The superintendent, in consultation with the board, shall by rule establish a schedule of reasonable fees for licenses, temporary permits and renewal of licenses for respiratory care practitioners.

B. The initial application fee shall be set in an amount not to exceed one hundred fifty dollars ($150).

C. A license renewal fee shall be established in an amount not to exceed one hundred fifty dollars ($150)."

## Section 13. Section 61-12B-12 NMSA 1978 (being Laws 1984, Chapter 103, Section 12, as amended) is amended to read:

"61-12B-12. DENIAL, SUSPENSION, REVOCATION AND REINSTATEMENT OF LICENSES.--

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes:

(1) fraud or deceit in the procurement of or attempt to procure a license or temporary permit;

(2) imposition of any disciplinary action for an act that would be grounds for disciplinary action by the department pursuant to the Respiratory Care Act or as set forth by rules of the department upon a person by an agency of another jurisdiction that regulates respiratory care;

(3) conviction of a crime that substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(4) impersonating or acting as a proxy for an applicant in an examination given pursuant to provisions of the Respiratory Care Act;

(5) habitual or excessive use of intoxicants or drugs;

(6) gross negligence as defined by rules of the department in the practice of respiratory care;

(7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;

(8) engaging in unprofessional conduct as defined by rules set forth by the department;

(9) committing a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions or duties of a respiratory care practitioner;

(10) practicing respiratory care without a valid license or temporary permit;

(11) aiding or abetting the practice of respiratory care by a person who is not licensed or who has not been issued a temporary permit by the department;

(12) conviction of a felony. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(13) violating a provision of the Controlled Substances Act;

(14) failing to furnish the department or its investigators or representatives with information requested by the department in the course of an official investigation;

(15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or as set forth by rules of the department; or

(16) surrendering a license, certificate or permit to practice respiratory care in another jurisdiction while an investigation or disciplinary proceeding is pending for an act or conduct that would constitute grounds for disciplinary action under the Respiratory Care Act.

B. The department, in consultation with the board, may impose conditions on and promulgate rules relating to the reapplication or reinstatement of applicants, licensees or temporary permittees who have been subject to disciplinary action by the department."

## Section 14. Section 61-12B-13 NMSA 1978 (being Laws 1984, Chapter 103, Section 13, as amended) is amended to read:

"61-12B-13. RESPIRATORY CARE FUND CREATED--

DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "respiratory care fund".

B. All funds received by the superintendent and money collected under the Respiratory Care Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the respiratory care fund.

C. All amounts paid into the respiratory care fund shall be expended only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund."

## Section 15. Section 61-12B-15 NMSA 1978 (being Laws 1984, Chapter 103, Section 15) is amended to read:

"61-12B-15. ENFORCEMENT.--

A. A person who violates a provision of the Respiratory Care Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. The department may bring civil action in any district court to enforce any of the provisions of the Respiratory Care Act."

## Section 16. A new section of the Respiratory Care Act is enacted to read:

"SEVERABILITY.--If any part or application of the Respiratory Care Act is held invalid, the remainder or its application to other situations or persons shall not be affected."

## Section 17. REPEAL.--Section 61-12B-14 NMSA 1978 (being Laws 1984, Chapter 103, Section 14, as amended) is repealed.

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SENATE BILL 231

# CHAPTER 189

**CHAPTER 189, LAWS 2001**

AN ACT

RELATING TO DRUGS; CHANGING A PROVISION OF THE CONTROLLED SUBSTANCES ACT TO PERMIT THE SALE OF HYPODERMIC SYRINGES BY LICENSED PHARMACISTS.

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

## Section 1. Section 30-31-25.1 NMSA 1978 (being Laws 1981, Chapter 31, Section 2, as amended) is amended to read:

"30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act.

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act.

C. A person who violates this section with respect to Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) or by imprisonment for a definite term less than one year, or both. A person who violates this section with respect to Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years his junior is

guilty of a fourth degree felony and shall be sentenced

pursuant to the provisions of Section 31-18-15 NMSA 1978.

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SENATE BILL 320

# CHAPTER 190

**CHAPTER 190, LAWS 2001**

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING A CERTAIN SECTION OF THE EDUCATIONAL RETIREMENT ACT PERTAINING TO INVESTMENT OF THE EDUCATIONAL RETIREMENT FUND.

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

## Section 1. Section 22-11-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. INVESTMENT OF THE FUND--INDEMNIFICATION OF BOARD.--

A. The board is authorized to invest or reinvest the fund and may invest the fund only in the following:

(1) obligations, including but not limited to bills, bonds or notes of the United States, United States government-sponsored enterprises or federal agency securities;

(2) obligations, including but not limited to bills, bonds and notes of governments other than the United States or their political subdivisions, agencies or instrumentalities, and these may be denominated in foreign currencies;

(3) obligations, including but not limited to bonds or notes of a municipality or political subdivision of the state that were issued pursuant to law; provided the issuer has not, within ten years prior to making the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided the bonds are city or county utility, or utility-district revenue bonds with the revenue of such utility, other than for payment of operation and maintenance expenses, pledged wholly to payment of the interest on and the principal of such indebtedness, and the utility project has been completely self-supporting for a period of five years preceding the date of the investment;

(4) 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 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);

(5) obligations, including but not limited to bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust organized within the United States; preferred stock or common stock or any security convertible to common stock of any corporation, partnership or trust organized within the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market or American depositary receipts of any corporation organized outside the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market; provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(6) prime bankers' acceptances issued by money center banks;

(7) obligations, including but not limited to bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust organized outside of the United States, and these may be denominated in foreign currencies; preferred stock or common stock or any security convertible to common stock of any corporation, partnership or trust organized outside of the United States whose securities are listed on at least one national or foreign stock exchange, and these may be denominated in foreign currencies; provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(8) currency transactions, including spot or cash basis currency transactions, forward currency contracts and buying or selling options or futures on foreign currencies, but only for the purposes of hedging foreign currency risk and not for speculation;

(9) stocks or shares of a diversified investment company registered under the Investment Company Act of 1940, as amended, which invests primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); individual, common or collective trust funds of banks or trust companies, which invest primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000); the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(10) industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act, where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States and has issued securities traded on one or more national stock exchanges and where the senior securities of the guaranteeing corporation would have the equivalent of a BAA rating.

B. The board or its designated agent may enter into contracts 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. No such contract shall be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of

cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

C. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

D. Investment of the fund shall be made with the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may employ investment advisory services and pay reasonable compensation from the fund for the services. The board may also employ investment management services and pay reasonable compensation from the fund for the services to make investment decisions on behalf of the board, within the investment objectives, policies and operating guidelines as directed by the board to the investment manager.

G. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorneys' fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section."

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SENATE BILL 387

# CHAPTER 191

**CHAPTER 191, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING SAFETY BELT USE BY ALL OCCUPANTS OF CERTAIN MOTOR VEHICLES.

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

## Section 1. Section 66-7-372 NMSA 1978 (being Laws 1985, Chapter 131, Section 3, as amended) is amended to read:

"66-7-372. SAFETY BELT USE REQUIRED--EXCEPTION.--

A. Except as provided by Section 66-7-369 NMSA 1978 and in Subsection B of this section, each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less manufactured with safety belts in compliance with federal motor vehicle safety standard number 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion on any street or highway.

B. This section shall not apply to an occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of the United States postal service while performing the duties of a rural letter carrier."

## Section 2. Section 66-7-373 NMSA 1978 (being Laws 1985, Chapter 131, Section 4, as amended) is amended to read:

"66-7-373. ENFORCEMENT PROGRAMS.--

A. Failure to be secured by a child passenger restraint device or by a safety belt as required by the Safety Belt Use Act shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

B. The bureau in cooperation with the state department of public education and the department of health shall, to the extent that funding allows, provide education to encourage compliance with the use of restraint devices in reducing the risk of harm to their users as well as to others.

C. The bureau shall evaluate the effectiveness of the Safety Belt Use Act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to the national highway traffic safety administration and the federal highway administration under 23 U.S.C. 402.

D. The provisions of the Safety Belt Use Act shall be enforced whether or not associated with the enforcement of any other statute."

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SENATE BILL 499

# CHAPTER 192

**CHAPTER 192, LAWS 2001**

AN ACT

RELATING TO HORSE RACING; PROVIDING FOR REHABILITATION OF A PERSON WHO OTHERWISE COULD NOT BE LICENSED TO WORK ON A NEW MEXICO RACETRACK; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 60-1-5 NMSA 1978 (being Laws 1973, Chapter 323, Section 3, as amended) is amended to read:

"60-1-5. LICENSES--QUALIFICATIONS.--

A. All persons engaged in racing, or employed on a licensee's premises by those engaged in racing, or operating a horse racing meeting, and persons operating concessions for or under authority of any licensee or employed by the concessionaire shall be licensed by the state racing commission and shall be fingerprinted.

B. Racetracks shall be licensed each calendar year.

C. The state racing commission may provide by regulation for the issuance of licenses for terms not to exceed five years for horse owners, trainers, jockeys and their employees; veterinarians; and employees of a racetrack. Fees for licenses under this subsection, not to exceed one hundred dollars ($100), shall be set by regulation of the commission.

D. The state racing commission shall not issue or renew a license and shall revoke or suspend any license issued pursuant to this section if, after due consideration for the proper protection of public health, safety, morals, good order and the general welfare of the inhabitants of this state, it finds that the issuance of the license or the holding of the license is inconsistent with the public interest. The burden of proving his qualifications to receive and hold a license under this section shall be at all times on the applicant or licensee. The state racing commission shall establish by regulation such qualifications for licenses to be issued pursuant to this section as it deems in the public interest.

E. Any person who is addicted to or uses narcotic drugs or who has been convicted of a violation of any federal or state narcotics law shall not be licensed on any New Mexico racetrack, unless sufficient evidence of rehabilitation is presented to the state racing commission.

F. If the state racing commission finds that any person has done any of the following acts, the person shall not be licensed by the commission for a period of five years from the date of the finding that the person, for the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout:

(1) administered, attempted to administer or conspired with others to administer to any horse, in or prior to a race, any dope, drug, chemical agent, stimulant or depressant, either internally, externally or hypodermically;

(2) attempted to use, used or conspired with others to use in any race any electrical or mechanical buzzer, goad, device, implement or instrument, excepting only the ordinary whip and spur, or acted to sponge the nostrils or windpipe of a racehorse; or

(3) used any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout.

G. The validity of any license issued by the state racing commission shall be conditioned upon the licensee not engaging in racing, operating a horse race meeting or participating as an employee or concessionaire at any racetrack in New Mexico operating or permitting to be operated an organized wagering system not licensed by the

commission. Any licensee not complying with that condition shall, after reasonable notice and hearing, have his license revoked, and the license shall not be reissued until the expiration of one year from the date of revocation."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 616

# CHAPTER 193

**CHAPTER 193, LAWS 2001**

AN ACT

RELATING TO CULTURAL CELEBRATION; DESIGNATING EVERY SECOND TUESDAY IN FEBRUARY AS HISPANIC CULTURE DAY.

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

**Section 1. HISPANIC CULTURE DAY.--The second Tuesday of February of each 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 that 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.**

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SENATE BILL 636

# CHAPTER 194

**CHAPTER 194, LAWS 2001**

AN ACT

RELATING TO MEDICAL SAVINGS ACCOUNTS; ALLOWING FOR DIRECT PAYMENTS TO HEALTH CARE PROVIDERS; PROVIDING LIABILITY FOR PAYMENTS FOR INELIGIBLE MEDICAL EXPENSES.

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

## Section 1. Section 59A-23D-4 NMSA 1978 (being Laws 1995, Chapter 93, Section 4) is amended to read:

"59A-23D-4. MEDICAL CARE SAVINGS ACCOUNT PROGRAM.--

A. Except as otherwise provided by statute, contract or collective bargaining agreement, an employer may establish a medical care savings account program for his employees.

B. In establishing the program, the employer shall:

(1) provide a qualified higher deductible health plan for the benefit of his employees;

(2) contribute to medical care savings accounts for the employees; and

(3) appoint an account administrator to administer the savings accounts.

C. Principal contributed to and interest earned on a medical care savings account and money paid for eligible medical expenses are exempt from taxation under the Income Tax Act.

D. Before establishing a program, the employer shall notify all employees in writing of the federal tax status of the program and how federal income taxation affects New Mexico income taxes.

E. Any compensation required by the account administrator to administer the program shall be paid by the employer, and the employer shall not require the employee to contribute to such compensation while the employee participates in the program. If the employee ceases to participate in the program, he shall be responsible for costs associated with his account.

F. Nothing in the Medical Care Savings Account Act prohibits the employer from requiring the employee to contribute to the qualified higher deductible health plan or the medical care savings account.

G. Nothing in the Medical Care Savings Account Act requires an employee to participate in a program. The employer shall offer the program to all employees on a nondiscriminatory basis."

## Section 2. Section 59A-23D-5 NMSA 1978 (being Laws 1995, Chapter 93, Section 5, as amended by Laws 1997, Chapter 243, Section 29 and also by Laws 1997, Chapter 254, Section 4) is amended to read:

"59A-23D-5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE RESPONSIBILITIES.--

A. An employer, in conjunction with an account administrator, shall provide a current written statement to employees that details how money in their medical care savings accounts is or will be invested and the rate of return employees may reasonably anticipate on the investment of the savings accounts. The account administrator shall file the statement with the department.

B. Except as provided in Section 59A-23D-6 NMSA 1978, money in a savings account shall be used solely for the purpose of paying the eligible medical expenses of an employee and his dependents.

C. Payments may be made by the employee directly to a health care provider through the use of a debit card or check that accesses the employee's medical savings account. If the account administrator determines that the employee paid for goods or services that do not qualify as eligible medical expenses, the employee shall be required to reimburse his medical savings account, and he shall be liable for any federal and state taxes and penalties. If the employee chooses to be reimbursed for eligible medical expenses, the account administrator shall reimburse the employee from the employee's medical care savings account. When seeking reimbursement, the employee shall submit documentation of eligible medical expenses paid by the employee.

D. If an employer makes contributions to a program on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover eligible medical expenses incurred that exceed the amount in the employee's savings account if the employee agrees to repay the advance from future installments or when he ceases to be an employee of the employer or a participant in the program. Such advances shall be exempt from taxation under the Income Tax Act."

## Section 3. Section 59A-23D-6 NMSA 1978 (being Laws 1995, Chapter 93, Section 6, as amended by Laws 1997, Chapter 243, Section 30 and also by Laws 1997, Chapter 254, Section 5) is amended to read:

"59A-23D-6. WITHDRAWALS.--

A. An employee may withdraw money without penalty from his medical care savings account for a purpose other than payment of eligible medical expenses when the employee attains the age specified in Section 1811 of the Social Security Act. An employee may also withdraw money without penalty for payment of coverage for:

(1) a health plan during any period of continuation coverage required under any federal law;

(2) a qualified long-term care insurance contract as defined by Section 7702B(6) of the Internal Revenue Code of 1986; or

(3) a health plan during a period in which the person is receiving unemployment compensation under any federal or state law.

B. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account that is not used

exclusively to pay eligible medical expenses of the employee or a dependent, it shall be included in the gross income of the employee for taxation purposes.

C. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account for a purpose other than a rollover to a new account administrator:

(1) the amount of the withdrawal shall be considered gross income to the employee and subject to taxation; and

(2) the administrator shall also consider as a withdrawal on behalf of the employee a penalty equal to fifteen percent of the amount of the withdrawal and shall consider this as gross income to the employee for taxation purposes.

D. If a person is no longer employed by an employer that participates in a program or if an employee chooses to cease participating in the program, the person or employee shall, within sixty days of his final day of employment or participation:

(1) request, in writing, the rollover of his savings account to a new account administrator;

(2) request, in writing, that the former employer's account administrator continue to administer the savings account, including in the request an agreement to pay the cost, if any, of account administration on that savings account; or

(3) withdraw the money from the savings account subject to the provisions of Subsection C of this section, if the withdrawal is not for the purpose of a rollover when within sixty days of the receipt of the funds they are placed with a new account administrator.

E. No more than sixty days after the date of notification by the employee pursuant to Subsection D of this section, the account administrator shall:

(1) transfer the savings account to a new account administrator as requested;

(2) agree, in writing, to continue to act as the account administrator for the savings account; or

(3) mail a check to the person or employee at his last known address for the amount in the account as of the day the check was issued.

F. Upon the death of an employee, the account administrator shall distribute the principal and accumulated interest of the savings account to the estate of the employee."

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SENATE BILL 685

# CHAPTER 195

**CHAPTER 195, LAWS 2001**

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR THE USE OF THE STATE PENITENTIARY IN SANTA FE FOR MOTION PICTURES.

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

**Section 1. STATE PENITENTIARY--LEASE FOR MOTION PICTURES.--The corrections department, the property control division of the general services department and the New Mexico film division of the economic development department shall enter into a joint powers agreement to make the old state penitentiary at Santa Fe available for use by the motion picture industry. The property and structures that fall within the existing security perimeter fence at the old state penitentiary at Santa Fe and any building not used by the corrections department that is within three hundred yards of the outside of the security perimeter fence of the old state penitentiary at Santa Fe shall be made available for lease at reasonable market rates to the motion picture industry for economic development.**

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SENATE BILL 704

# CHAPTER 196

**CHAPTER 196, LAWS 2001**

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR FREE USE OF STATE BUILDINGS BY THE MOTION PICTURE INDUSTRY.

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

**Section 1. STATE BUILDINGS--USE IN MOTION PICTURES.--The property control division of the general services department shall provide for the free access to state buildings by the motion picture industry.**

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SENATE BILL 711

# CHAPTER 197

**CHAPTER 197, LAWS 2001**

AN ACT

RELATING TO MUNICIPAL ELECTIONS; REVISING THE CONDUCT OF MUNICIPAL ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE MUNICIPAL ELECTION CODE.

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

## Section 1. Section 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.

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.

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 2. Section 3-8-22 NMSA 1978 (being Laws 1985, Chapter 208, Section 30) is amended to read:

"3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST VOTER-- TYPE OF ASSISTANCE.--

A. A voter may request assistance in voting only if he is:

(1) blind;

(2) physically disabled;

(3) unable to read or write; or

(4) a member of a language minority who is unable to read well enough to exercise the elective franchise.

B. When a voter who is eligible for assistance requires assistance in marking his paper ballot or recording his vote on a voting machine, the voter shall announce this fact in an audible tone before receiving his paper ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to his name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking his paper ballot or recording his vote on a voting machine.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking his ballot is blind, has a physical disability, is unable to read or write or is a member of a language minority who has requested assistance, he may be accompanied into the voting machine by a person of his own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking and folding his paper ballot or recording his vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. "Language minority" means a person who is an American Indian or of Spanish heritage, and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing American Indian election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service."

## Section 3. 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, the date and time for early 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 4. Section 3-8-27 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-8, as amended) is amended to read:

"3-8-27. REGULAR MUNICIPAL ELECTION--DECLARATION OF CANDIDACY--WITHDRAWING NAME FROM BALLOT--PENALTY FOR FALSE STATEMENT.--

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for municipal office shall personally appear at the office of the municipal clerk to file all documents required by law in order to cause a person to be certified as a candidate. Alternatively, on candidate filing day, a person acting solely on the candidate's behalf, by virtue of a written affidavit of authorization signed by the candidate, notarized and presented to the municipal clerk by such person, shall file in the office of the municipal clerk all documents required by law in order to cause a person to be certified as a candidate.

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk a declaration of candidacy, a certified copy of the candidate's current affidavit of voter registration on file with the county clerk, which has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution, and, in a home rule or charter municipality that requires a nominating petition to be submitted by a candidate for municipal office, a nominating petition that has the required number of signatures.

C. All candidates shall cause their affidavits of voter registration to show their address as a street address or rural route number and not as a post office box.

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy which contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored;

(5) a statement that the candidate or the candidate's authorized representative shall personally appear at the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) a telephone number at which the candidate or the candidate's authorized representative can be reached for purposes of giving telephone notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made in the declaration of candidacy constitutes a fourth degree felony under the laws of New Mexico; and

(8) the notarized signature of the candidate on the declaration of candidacy.

E. The municipal clerk shall not accept a declaration of candidacy for more than one municipal elected office per candidate, so that each candidate declares for only one municipal elected office.

F. Once filed, the declaration of candidacy is a public record.

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk shall prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, the municipal clerk shall not certify that individual as a candidate for municipal office.

H. The municipal clerk shall post in the clerk's office a list of the names of those individuals who have been certified as candidates. The municipal clerk shall also post in the clerk's office the names of those individuals who have not been certified as

candidates, along with the reasons therefor. The posting shall occur no later than 9:00 a.m. on the fifty-fourth day preceding the election.

I. Not later than 5:00 p.m. on the forty-ninth day before the day of the election, a candidate for municipal office may file an affidavit on the form provided by the municipal clerk in the office of the municipal clerk stating that he is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality and the county clerk the names of the candidates and their position on the ballot.

K. Any person knowingly making a false statement in the declaration of candidacy is guilty of a fourth degree felony.

L. No person shall be elected to municipal office as a write-in candidate unless that person has been certified as a declared write-in candidate by the municipal clerk, as follows:

(1) write-in candidates filing day shall be on the forty-second day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-first day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the fortieth day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons therefor; and

(5) not later than 5:00 p.m. on the twenty-eighth day preceding the election, a declared write-in candidate may file an affidavit that he is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that candidate shall not be counted and canvassed."

## Section 5. Section 3-8-46 NMSA 1978 (being Laws 1985, Chapter 208, Section 54, as amended) is amended to read:

"3-8-46. CONDUCT OF ELECTIONS--CLOSING POLLS--LOCKING VOTING MACHINES--OPENING VOTING MACHINES--VERIFICATION OF VOTES--ADMITTANCE OF WATCHERS AND CANDIDATES--PROCLAMATION OF RESULTS--COMPLETION OF LOCKING--DURATION OF LOCKING AND SEALING.--

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked and sealed; giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, or if the precinct officials are unable to obtain the returns from the voting machine, the precinct officials shall call the municipal clerk who shall immediately contact the county clerk, who shall dispatch a voting machine technician to that polling place to help the precinct officials obtain the returns from the voting machine.

D. A write-in vote shall be cast by writing in the name of a declared write-in candidate on the ballot or, on voting machines, write-ins shall be written in the slot provided for each designated office. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of write-in candidacy of the declared write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify the declared write-in candidate;

(2) the name is written in the proper slot on the voting machine or on the proper line for write-in votes provided on an absentee ballot, emergency paper ballot or paper ballot used in lieu of voting machines;

(3) the name written in is not a vote for a person who is on the ballot for that office; and

(4) the name written in is not imprinted by rubber stamp or similar device or by the use of preprinted stickers or labels.

E. Only the members of the precinct board, candidates or their representatives, representatives of the news media, certified challengers, watchers and observers and the municipal clerk may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, machine-printed returns and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by an election judge who shall read the name of each candidate and the total number of votes cast for each candidate shown on the printed returns. An election judge shall also read the total number of votes cast for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns. The precinct board may make corrections then and there.

G. When the precinct board is satisfied that the election results have been correctly tallied, an election judge shall complete a separate election return certificate in quadruplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided, one copy returned to the municipal clerk to be used as unofficial returns and the original returned to the municipal clerk in the envelope provided.

H. Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

I. On the voting machine, the machine return sheet is the official vote tally for that machine and the separate election return certificate is the official vote tally for that precinct or consolidated precinct.

J. If in the district court's opinion a contest is likely to develop, the court may order a voting machine to remain locked and sealed for such time as it deems necessary.

K. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the county clerk, unless other provisions for the use of the voting machine are ordered by the court."

## Section 6. Section 3-8-53 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-14, as amended) is amended to read:

"3-8-53. POST-ELECTION DUTIES--CANVASS OF RETURNS--MAJORITY VOTE FOR QUESTIONS.--

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns:

(1) a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality;

(2) the members of the governing body of the municipality who are not candidates for municipal office; provided that if the members of the governing body who are not candidates for municipal office constitute a quorum, a special meeting shall be called; or

(3) a district court judge from the judicial district in which the municipality is located.

B. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

C. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code;

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each declared write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

D. The matters to be performed pursuant to Subsection C of this section shall be completed not later than 5:00 p.m. on the third day following the election, and such matters shall be performed solely at the office of the municipal clerk.

E. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law."

## Section 7. Section 3-8-58 NMSA 1978 (being Laws 1985, Chapter 208, Section 66) is amended to read:

"3-8-58. POST-ELECTION DUTIES--CANVASS--VOTING MACHINE RECHECK.--

A. Prior to completion of the official canvass of an election, the municipal clerk, upon written request of any candidate in the election, if any, or upon receipt of a written petition of five percent of the people who voted in the election, shall, in the presence of the district judge, conduct a recheck and comparison of the results shown on the official returns being canvassed with the results of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the municipal clerk may request the county clerk to:

(1) break the seal and unlock the voting machine;

(2) check the figures shown by the counter on the voting machine;

(3) insert the cartridge into the voting machine; and

(4) re-run the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be locked.

D. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared."

## Section 8. Section 3-8-68 NMSA 1978 (being Laws 1985, Chapter 208, Section 76, as amended) is amended to read:

"3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the

municipal canvassing board, may have a recount of the paper ballots used in lieu of voting machines, emergency paper ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge that contains the number of total votes that were cast in the precinct.

B. In the case of any office for which the municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars ($50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars ($50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars ($10.00) in cash or a sufficient surety bond in an amount equal to ten dollars ($10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the municipality upon warrant of the municipal clerk from the general fund of the municipality.

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, they shall not be entitled to such mileage or fees."

## Section 9. Section 3-8-81 NMSA 1978 (being Laws 1999, Chapter 278, Section 37) is amended to read:

"3-8-81. EARLY VOTING.--

A. The governing body of a municipality shall provide for early voting for any regular or special municipal election at the time of the adoption of the election resolution for a regular or special municipal election, and shall designate the office of the municipal clerk as the early voting precinct.

B. Early voting shall be done during the municipality's regular hours and days of business, between Monday and Friday, commencing on the twentieth day preceding the election and closing at 5:00 p.m. on the Friday immediately prior to the date of the election.

C. The municipal clerk shall publish notice of early voting at least twice, between twenty-four and sixty days prior to the election, and shall make reasonable efforts to publicize and inform voters of the time and location for early voting. A notice regarding early voting may be combined with other election publications that are required by law."

## Section 10. 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 absentee ballot application shall be furnished by the municipal clerk by mail or in person in the office of the municipal clerk to the voter upon request by the voter.

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 applicant has voted early;

(5) the application is not signed by the applicant; or

(6) 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";

(2) enter the required information in the absentee ballot register; and

(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. Absentee ballots may be cast in person beginning on the twenty-seventh day before the election at the municipal clerk's office until 5:00 p.m. on the Thursday immediately prior to the date of 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 Thursday 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 Thursday 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 11. A new section of the Municipal Election Code is enacted to read:

"FORM OF EARLY VOTING BALLOT.--

A. When a municipality elects to use paper ballots for early voting, the form of the early voting ballot shall be in a form prescribed by the municipal clerk. The early voting ballot shall:

(1) be numbered consecutively beginning with number one. The number shall be printed in the upper

right-hand corner of the ballot with a diagonal perforated line approximately placed so that the portion of the ballot bearing the number in the upper right-hand corner may be readily and easily detached from the ballot;

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type;

(5) have all words and phrases printed correctly and in their proper places; and

(6) have district and precinct numbers, if applicable.

B. The following heading shall be printed on each paper ballot used for early voting in municipal elections:

"OFFICIAL EARLY VOTING BALLOT

Election held.....(insert date)".

C. If the election is a regular municipal election, then the early voting ballot shall be prepared consistent with the requirements set forth in Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. When space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". Below the heading shall appear one line, with a box to the right of the line, for each individual office-holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body.

D. If the election is a special municipal election, then questions presented shall be placed on the early voting ballot in the order designated by the governing body.

E. Next to each question presented on an early voting ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST".

F. At the bottom of all early voting ballots shall be printed:

"OFFICIAL EARLY VOTING BALLOT",

followed by a facsimile signature of the municipal clerk."

**Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 753

# CHAPTER 198

**CHAPTER 198, LAWS 2001**

AN ACT

RELATING TO AVIATION; PROVIDING FOR A DISTRIBUTION OF GROSS RECEIPTS TAX REVENUE FOR THE AIR SERVICE ASSISTANCE PROGRAM; AMENDING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

**Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2, as amended by Laws 1995, Chapter 6, Section 1 and also by Laws 1995, Chapter 36, Section 1) is amended to read:**

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

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

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

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 of one percent of the net receipts attributable to the gross receipts tax distributable to the general fund."

**Section 2. Section 64-1-15 NMSA 1978 (being Laws 1963, Chapter 314, Section 7, as amended) is amended to read:**

"64-1-15. EARMARKED TAXES--APPROPRIATION.--There is created in the state treasury the "state aviation fund". The state treasurer shall credit to the state aviation fund all unrefunded taxes collected on the sale of motor fuel sold for use in aircraft. All income to the state aviation fund is appropriated to the division. The amounts distributed to the state aviation fund pursuant to Subsection A of Section 7-1-6.7 NMSA 1978 shall be used for planning, construction and maintenance of a system of airports, navigation aids and related facilities serving New Mexico. The amounts distributed to the state aviation fund pursuant to Subsection C of Section 7-1-6.7 NMSA 1978 shall be used for the air service assistance program. All expenditures shall be made in accordance with budgets approved by the department of finance and administration."

**Section 3. APPROPRIATION.--Four hundred thousand dollars ($400,000) is appropriated from the general fund to the state highway and transportation department for expenditure in fiscal years 2001 and 2002 by the aviation division to carry out the provisions of this act for an air service assistance program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.**

**Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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SENATE BILL 192, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 199

**CHAPTER 199, LAWS 2001**

AN ACT

RELATING TO PUBLIC BUILDINGS; AUTHORIZING THE ACQUISITION OF STATE OFFICE BUILDINGS; ENACTING THE STATE OFFICE BUILDING ACQUISITION BONDING ACT; CREATING A SPECIAL FUND CONSISTING OF GROSS RECEIPTS TAX DISTRIBUTIONS; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE STATE OFFICE BUILDING TAX REVENUE BONDS; MAKING AN APPROPRIATION.

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

## Section 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "State Office Building Acquisition Bonding Act".

## Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that the expense of leasing office space for state occupancy has grown to the point that the state would be better served if more state-owned facilities were acquired. The legislature further finds that the state's overall occupancy costs could be reduced even after taking into account the payments necessary on bonds issued to acquire additional facilities and that, therefore, it is economically advantageous for the state to own additional office space. Further, in anticipation of the state's future office space needs, the legislature finds it prudent to establish an office acquisition program.

B. The purpose of the State Office Building Acquisition Bonding Act is to acquire additional state office buildings by issuing bonds paid for with distributions from a special fund composed of distributions of gross receipts tax revenue that reflect a portion of the savings that are expected from the conversion to more state-owned facilities.

## Section 3. DEFINITION.--As used in the State Office Building Acquisition Bonding Act, "acquiring" or "acquisition" includes acquiring or acquisition by purchase, construction or renovation.

## Section 4. NEW MEXICO FINANCE AUTHORITY SHALL ISSUE STATE OFFICE BUILDING TAX REVENUE 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 office building bonding fund, in compliance with the State Office Building Acquisition Bonding Act for the purpose of acquiring state office buildings when the acquisition is authorized by legislative act and the director of the property control division of the general services department certifies the need for the issuance of the bonds.

B. 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 purpose of the State Office Building Acquisition Bonding Act and the authorizing legislation.

## Section 5. STATE OFFICE BUILDING BONDING FUND CREATED--MONEY IN THE FUND PLEDGED.--

A. The "state office 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 office building bonding fund is pledged for the payment of principal and interest on all state office building tax revenue bonds issued pursuant to the State Office Building Acquisition 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 state office building tax revenue 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 office building bonding fund on the state office building tax revenue bonds issued pursuant to the State Office Building Acquisition 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 office building bonding fund above the estimated amounts.

D. Any balance remaining in the state office 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 and the New Mexico finance authority have agreed that the state office building tax revenue bonds issued pursuant to the State Office Building Acquisition Bonding Act have been retired, that no additional obligations of the state office building bonding fund exist and that no additional expenditures from the fund are necessary; or

(2) a court of jurisdiction has ruled that the state office building tax revenue bonds have been retired, that no additional obligations of the state office building bonding fund exist and that no additional expenditures from the fund are necessary.

E. The state office building tax revenue bonds issued pursuant to the State Office Building Acquisition Bonding Act shall be payable solely from the state office building bonding fund or, with the approval of the bond holders, 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 office building bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the state office building tax revenue bonds issued pursuant to the State Office Building Acquisition Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the state office 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 office building bonding fund is dedicated as provided in this section.

## Section 6. AUTHORITY TO REFUND BONDS.--The New Mexico finance authority may issue and sell at public or private sale state office building tax revenue bonds to refund outstanding state office building tax revenue 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 7. STATE OFFICE BUILDING TAX REVENUE BONDS--FORM--EXECUTION.--

A. The New Mexico finance authority, except as otherwise specifically provided in the State Office Building Acquisition Bonding Act, shall determine at its discretion the terms, covenants and conditions of state office building tax revenue 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 state office building tax revenue 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. State office building tax revenue 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 8. PROCEDURE FOR SALE OF BONDS.--

A. State office building tax revenue 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, 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 state office building tax revenue 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 state office building tax revenue bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale.

## Section 9. STATE OFFICE BUILDING ACQUISITION BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

A. The State Office Building Acquisition Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of state office building tax revenue 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. State office building tax revenue 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 10. SUIT MAY BE BROUGHT TO COMPEL PERFORMANCE OF OFFICERS.--Any holder of state office building tax revenue 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 Office Building Acquisition Bonding Act.**

**Section 11. BONDS TAX EXEMPT.--All state office building tax revenue bonds shall be exempt from taxation by the state or any of its political subdivisions.**

**Section 12. A new section of the Tax Administration Act is enacted to read:**

"DISTRIBUTION--STATE OFFICE BUILDING BONDING FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state office 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 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 214, AS AMENDED

# CHAPTER 200

**CHAPTER 200, LAWS 2001**

AN ACT

RELATING TO BUSINESS ENTITIES; MODERNIZING THE LAWS REGULATING CORPORATIONS, LIMITED LIABILITY COMPANIES AND COOPERATIVE ASSOCIATIONS; ENACTING THE FOREIGN BUSINESS TRUST REGISTRATION 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 3-29-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-1) is amended to read:

"3-29-1. SANITARY PROJECTS ACT--SHORT TITLE.--

Chapter 3, Article 29 NMSA 1978 may be cited as the "Sanitary Projects Act"."

## Section 2. Section 3-29-16 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-16) is amended to read:

"3-29-16. CERTIFICATE OF ASSOCIATION.--The members of an association shall execute a certificate setting forth:

A. the name of the association;

B. the name of the incorporators;

C. the location of the principal office of the association in this state;

D. the objects and purposes of the association;

E. the address of the initial registered office of the association and the name of the initial registered agent at that address;

F. 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;

G. the period, if any, delimited for the duration of the association; and

H. the number and manner of electing the board of directors of the association.

The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain any provisions not inconsistent with the Sanitary Projects

Act or other law of this state which 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 which can be served if the project is completed."

## Section 3. Section 3-29-17 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-17) is amended to read:

"3-29-17. FILING OF CERTIFICATE.--The certificate of association shall be acknowledged as required for deeds of real estate and shall be filed in the office of the public regulation commission. A copy of the certificate, duly certified by the commission or county clerk, shall be evidence in all courts and places."

## Section 4. A new section of the Sanitary Projects Act is enacted to read:

"REGISTERED OFFICE AND REGISTERED AGENT.--An association shall have and continuously maintain in the state:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation."

## Section 5. A new section of the Sanitary Projects Act is enacted to read:

"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 his acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(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; and

(7) a statement that the change was authorized by resolution duly adopted by its board of directors.

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 6. A new section of the Sanitary Projects Act is enacted to read:

"SERVICE OF PROCESS ON ASSOCIATION.--The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law."

## Section 7. A new section of the Sanitary Projects Act is enacted to read:

"ANNUAL REPORT.--

A. An association shall file, within the time prescribed by the Sanitary Projects Act, on forms prescribed and furnished by the public regulation commission to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

(1) the name of the association and the state or country under the laws of which it is incorporated;

(2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;

(3) a brief statement of the character of the affairs that the association is actually conducting; and

(4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by any two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours."

## Section 8. A new section of the Sanitary Projects Act is enacted to read:

"FILING OF ANNUAL REPORT--SUPPLEMENTAL REPORT--EXTENSION OF TIME--PENALTY.--

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its taxable year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act, a change is made in:

(1) the name of the association;

(2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or

(3) the character of the association's business and its principal place of business within or without the state.

C. Proof to the satisfaction of the public regulation commission that, prior to the due date of any report required by Subsections A or B of this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for any necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which any return required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of any fee is required. The commission shall, when an extension of time has been granted an association under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required return and to pay the required fees, provided that a copy of the approved federal extension of time is attached to the association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check, and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars ($10.00) to be assessed by the public regulation commission."

## Section 9. 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 a statement of the establishment of a series of shares, a fee of one hundred dollars ($100);

(8) filing a statement of reduction of authorized shares, a fee of one hundred dollars ($100);

(9) 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);

(10) 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);

(11) 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);

(12) 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);

(13) filing articles of merger or consolidation increasing the total amount of authorized shares which the surviving or new corporation is authorized to issue in excess of the aggregate number of shares which 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);

(14) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, a fee of fifty dollars ($50.00);

(15) filing a corporate report and filing a supplemental report, a fee of twenty-five dollars ($25.00);

(16) filing any other statement, corrected document or report of a domestic or foreign corporation, a fee of twenty-five dollars ($25.00);

(17) issuing a certificate of good standing and compliance, a fee of fifty dollars ($50.00); and

(18) issuing a letter of reinstatement of a domestic or foreign corporation, a fee of one hundred dollars ($100).

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 10. Section 53-2-3 NMSA 1978 (being Laws 1905, Chapter 79, Section 120, as amended) is amended to read:

"53-2-3. DISPOSITION OF FEES.--The public regulation commission shall turn over to the state treasurer the fees collected under the provisions of this article in the manner required by law. The commission is not responsible for a fraudulent or worthless check, draft, warrant, order or other means of payment accepted by it in good faith for the payment of a fee or on behalf of a corporation, but it shall be permitted to deduct the fee from money held by it to be paid into the state treasury. If a fraudulent or worthless check, draft, warrant or order is not made good immediately, it is the duty of the attorney general, as soon as the facts are made known to him, to institute suit against the corporation and, if sent by the incorporators its incorporators in the name of the state for the recovery of the amount of the check, draft, warrant, order or other

means of payment, and protest fees and costs of the action shall be assessed against the defendant."

## Section 11. Section 53-2-4 NMSA 1978 (being Laws 1905, Chapter 79, Section 123, as amended) is amended to read:

"53-2-4. CORPORATIONS--COMPILATION.--The public regulation commission shall compile annually from the records of its office a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office in this state of the corporations affected, the name of the agent in charge, the amount of the authorized capital stock, the amount of stock with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue."

## Section 12. Section 53-2-8 NMSA 1978 (being Laws 1905, Chapter 79, Section 23, as amended) is amended to read:

"53-2-8. NO STOCKHOLDER'S LIABILITY--SEPARATE CLASS OF CORPORATION.--No stockholder's liability for unpaid stock shall attach to stock issued by a corporation pursuant to this section if, at the time of filing the certificate of incorporation, a separate certificate is signed and executed in the same manner as the certificate of incorporation, declaring that there is no stockholder's liability on account of stock issued, and is filed in the office of the public regulation commission together with the certificate of incorporation. The separate certificate shall be certified and recorded in the office of the county clerk, and both the certificate of incorporation and the certificate of nonliability of stockholders shall be published as provided in this section. This section does not apply to any of the provisions for the issuance of stock and fixing liability and the means of enforcing liability upon the same contained in any other law, but is a separate provision creating a separate class of corporations. Each corporation taking advantage of the provisions of this section must add to its corporate name in the certificate of incorporation, in every other certificate, report or record required by law and in every contract or other corporate instrument, the words "no stockholder's liability". No corporation shall be organized under this section after December 31, 1967."

## Section 13. A new section of Chapter 53, Article 2 NMSA 1978 is enacted to read:

"ELECTRONIC FILING AND CERTIFICATION OF DOCUMENTS--USE OF ELECTRONIC PAYMENT OF FEES.--

A. The public regulation 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 a provision of Chapter 53 NMSA 1978. The rules shall provide for the appropriate treatment of electronic filings for the purposes of satisfying requirements for

original documents or copies and shall provide the requirements for signature with respect to electronic filings. As used in this section "electronic filing" means filing by facsimile, email or other electronic transmission. If the commission accepts the filing of a document by electronic transmission, it may accept for filing a document containing a copy of a signature, however made.

B. The public regulation commission may accept a credit or debit card, in lieu of cash or check, or other means of payment specified in its rules, as payment of a fee pursuant to a provision of Chapter 53 NMSA 1978. The commission shall determine those credit or debit cards or other means of payment that may be accepted for payment."

## Section 14. A new section of Chapter 53, Article 4 NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 53, Article 4 NMSA 1978 may be cited as the "Cooperative Association Act"."

## Section 15. Section 53-4-5 NMSA 1978 (being Laws 1939, Chapter 164, Section 5, as amended by Laws 1993, Chapter 311, Section 3 and also by Laws 1993, Chapter 318, Section 1) 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 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; and

L. the address of the initial registered office of the association and the name of the initial registered agent at that address.

The articles may also contain any other provisions not inconsistent with the Cooperative Association Act."

## Section 16. Section 53-4-6 NMSA 1978 (being Laws 1939, Chapter 164, Section 6, as amended) is amended to read:

"53-4-6. ARTICLES OF INCORPORATION--FILING--RECORDATION--FEES.--The articles of incorporation of the association shall be filed with the public regulation commission together with a fee of fifty dollars ($50.00) and shall be recorded with the county clerk of the county where the principal office of the association is located for a fee of one dollar ($1.00)."

## Section 17. Section 53-4-7 NMSA 1978 (being Laws 1939, Chapter 164, Section 7, as amended) is amended to read:

"53-4-7. ARTICLES OF INCORPORATION--AMENDMENTS--FEE.--

A. Amendments to the articles of incorporation may be proposed by a two-thirds' vote of the board of directors or by petition of one-tenth of the association's members. Notice of the meeting to consider the amendment shall be sent by the secretary at least thirty days in advance to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt the amendment and, when verified by the president and the secretary, it shall be filed with the public regulation commission within thirty days of its adoption, and a fee of twenty-five dollars ($25.00) shall be paid.

B. If the amendment is to alter the preferences of outstanding shares of any type or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning the outstanding shares affected by the change shall also be required for the adoption of the amendment.

C. The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment."

## Section 18. Section 53-4-34 NMSA 1978 (being Laws 1939, Chapter 164, Section 34, as amended) is amended to read:

"53-4-34. ANNUAL REPORT.--

A. An association shall, annually within sixty days of the close of its operations for that year, make a report of its condition sworn to by the president and the secretary, which report shall be filed with the public regulation commission. The report shall state:

(1) the name and principal address of the association;

(2) the names and addresses of the officers and directors and the name and address of the initial registered agent and registered office of the association;

(3) the amount and nature of the association's authorized, subscribed and paid-in capital, the number of its shareholders, the par value of its shares and the rate at which any interest-dividends have been paid. For nonshare associations, the annual report shall state the total number of members, the number admitted or withdrawn during the year and the amount of membership fees received; and

(4) the receipts, expenditures, assets and liabilities of the association.

B. A copy of the report required pursuant to Subsection A of this section shall be kept on file at the principal office of the association.

C. A person who signs or verifies a report required pursuant to Subsection A of this section that contains a false statement, known to that person to be false, shall upon conviction be fined not exceeding five hundred dollars ($500) or imprisoned not exceeding one year, or both.

D. Every association shall pay an annual fee of ten dollars ($10.00) upon filing the report.

E. A supplemental report shall be filed with the public regulation commission within thirty days if, after filing of the annual report, a change is made in:

(1) the mailing address, street address, rural route number, box number, or the geographical location of its registered office in this state;

(2) the name of the agent at the address of the registered office upon whom process against the association may be served; or

(3) the name or address of any of the directors or officers of the association or the date when term of office expires."

## Section 19. Section 53-4-35 NMSA 1978 (being Laws 1939, Chapter 164, Section 35) is amended to read:

"53-4-35. NOTICE OF DELINQUENT REPORTS--FORFEITURES--REINSTATEMENT.--If an association fails to make a report within the required period of sixty days, the public regulation commission shall, within sixty days from the expiration of the period, send the association a registered letter, directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, the commission shall notify it by registered letter that its corporate rights stand forfeited, shall remove its name from its list of live corporations and notify the attorney general, who shall cause its affairs to be wound up. If, within sixty days from such forfeiture, the association files the report and pays a penalty of ten dollars ($10.00) and all actual expenses of any suit begun to wind it up, the commission shall set aside the forfeiture, the suit shall be dismissed and the association shall be reinstated to its former rights and legal status."

## Section 20. Section 53-4-37 NMSA 1978 (being Laws 1939, Chapter 164, Section 37) is amended to read:

"53-4-37. USE OF NAME "COOPERATIVE"--PENALTY.--

A. Only the following entities are entitled to use the term "cooperative" or an abbreviation or derivation of that term as part of their business names or to represent themselves as conducting business on a cooperative basis:

(1) associations organized pursuant to the Cooperative Association Act;

(2) groups organized on a cooperative basis pursuant to any other law of this state; and

(3) foreign corporations authorized to do business in this state on a cooperative basis pursuant to the Cooperative Association Act or any other law of this state.

B. Any person, firm or corporation violating the provisions of Subsection A of this section shall be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200), and the attorney general or any aggrieved individual or association or group organized on a cooperative basis may sue to enjoin an alleged violation of this section.

C. Should the courts or the attorney general or the public regulation commission decide that any person, firm or corporation, using the name "cooperative" prior to these provisions and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name, the words "does not comply with the cooperative laws of New Mexico" in the same kind of type and in letters not less than two-thirds as large as those used in the term "cooperative"."

## Section 21. Section 53-4-40 NMSA 1978 (being Laws 1939, Chapter 164, Section 40) is amended to read:

"53-4-40. EXISTING COOPERATIVE CORPORATIONS.--A group incorporated under another law of this state and operating on a cooperative basis may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by the provisions of the Cooperative Association Act and shall amend its articles and bylaws not in conformity with those provisions. A certified copy of the amended articles shall be filed with the public regulation commission and a fee of twenty-five dollars ($25.00) shall be paid."

## Section 22. Section 53-4-41 NMSA 1978 (being Laws 1939, Chapter 164, Section 41) is amended to read:

"53-4-41. FOREIGN CORPORATIONS.--A foreign corporation operating on a cooperative basis and complying with the applicable laws of the state in which it is organized is entitled to receive from the public regulation commission a certificate authorizing it to do business in this state as a foreign cooperative corporation."

## Section 23. A new section of the Cooperative Association Act is enacted to read:

"REGISTERED OFFICE AND REGISTERED AGENT.--An association shall have and continuously maintain in New Mexico:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation."

## Section 24. A new section of the Cooperative Association Act is enacted to read:

"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 the association's registered office;

(3) if the address of its registered office is changed, the address to which the registered office is changed;

(4) the name of the association's 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, an affidavit executed by the successor registered agent in which he acknowledges his acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(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; and

(7) a statement that the change was authorized by resolution duly adopted by the association's board of directors.

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 Cooperative Association 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 25. A new section of the Cooperative Association Act is enacted to read:

"SERVICE OF PROCESS ON ASSOCIATION.--The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law."

## Section 26. A new section of the Corporate Reports Act is enacted to read:

"CANCELED CORPORATIONS STRICKEN FROM PUBLIC REGULATION COMMISSION FILES.--A domestic corporation whose certificate of incorporation has been canceled by the public regulation commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings. A foreign corporation whose certificate of authority to do business in the state has been canceled by the commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings."

## Section 27. 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 which 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 or franchise taxes, 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, 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 28. Section 53-5-3 NMSA 1978 (being Laws 1959, Chapter 181, Section 3) is amended to read:

"53-5-3. PUBLIC REGULATION COMMISSION TO SUPPLY DEFINITIONS.--The public regulation commission shall prepare and make available with appropriate corporate report forms a list of definitions of corporate and financial terms used in the annual corporate reports."

## Section 29. Section 53-5-6 NMSA 1978 (being Laws 1959, Chapter 181, Section 6, as amended) is amended to read:

"53-5-6. APPLICATION FOR PERIOD OF EXTENSION.--

A. A corporation may, upon application to the public regulation commission by the date upon which a report is required to be filed under the Corporate Reports Act, petition the commission for an extension of time in which to file the required report.

B. For good cause shown, the public regulation commission may extend for no more than a total of twelve months the date on which any return required by the provisions of the Corporate Reports Act must be filed or the date on which the payment of any fee is required for a specific corporation subject to the Corporate Reports Act. No extension shall prevent the accrual of interest as otherwise provided by law.

C. The public regulation commission shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees and tax if a copy of the approved

federal extension of time is attached to the corporation's annual report. No extension of time granted shall prevent the accrual of interest as otherwise provided by law.

D. Nothing contained in this section shall prevent the collection of any tax, penalty or interest due upon the failure of any corporation to submit the required report."

## Section 30. 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. Every 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 any reporting period shall incur a civil penalty of one hundred dollars ($100) 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 its registered agent and also to the principal office of the corporation 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, franchise taxes, penalties and interest 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 one hundred dollars ($100) 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 a corporation's registered agent and also either to the principal office of the corporation in the state or country under the laws of which it is incorporated or to the principal office of the corporation as each address is 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, franchise taxes, penalties and interest 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. Every 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 any reporting period shall incur a civil penalty of one hundred dollars ($100) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report.

D. Any 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 any 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 31. Section 53-5-8 NMSA 1978 (being Laws 1959, Chapter 181, Section 8, as amended) is amended to read:

"53-5-8. PUBLIC REGULATION COMMISSION MAY FURNISH FORMS--RELEASE OF INFORMATION--PENALTY.--

A. The public regulation commission may, upon application, furnish the necessary blank forms used in the preparation of the annual corporate reports.

B. The public regulation commission shall provide pursuant to the provisions of the Public Records Act for the retention, storage and destruction of annual corporate reports filed with the commission.

C. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act shall be made available to interested persons during proper hours, except that data contained in Paragraph (2) of Subsection A of Section 53-5-2 NMSA 1978 shall not be released unless in statistical form classified to prevent identification of particular corporations.

D. All reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the public regulation commission.

E. All reports required under the Corporate Reports Act shall be made available to the revenue processing division of the taxation and revenue department upon written request and the revenue processing division shall be subject to the same restrictions upon revealing the information as are imposed by this section upon the public regulation commission.

F. Any other state agency or department or United States agency or department upon written request to the public regulation commission may examine reports filed with the commission upon a showing that the corporate reports sought to be examined are germane to an investigation being conducted by the petitioning agency or department, and any information revealed is subject to Subsection G of this section.

G. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) nor less than one hundred dollars ($100) or by imprisonment in the county jail not more than ninety days nor less than thirty days or by both fine and imprisonment in the discretion of the judge."

## Section 32. 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, franchise taxes, penalties and interest, 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 33. Section 53-6-12 NMSA 1978 (being Laws 1963, Chapter 16, Section 12) is amended to read:

"53-6-12. DISQUALIFICATION--DISSOLUTION.--If any officer, shareholder, agent or employee of a professional corporation who has been rendering professional service to the public becomes legally disqualified to render the professional service within this state, or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of a professional service, or accepts employment that, pursuant to existing law, places restriction or limitations upon his continued rendering of the professional service, he shall sever all employment with, and financial interest in, the professional corporation forthwith. A professional corporation's failure to require compliance with this section shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a professional corporation's failure to comply with this section is brought to the attention of the public regulation commission, the commission shall certify to the attorney general that fact for appropriate action to dissolve the professional corporation."

## Section 34. Section 53-7-35 NMSA 1978 (being Laws 1983, Chapter 312, Section 18) is amended to read:

"53-7-35. AMENDMENT OF ARTICLES OF INCORPORATION.--

A. The articles of incorporation may be amended by the votes of the stockholders and the members, voting separately by classes, and the amendments shall require approval of two-thirds of the votes of the stockholders and two-thirds of the votes of the members. No amendment of the articles of incorporation that is inconsistent with the general purposes expressed in the Business Development Corporation Act authorizes any additional class of capital stock to be issued or eliminates or curtails the right of the director of the financial institutions division of the regulation and licensing department to examine the corporation or the obligation of the corporation to make reports as provided in Section 53-7-39 NMSA 1978 shall be made. No amendment of the articles of incorporation that increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, maturity date or in the security or credit position of any outstanding loan of a member to the corporation shall be made without the consent of each member affected by the amendment.

B. Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, the articles of amendment, setting forth the amendment and the adoption of it, shall be signed and sworn to by the president, the treasurer and a majority of the directors. The articles of amendment shall be submitted to the director of the financial institutions division, who shall examine the amendment. If the director of the financial institutions division finds that the amendment conforms to the requirements of the Business Development Corporation Act, he shall so certify and endorse his approval on the articles of amendment. The articles of amendment shall be filed in the office of the public regulation commission. No amendment shall take effect until the articles of amendment have been filed."

## Section 35. Section 53-7-36 NMSA 1978 (being Laws 1983, Chapter 312, Section 19) is amended to read:

"53-7-36. LEGISLATIVE AMENDMENTS--IMPLEMENTATION.--Within sixty days after the effective date of any legislative amendment to the Business Development Corporation Act, the stockholders and the members of the corporation shall vote to modify the articles of incorporation pursuant to the amendment at a meeting duly called for that purpose. The purpose of the vote shall be solely to determine whether any member may be allowed to withdraw. If the amendment to the articles of incorporation is not approved by at least two-thirds of the votes of the stockholders and two-thirds of the votes of the members, any member voting against approval of the amendment has the right to withdraw from membership. Within thirty days after a meeting at which the amendment to the articles of incorporation has been voted on, a certificate signed and sworn to by the recording officer of the corporation, setting forth the action taken at the meeting with respect to the amendment and each member's vote, shall be filed in the

office of the public regulation commission and the office of the financial institutions division."

## Section 36. Section 53-7-39 NMSA 1978 (being Laws 1983, Chapter 312, Section 22) is amended to read:

"53-7-39. ANNUAL REPORT--OTHER INFORMATION.--The corporation shall be subject to the examination of the director of the financial institutions division. The corporation shall make reports of its condition not less than annually to the director of the financial institutions division and to the public regulation commission, and the corporation shall furnish such other information as may from time to time be required by the director of the financial institutions division."

## Section 37. Section 53-8-18 NMSA 1978 (being Laws 1975, Chapter 217, Section 18) 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, except that the number of the first board of directors shall be fixed by the articles of incorporation. 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 38. Section 53-8-54 NMSA 1978 (being Laws 1975, Chapter 217, Section 54) is amended to read:

"53-8-54. ISSUANCE OF CERTIFICATE OF REVOCATION.--

A. Upon revoking any 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 its registered office 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 39. Section 53-8-83 NMSA 1978 (being Laws 1975, Chapter 217, Section 83, as amended) is amended to read:

"53-8-83. FILING OF ANNUAL REPORT--INITIAL REPORT--SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

A. The annual report of a domestic or foreign corporation shall be delivered to the commission on or before the fifteenth day of the fifth month following the end of its taxable year, except that the first annual report of a domestic or foreign corporation shall be filed within thirty days of the date on which its certificate of incorporation or its certificate of authority was issued by the commission.

B. A supplemental report shall be filed with the commission within thirty days if, after the filing of the annual report required under the Nonprofit Corporation Act, a change is made in:

(1) the name of the corporation;

(2) the mailing address, street address or the geographical location of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;

(3) 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

(4) the corporation's principal place of business within or without the state.

C. Proof to the satisfaction of the commission that prior to the due date of any report required by Subsection A or B of this section the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Nonprofit Corporation Act, it shall file the same. If the commission finds that it does not so conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file the report within the time provided shall not apply, if the report is corrected to conform to the requirements of the Nonprofit Corporation Act and returned to the commission within thirty days from the date on which it was mailed to the corporation by the commission.

D. Upon application by a corporation and for good cause shown, the commission may extend, for no more than a total of twelve months, the date on which a return required by the provisions of the Nonprofit Corporation Act must be filed or the date on which the payment of any fee is required, but no extension shall prevent the accrual of interest as otherwise provided by law. The commission shall, when an extension of time has been granted a nonprofit corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees if a copy of the approved federal extension of time is attached to the corporation's report. An extension shall not prevent the accrual of interest as otherwise provided by law.

E. Nothing in this section prevents the collection of a fee or penalty due upon the failure of any corporation to submit the required report.

F. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation."

## Section 40. Section 53-11-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 1, as amended) is amended to read:

"53-11-1. SHORT TITLE.--Chapter 53, Articles 11 through 18 NMSA 1978 may be cited as the "Business Corporation Act"."

## Section 41. Section 53-11-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 2, as amended) is amended to read:

"53-11-2. DEFINITIONS.--As used in the Business Corporation Act, unless the text otherwise requires:

A. "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of the Business Corporation Act, except a foreign corporation;

B. "foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose for which a corporation may be organized under the Business Corporation Act;

C. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

D. "shares" means the units into which the proprietary interests in a corporation are divided;

E. "subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation;

F. "shareholder" means one who is a holder of record of shares in a corporation;

G. "authorized shares" means the shares of all classes which the corporation is authorized to issue;

H. "annual report" means the corporate report required by the Corporate Reports Act;

I. "distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness, by a corporation to or for the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase redemption or other acquisition of its shares, or otherwise;

J. "franchise tax" means the franchise tax imposed by the Corporate Income and Franchise Tax Act;

K. "fees" means the fees imposed by Section 53-2-1 NMSA 1978;

L. "commission" means the public regulation commission or its delegate;

M. "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality; and

N. "delivery" means:

(1) if personally served, the date on which the documentation is received by the corporations bureau of the commission; and

(2) if mailed, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation."

## Section 42. Section 53-11-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 5, as amended) is amended to read:

"53-11-5. POWER OF CORPORATION TO ACQUIRE ITS OWN SHARES.--

A. As used in this section, "treasury shares" means shares of a corporation issued and subsequently acquired by the corporation but that have not been restored to the status of unissued shares.

B. A corporation has the power to purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of and to pledge, use and otherwise deal in and with its own shares.

C. Treasury shares do not carry voting rights or participate in distributions, may not be counted as outstanding shares for any purpose and may not be counted as assets of the corporation for the purpose of computing the amount available for distributions. Unless the articles of incorporation provide otherwise, treasury shares may

be retired and restored to the status of authorized and unissued shares without an amendment to the articles of incorporation or may be disposed of for such consideration as the board of directors may determine.

D. This section does not limit the right of a corporation to vote its shares held by it in a fiduciary capacity.

E. If the articles of incorporation provide that treasury shares that are retired shall not be reissued, the authorized shares shall be reduced by the number of treasury shares retired.

F. If the number of authorized shares is reduced by a retirement of treasury shares, the corporation shall, on or before the time for filing its next corporate report under the Corporate Reports Act with the commission, file a statement of reduction showing the reduction in the authorized shares. The statement of reduction shall be executed by the corporation by an officer of the corporation and shall set forth:

(1) the name of the corporation;

(2) the number of authorized shares reduced, itemized by classes and series; and

(3) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such reduction."

## Section 43. Section 53-11-12 NMSA 1978 (being Laws 1967, Chapter 252, Section 3) 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 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 certified 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 44. 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 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 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 53-5-5 NMSA 1978.

C. Any registered agent of a corporation may resign upon filing a written notice of resignation with the 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 and 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."

## Section 45. Section 53-11-19 NMSA 1978 (being Laws 1967, Chapter 81, Section 18, as amended) is repealed and a new Section 53-11-19 is enacted to read:

"53-11-19. PAYMENT FOR SHARES.--

A. The board of directors may authorize shares to be issued for consideration consisting of tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

B. Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

C. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against

their purchase price, until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part."

## Section 46. Section 53-11-20 NMSA 1978 (being Laws 1967, Chapter 81, Section 19, as amended) is amended to read:

"53-11-20. STOCK RIGHTS AND OPTIONS.--Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in the manner approved by the board of directors and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which the shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for the rights or options is conclusive."

## Section 47. Section 53-11-28 NMSA 1978 (being Laws 1967, Chapter 81, Section 27, as amended) is amended to read:

"53-11-28. MEETINGS OF SHAREHOLDERS.--

A. Meetings of shareholders may be held at any place within or without this state in accordance with the bylaws. If no other place is designated in, or fixed in accordance with, the bylaws, meetings shall be held at the principal place of business of the corporation.

B. An annual meeting of the shareholders shall be held at the time designated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any shareholder, order a meeting to be held.

C. Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or such other persons as may be authorized in the articles of incorporation or the bylaws."

## Section 48. Section 53-11-33 NMSA 1978 (being Laws 1967, Chapter 81, Section 32, as amended) is amended to read:

"53-11-33. VOTING OF SHARES.--

A. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in the Business Corporation Act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. The articles of incorporation may grant, either absolutely or conditionally to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors, and this right shall not be terminated except upon written assent of the holders of a majority in aggregate face amount of the bonds or debentures.

B. Shares held by another corporation, domestic or foreign, if a majority of the shares entitled to vote for the election of directors of the other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

C. The articles of incorporation may provide that at each election for directors every shareholder entitled to vote at the election has the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of the candidates. A statement in the articles of incorporation that cumulative voting exists is sufficient to confer such right.

D. Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent or proxy as the bylaws of the other corporation may prescribe, or, in the absence of such provisions, as the board of directors of the other corporation may determine.

E. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of the shares into his name. Shares standing in the name of a trustee, or a custodian for a minor, may be voted by him, either in person or by proxy, but only after a transfer of the shares into his name.

F. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Shares standing in the name of a receiver or bankruptcy trustee may be voted by the receiver or bankruptcy trustee, and shares held by or under the control of a receiver or bankruptcy trustee may be voted by him without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which the receiver or bankruptcy trustee was appointed.

H. A shareholder whose shares are pledged may vote the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee may vote the shares so transferred.

I. Shares standing in the name of a partnership may be voted by any partner, and shares standing in the name of a limited partnership may be voted by any general partner.

J. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy.

K. From the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

L. Without limiting the manner in which a shareholder may authorize another person or persons to act for the shareholder as proxy pursuant to Subsection F of this section, the following shall constitute valid means by which a shareholder may grant that authority:

(1) a shareholder may execute a writing authorizing another person or persons to act for that shareholder as proxy, and execution may be by the shareholder or the shareholder's authorized officer, director, employee or agent signing the writing or causing the person's signature to be affixed to the writing by any reasonable means, including by facsimile signature;

(2) a shareholder may authorize another person or persons to act for that shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile transmission, email or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that the electronic transmission shall either set forth, or be submitted with information from which it can be determined, that the electronic transmission was authorized by the shareholder. If it is determined that an electronic transmission is valid, the inspector, or if there is no inspector, the person making that determination, shall specify the information upon which he relied.

M. A copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to Subsection L of this section may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, if that copy, facsimile

telecommunication or other reproduction is a complete reproduction of the entire original writing or transmission."

## Section 49. Section 53-11-37 NMSA 1978 (being Laws 1967, Chapter 81, Section 36) is amended to read:

"53-11-37. CLASSIFICATION OF DIRECTORS.--When the board of directors consists of two or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after the classification, the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders."

## Section 50. Section 53-11-39 NMSA 1978 (being Laws 1967, Chapter 81, Section 38, as amended) is amended to read:

"53-11-39. REMOVAL OF DIRECTORS.--

A. At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Except as provided in Subsection D of this section, a director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

B. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

C. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

D. Unless the articles of incorporation provide otherwise, in the case of a corporation whose board is classified as provided in Section 53-11-37 NMSA 1978, shareholders may remove directors only for cause."

## Section 51. 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 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 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 and franchise taxes 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 52. Section 53-13-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 57, as amended) is amended to read:

"53-13-3. CLASS VOTING ON AMENDMENTS.--The holders of the outstanding shares of a class may vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

A. effect an exchange, reclassification or cancellation of all or part of the shares or the class;

B. effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of the class;

C. change the designations, preferences, limitations or relative rights of the shares of the class;

D. change the shares of the class into the same or a different number of shares of the same class or another class;

E. create a new class of shares having rights and preferences prior and superior to the shares of the class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of the class;

F. in the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the series and the variations in the relative rights and preferences between the shares of the series or authorize the board of directors to do so;

G. limit or deny the existing preemptive rights of the shares of the class; or

H. cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared."

## Section 53. Section 53-13-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 58, as amended) is amended to read:

"53-13-4. ARTICLES OF AMENDMENT.--The articles of amendment shall be executed by the corporation by an authorized officer and shall set forth:

A. the name of the corporation;

B. the amendment adopted;

C. the date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued;

D. the number of shares outstanding and the number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote on it as a class, the designation and number of outstanding shares entitled to vote of each class;

E. the number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote on the amendment as a class, the number of shares of each class voted for and against the amendment, respectively, or if no shares have been issued, a statement to that effect; and

F. if the amendment provides for an exchange, reclassification or cancellation of issued shares and if the manner in which the action shall be effected is not set forth in the amendment, then a statement of the manner in which it shall be effected."

## Section 54. Section 53-13-7 NMSA 1978 (being Laws 1975, Chapter 64, Section 32, as amended) is amended to read:

"53-13-7. RESTATED ARTICLES OF INCORPORATION.--

A. A domestic corporation may at any time restate its articles of incorporation, as amended, by a resolution adopted by the board of directors.

B. Upon the adoption of such resolution, restated articles of incorporation shall be executed by the corporation by an authorized officer and shall set forth all of the operative provisions of the articles of incorporation as amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all previous amendments.

C. The original of the restated articles of incorporation together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the restated articles of incorporation conform to law, it shall, when all fees have been paid:

(1) endorse on the original and a copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a restated certificate of incorporation to which it shall affix the file-stamped copy.

D. The restated certificate of incorporation, together with the file-stamped copy of the restated articles of incorporation affixed to it shall be returned by the commission to the corporation or its representative. Unless the commission disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the restated articles of incorporation to the commission, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all previous amendments."

## Section 55. Section 53-13-8 NMSA 1978 (being Laws 1967, Chapter 81, Section 62, as amended) is amended to read:

"53-13-8. AMENDMENT OF ARTICLES OF INCORPORATION IN REORGANIZATION PROCEEDINGS.--

A. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the

reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only those provisions that may be lawfully contained in original articles of incorporation at the time of making the amendment. The articles of incorporation may be amended for the foregoing purpose to:

(1) change the corporate name, period of duration or corporate purposes of the corporation;

(2) repeal, alter or amend the bylaws of the corporation;

(3) change the aggregate number of shares or shares of any class that the corporation has authority to issue;

(4) change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify or cancel all or any part of the shares, whether issued or unissued;

(5) authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(6) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of, or in addition to, all or any of the directors or officers then in office.

B. Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) articles of amendment approved by decree or order of court shall be executed by the person the court designates or appoints for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States;

(2) an original of the articles of amendment 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 amendment conform 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) issue a certificate of amendment to which it shall affix the file-stamped copy; and

(3) the certificate of amendment, together with the file-stamped copy of the articles of amendment affixed to it shall be returned by the commission to the corporation or its representative. Unless the commission disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission or on a later date, not more than thirty days subsequent to the delivery of the articles to the commission, as shall be provided for in the articles of amendment without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

## Section 56. Section 53-14-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 71, as amended) is amended to read:

"53-14-4. ARTICLES OF MERGER, CONSOLIDATION OR

EXCHANGE.--

A. Upon receiving the approvals required by Sections 53-14-1, 53-14-2 and 53-14-3 NMSA 1978, articles of merger or articles of consolidation shall be executed by each corporation by an authorized officer and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, either:

(a) the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(b) a statement that the vote of shareholders is not required by virtue of Subsection D of Section 53-14-3 NMSA 1978;

(3) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the plan, respectively; and

(4) as to the acquiring corporation in a plan of exchange, a statement that the adoption plan and performance of its terms were duly approved by its board of directors and such other requisite corporate action, if any, as may be required of it.

B. The original of the articles of merger, consolidation or exchange together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles 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 merger, consolidation or exchange to which it shall affix the file-stamped copy.

C. The certificate of merger, consolidation or exchange, together with the file-stamped copy of the articles affixed to it shall be returned by the commission to the surviving, new or acquiring corporation or its representative."

## Section 57. Section 53-14-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 72, as amended) is amended to read:

"53-14-5. MERGER OF SUBSIDIARY CORPORATION.--

A. Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall by resolution approve a plan of merger setting forth:

(1) the name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the "surviving corporation"; and

(2) the manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

B. A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

C. Articles of merger shall be executed by the surviving corporation by an authorized officer and shall set forth:

(1) the plan of merger;

(2) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(3) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

D. On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver of the mailing requirement by the holders of all outstanding shares, an original of the articles of merger together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles 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 merger to which it shall affix the file-stamped copy.

E. The certificate of merger, together with the file-stamped copy affixed to it shall be returned by the commission to the surviving corporation or its representative."

## Section 58. 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 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 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 and franchise taxes 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 59. Section 53-16-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 80) is amended to read:

"53-16-2. VOLUNTARY DISSOLUTION BY CONSENT OF SHAREHOLDERS.--A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Upon the execution of the written consent, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. the names and respective addresses of its officers;

C. the names and respective addresses of its directors;

D. a copy of the written consent signed by all shareholders of the corporation; and

E. a statement that the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys in fact authorized to consent on their behalf."

## Section 60. Section 53-16-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 81, as amended) is amended to read:

"53-16-3. VOLUNTARY DISSOLUTION BY ACT OF

CORPORATION.--A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

A. the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. written notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation;

C. at the meeting, a vote of shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, and the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution, unless any class of shares is entitled to vote on it as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on it as a class and of the total shares entitled to vote on the resolution; and

D. upon the adoption of the resolution, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

(1) the name of the corporation;

(2) the names and respective addresses of its officers;

(3) the names and respective addresses of its directors;

(4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(6) the number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class for and against the resolution, respectively."

## Section 61. Section 53-16-7 NMSA 1978 (being Laws 1967, Chapter 81, Section 85) is amended to read:

"53-16-7. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS BY CONSENT OF SHAREHOLDERS.--By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission, revoke voluntary dissolution proceedings. Upon the execution of the written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. the names and respective addresses of its officers;

C. the names and respective addresses of its directors;

D. a copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings; and

E. that the written consent has been signed by all shareholders of the corporation or signed in their names by their authorized attorneys."

## Section 62. Section 53-16-8 NMSA 1978 (being Laws 1967, Chapter 81, Section 86, as amended) is amended to read:

"53-16-8. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS BY ACT OF CORPORATION.--By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission, revoke voluntary dissolution proceedings taken, in the following manner:

A. the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of revocation be submitted to a vote at a special meeting of shareholders;

B. written notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of special meetings of shareholders;

C. at the meeting, a vote of the shareholders entitled to vote shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon; and

D. upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

(1) the name of the corporation;

(2) the names and respective addresses of its officers;

(3) the names and respective addresses of its directors;

(4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(5) the number of shares outstanding; and

(6) the number of shares voted for and against the resolution, respectively."

## Section 63. Section 53-16-9 NMSA 1978 (being Laws 1967, Chapter 81, Section 87) 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 and franchise taxes 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 64. Section 53-16-11 NMSA 1978 (being Laws 1967, Chapter 81, Section 89) is amended to read:

"53-16-11. ARTICLES OF DISSOLUTION.--If voluntary dissolution proceedings have not been revoked, then, when all debts, liabilities and obligations of the

corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by an authorized officer, which statement shall set forth:

A. the name of the corporation;

B. that the commission has previously filed a statement of intent to dissolve the corporation and the date on which the statement was filed;

C. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

D. that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

E. 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 65. Section 53-16-12 NMSA 1978 (being Laws 1967, Chapter 81, Section 90) 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 and franchise taxes 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 66. 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 which 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 which 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 and franchise taxes payable.

B. The application shall be made on forms prescribed by the commission and shall be executed by the corporation by an authorized officer."

## Section 67. Section 53-17-6 NMSA 1978 (being Laws 1967, Chapter 81, Section 108, as amended) is amended to read:

"53-17-6. FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. A corporation applying for a certificate of authority shall deliver to the commission:

(1) an original of the application of the corporation for a certificate of authority together with a copy, which may be signed, photocopied or conformed;

(2) 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, current within thirty days and which has not expired at the time of receipt by the commission; and

(3) a statement executed by the designated 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 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.

B. If the commission finds that the application 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;

(2) file in its office the original of the application, the statement and the copy of the articles of incorporation and amendments thereto; and

(3) issue a certificate of authority to transact business in this state to which it shall affix the file-stamped copy.

C. The certificate of authority, together with the file-stamped copy of the application affixed to it shall be returned by the commission to the corporation or its representative."

## Section 68. 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 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 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 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 his business address to another place within the same county, he may change the address and the address of the registered office of any corporations of which he is a registered agent by filing a statement as required in Subsection A of this section, except that it need be signed only by the registered agent and need not be responsive to Paragraph (5) of that subsection and must recite that a copy of the statement has been mailed to each corporation."

## Section 69. Section 53-17-13 NMSA 1978 (being Laws 1967, Chapter 81, Section 114, as amended) is amended to read:

"53-17-13. MERGER OR CONVERSION OF FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.--Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger or conversion permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger or conversion becomes effective, file with the commission a copy of the articles of merger or conversion duly authenticated by the proper officer of the state or country under the laws of which the statutory merger or conversion was effected. It is not necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state or unless the surviving corporation is to transact business in New Mexico but has not procured a certificate of authority to transact business in this state."

## Section 70. 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 any action, suit or proceeding based upon any 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 any 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 or franchise taxes payable by the foreign corporation.

B. The application for withdrawal shall be made on forms prescribed by the commission and shall be executed by the corporation by an authorized officer 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 71. Section 53-17-16 NMSA 1978 (being Laws 1967, Chapter 81, Section 117) 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 and franchise taxes 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 72. 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 any certificate of authority, the commission shall:

(1) issue a certificate of revocation in triplicate;

(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 its registered office in this state and also either to its principal office in the state or country under the laws of which it is incorporated or to the principal office of the corporation at the addresses as shown in the last 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 73. Section 53-18-6.1 NMSA 1978 (being Laws 1983, Chapter 304, Section 72) is amended to read:

"53-18-6.1. VOTING REQUIREMENTS--EXISTING CORPORATIONS.--

A. The provisions of the 1983 amendments to the Business Corporation Act lowering voting requirements from a two-thirds majority to a simple majority shall not apply to a corporation that was in existence on June 17, 1983, until the corporation, by amendment to its articles of incorporation, chooses to become subject to those provisions, except as provided in Subsection B of this section.

B. Corporations in existence on June 17, 1983 that, as of July 1, 2001, are listed on a national securities exchange, or whose shares are publicly traded on an over-the-counter basis and have more than four hundred fifty shareholders of record, shall be subject to the lower voting requirements established by the 1983 amendments to the Business Corporation Act upon adoption of a bylaws provision by the board of directors making the corporation subject to the lower voting requirements. The bylaws provision adopted pursuant to this subsection may be rescinded only by submission to the shareholders of a proposal to amend the articles of incorporation to establish a greater voting requirement in accordance with the provisions of

Section 53-18-6 NMSA 1978, which proposal may be made by any shareholder of record."

## Section 74. A new section of the Limited Liability Company Act is enacted to read:

"ADMINISTRATIVE REVOCATION.--A limited liability company may be revoked by the commission if:

A. the limited liability company has failed for a period of thirty days to appoint and maintain a registered agent as required by the Limited Liability Company Act; or

B. the limited liability company has failed for a period of thirty days, 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 Limited Liability Company Act."

## Section 75. A new section of the Limited Liability Company Act is enacted to read:

"REINSTATEMENT FOLLOWING ADMINISTRATIVE REVOCATION.--

A. A limited liability company administratively revoked pursuant to the Limited Liability Company Act may apply to the commission for reinstatement within two years after the effective date of revocation. The application must:

(1) recite the name of the limited liability company 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 limited liability company's name satisfies the requirements of Section 53-19-3 NMSA 1978.

B. If the commission determines that the application contains the information required by Subsection A 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 limited liability company.

C. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the limited liability company resumes carrying on its business as if the administrative revocation had never occurred."

## Section 76. Section 53-19-48 NMSA 1978 (being Laws 1993, Chapter 280, Section 48) 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 duplicate copy that may be a signed, photocopied or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its organization and an original 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 affidavit, together with a duplicate copy, 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 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 77. Section 53-19-51 NMSA 1978 (being Laws 1993, Chapter 280, Section 51) is amended to read:

"53-19-51. AMENDED CERTIFICATE OF REGISTRATION.--

A. The application for registration of a foreign limited liability company may be amended by filing an amended certificate of registration with the commission signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application for an amended certificate of registration shall set forth:

(1) the name of the foreign limited liability company;

(2) the date the original application for registration was filed; and

(3) the amendment to the application for registration.

B. The application for registration may be amended in any way, so long as the application for registration as amended contains only provisions that, at the time of the amendment, may be lawfully contained in an application for registration.

C. An application for registration shall be amended to reflect any change in the identity of the persons in whom management of the foreign limited liability company is vested.

D. The requirements in respect to the form and contents of the application for amended certificate of registration, the manner of its execution, the filing of an original and copy with the commission, the issuance of an amended certificate of registration and the effect thereof, shall be the same as in the case of an original application for a certificate of registration. In addition to these requirements, the application shall be accompanied by an authenticated copy of the amended articles of organization."

## Section 78. Section 53-19-60 NMSA 1978 (being Laws 1995, Chapter 213, Section 8) is amended to read:

"53-19-60. CONVERSIONS AND MERGERS--CONVERSION OF CORPORATION, PARTNERSHIPOR LIMITED PARTNERSHIPTO 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 provided for by the document, instrument, agreement or other writing governing the internal affairs of the corporation, partnership or limited partnership 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 under 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 that also contain:

(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 under 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 under 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 79. A new section of the Limited Liability Company Act, Section 53-19-60.1 NMSA 1978, is enacted to read:

"53-19-60.1. CONVERSIONS AND MERGERS--CONVERSION OF LIMITED LIABILITY COMPANY TO CORPORATION, PARTNERSHIPOR 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 all of the members or by a number or percentage of the members or managers required for conversion in the operating agreement.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the members' interest 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 80. Section 53-19-61 NMSA 1978 (being Laws 1995, Chapter 213, Section 9) is amended to read:

"53-19-61. CONVERSIONS AND MERGERS--EFFECT OF CONVERSION.--

A. A corporation, partnership, limited liability company or limited partnership that has been converted pursuant to Section 53-19-60 or 53-19-60.1 NMSA 1978 is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

(1) all property owned by the converting entity is vested in the converted entity;

(2) all debts, liabilities and other obligations of the converting entity continue as obligations of the converted entity;

(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting entity are vested in the converted entity; and

(5) except as otherwise provided in the agreement of conversion under Subsection C of Section 53-19-60 NMSA 1978, all of the owners of the converting entity continue as owners of the converted entity."

## Section 81. 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 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 issuing a registration to a foreign limited liability company, a fee of one hundred dollars ($100);

K. for filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars ($50.00); and

L. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars ($25.00)."

## Section 82. Section 73-5-2 NMSA 1978 (being Laws 1909, Chapter 76, Section 2, as amended) is amended to read:

"73-5-2. CERTIFICATE OF ORGANIZATION--CONTENTS.--The incorporators of a water users' association shall execute a certificate setting forth:

A. the name of the association. No name shall be assumed that is in use by another association or corporation in this state, or so nearly similar as to lead to uncertainty or confusion;

B. the names of the incorporators;

C. the location of the association's principal office in this state;

D. the objects and purposes of the association, the county or counties in which its operations are to be carried on and the general description of the lands to be irrigated and the reservoirs, canals, ditches or works to be constructed, enlarged, combined or used under the management of the association;

E. 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 works and for its necessary expenses;

F. the period if any limited for the duration of the association;

G. the number and manner of electing the board of directors, trustees or governing board of the association, and may name the persons who shall serve as such for the first three months or until their successors are elected and qualified;

H. the address of its initial registered office and the name of its initial registered agent at that address; and

I. any provision, not inconsistent with Chapter 73, Article 5 NMSA 1978 or other law of this state, which the incorporators may choose to insert for the regulation

and conduct of the business and affairs of the association, extending its membership, enlarging or changing the scope of its operations, creating and enforcing a lien upon the lands, reservoirs, canals, ditches, works and water rights of the association or its members for the cost of acquisition, construction, repair, improvement and maintenance of reservoirs, canals, ditches and other works, collecting the necessary funds for expenses and purposes of the association, defining or limiting its powers and for its dissolution and the distribution or other disposition of its property."

## Section 83. SHORT TITLE.--Sections 84 through 100 of this act may be cited as the "Foreign Business Trust Registration Act".

## Section 84. DEFINITIONS.--As used in the Foreign Business Trust Registration Act:

A. "business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets; and

B. "foreign business trust" means a business trust formed under the laws of a state other than New Mexico.

## Section 85. CERTIFICATE OF AUTHORITY--NECESSITY TO OBTAIN TO TRANSACT BUSINESS--WHAT CONSTITUTES NOT TRANSACTING BUSINESS.--

A. A foreign business trust shall not transact business in this state unless it first obtains a certificate of authority from the public regulation commission. A foreign business trust is not entitled to obtain a certificate of authority to transact a business in this state that it is not permitted to transact in the state or country in which it was created.

B. The following activities do not constitute transacting business within the meaning of Subsection A of this section:

(1) maintaining, defending or effecting the settlement of an action, suit or administrative or arbitration proceeding, or effecting the settlement of claims or disputes;

(2) maintaining bank accounts;

(3) maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

(4) soliciting or procuring orders when the orders require acceptance outside of this state before becoming binding contracts;

(5) transacting business in interstate commerce;

(6) holding meetings of the board of trustees or holders of beneficial interest or carrying on other activities concerning internal affairs;

(7) selling through independent contractors;

(8) creating or procuring indebtedness, mortgages and security interests in real and personal property;

(9) conducting an isolated transaction that is completed within a period of thirty days and not in the course of a number of repeated transactions of a similar nature;

(10) securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

(11) owning without more, real or personal property.

## Section 86. NAME OF FOREIGN BUSINESS TRUST.--

A. The name of a foreign business trust set forth in its certificate of trust shall be distinguishable from the name shown in the records of the public regulation commission of any corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign limited liability company, foreign investment trust or foreign limited liability partnership in New Mexico; except that a foreign business trust may register under any name that is not distinguishable from the name shown in the records of the commission of a domestic or foreign corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico if the foreign business trust has the written consent of the other entity to use the name and if the written consent is filed with the commission.

B. The name of a foreign business trust set forth in its certificate of trust may contain the name of a beneficial owner, a trustee or any other person.

C. The name of a foreign business trust set forth in its certificate of trust may contain the following words: "company", "association", "club", "foundation", "fund", "institute", "society", "union", "syndicate", "limited" or "trust" or abbreviations of similar import.

D. The exclusive right to the use of a name may be reserved by a foreign business trust in accordance with the Business Corporation Act.

## Section 87. PROHIBITED CHANGE OF NAME--PENALTIES.--If a foreign business trust authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the foreign business trust shall be suspended, and it shall not thereafter transact business in this state until it changes its name to a name that is available to it under the laws of this state and obtains a certificate of correction or amendment.

## Section 88. 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 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 89. ISSUANCE OF CERTIFICATE OF AUTHORITY.--

A. If the public regulation commission finds that the application for a certificate of authority meets the requirements of the Foreign Business Trust Registration Act and the requisite fees have been paid, it shall:

(1) endorse on the original the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application; and

(3) issue a certificate of authority to transact business in this state to which it shall affix a copy of the application.

B. The certificate of authority, together with a copy of the application affixed to it, shall be returned by the public regulation commission to the business trust or its representative.

## Section 90. CHANGES AND AMENDMENTS.--If a statement in the application for certificate of authority of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file with the public regulation commission a certificate, signed by an authorized person, correcting the statement, together with the fee required by Section 98 of the Foreign Business Trust Registration Act.

## Section 91. REGISTERED OFFICE AND REGISTERED AGENT--REQUIREMENT OF MAINTENANCE IN STATE.--A foreign business trust authorized to transact business in this state shall have and continuously maintain in this state:

A. a registered office, which may be the same as its place of business in this state; and

B. a registered agent, which may be either an individual resident in this state whose business office is identical with the registered office, or a domestic or foreign corporation, limited partnership, limited liability company, limited liability partnership or investment trust authorized to transact business in this state, having a business office identical with the registered office of the foreign business trust.

## Section 92. 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 the 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.

## Section 93. SERVICE OF PROCESS.--

A. The registered agent appointed by a foreign business trust authorized to transact business in this state shall be an agent of the foreign business trust upon whom may be served any process, notice or demand required or permitted by law to be served upon the foreign business trust.

B. A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to a trustee of the foreign business trust at its principal office shown on its application for a certificate of authority if the foreign business trust:

(1) has no registered agent or its registered agent cannot be served with reasonable diligence;

(2) has withdrawn from transacting business in New Mexico; or

(3) has had its certificate of authority revoked.

C. Service is perfected under Subsection B of this section at the earliest of:

(1) the date the foreign business trust receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign business trust; or

(3) five days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

D. This section does not prescribe the only means, or necessarily the required means, of serving a foreign business trust described in Subsection B of this section.

## Section 94. 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 any 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 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 95. CERTIFICATE OF WITHDRAWAL--ISSUANCE.--

A. An application of a foreign business trust for withdrawal shall be delivered to the public regulation commission. If the commission finds that the application meets the requirements of the Foreign Business Trust Registration Act, when all fees and taxes prescribed by law have been paid it shall:

(1) endorse on the application the word "filed" and the month, day and year of the filing;

(2) file the application in its office; and

(3) issue a certificate of withdrawal.

B. The certificate of withdrawal, together with a copy of the application for withdrawal affixed thereto by the public regulation commission, shall be returned to the foreign business trust or its representative. Upon the issuance of the certificate of withdrawal, the authority of the foreign business trust to transact business in this state shall cease.

## Section 96. CERTIFICATE OF AUTHORITY--REVOCATION--CAUSES.--

A. The certificate of authority of a foreign business trust to transact business in this state may be revoked by the public regulation commission pursuant to this section when:

(1) the foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(2) the foreign business trust has failed to appoint and maintain a registered agent in this state;

(3) the foreign business trust has failed, after change of its registered office or registered agent, to file with the commission a statement of the change as required by law; or

(4) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

B. No certificate of authority of a foreign business trust shall be revoked by the public regulation commission unless:

(1) it has given the foreign business trust not less than sixty days' prior notice of revocation by mail addressed to its registered office in this state; and

(2) the foreign business trust prior to revocation fails to pay fees or taxes owed, file the required statement of change of registered agent or registered office or correct the misrepresentation.

## Section 97. CERTIFICATE OF AUTHORITY--REVOCATION PROCEDURE.--

A. Upon revoking a certificate of authority of a foreign business trust, the public regulation commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the foreign business trust at its registered office in this state a notice of the revocation accompanied by the other certificate.

B. Upon issuance of the certificate of revocation, the authority of the foreign business trust to transact business in this state ceases.

## Section 98. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY.--

A. A foreign business trust transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

B. The successor to a foreign business trust that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign business trust or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign business trust, its successor or assignee until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay a proceeding until the foreign business trust or its successor obtains a certificate.

D. A foreign business trust is liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year it transacts business in this state without a certificate of authority. The attorney general may enforce the civil liability imposed pursuant to this subsection.

E. The failure of a foreign business trust to obtain a certificate of authority does not impair the validity of any contract or act of the foreign business trust or prevent it from defending any action, suit or proceeding in any court of this state.

## Section 99. 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 a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, fifty dollars ($50.00);

D. filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, twenty-five dollars ($25.00);

E. filing any other statement of a foreign business trust, twenty-five dollars ($25.00); and

F. 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 100. TEMPORARY PROVISION--LAWS APPLICABLE TO FOREIGN BUSINESS TRUST PREVIOUSLY TRANSACTING BUSINESS IN THIS STATE.--

A. Foreign business trusts that are transacting business in this state at the time the Foreign Business Trust Registration Act takes effect, for a purpose or purposes for which a foreign business trust might secure authority under that law, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to the rights and privileges applicable to foreign business trusts obtaining certificates of authority to transact business and shall be subject to the limitations, restrictions, liabilities and duties prescribed in that act for foreign business trusts obtaining certificates of authority to transact business in this state.

B. Within one year from the effective date of the Foreign Business Trust Registration Act, foreign business trusts transacting business within the state at the time of the effective date of that act shall secure a certificate of authority or be subject to the penalties, restrictions and limitations provided in the act.

## Section 101. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 331, AS AMENDED

# CHAPTER 201

**CHAPTER 201, LAWS 2001**

AN ACT

RELATING TO DOMESTIC RELATIONS; PROVIDING FOR A SUPERVISED VISITATION PROGRAM IN JUDICIAL DISTRICTS.

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

## Section 1. Section 40-12-4 NMSA 1978 (being Laws 1987, Chapter 153, Section 4) is amended to read:

"40-12-4. DISTRICT COURT DOMESTIC RELATIONS MEDIATION FUND CREATED.--A judicial district shall create a "domestic relations mediation fund" of the judicial district. Money in the fund shall be used to offset the cost of operating the domestic relations mediation program and the supervised visitation program. Deposits to the fund shall include payments made through the imposition of a sliding fee scale

pursuant to Sections 40-12-5 and 40-12-5.1 NMSA 1978, distributions pursuant to Section 34-6-40 NMSA 1978 and the collection of the surcharge provided for in Section 40-12-6 NMSA 1978."

## Section 2. A new section of the Domestic Relations Mediation Act, Section 40-12-5.1 NMSA 1978, is enacted to read:

"40-12-5.1. SUPERVISED VISITATION PROGRAM.--

A. A judicial district may establish a "supervised visitation program" by local court rule approved by the supreme court. The supervised visitation program shall be used when, in the opinion of the court, the best interests of the child are served if confrontation or contact between the parents is to be avoided during exchanges of custody or if contact between a parent and a child should be supervised. In a supervised visitation program, the district court may employ or contract with a person:

(1) with whom a child may be left by one parent for a short period while waiting to be picked up by the other parent; or

(2) to supervise visits among one or both parents and the child.

B. A parent may request the services of the supervised visitation program or the court may order that the program be used.

C. Parents shall pay the cost of the neutral corner program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the service. The fees shall be paid to the district court to be credited to the fund."

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SENATE BILL 348, AS AMENDED

# CHAPTER 202

**CHAPTER 202, LAWS 2001**

AN ACT

RELATING TO INSURANCE; AUTHORIZING AND DIRECTING THE SUPERINTENDENT OF INSURANCE TO PROMULGATE PRIVACY RULES.

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

## Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"SUPERINTENDENT AUTHORIZED AND DIRECTED TO PROMULGATE PRIVACY RULES.--The superintendent is authorized to and shall promulgate rules to reasonably protect the privacy of insurance consumers' nonpublic personal information, including personal health and financial information. Rules promulgated pursuant to this section shall meet any applicable federal requirements for protecting nonpublic personal information of insured persons from improper access or disclosure."

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SENATE BILL 352, AS AMENDED

# CHAPTER 203

**CHAPTER 203, LAWS 2001**

AN ACT

RELATING TO EDUCATION; ADDING PROVISIONS TO THE EDUCATION TECHNOLOGY EQUIPMENT ACT TO REQUIRE ADDITIONAL NOTICE AND INFORMATION ABOUT A LOCAL SCHOOL BOARD'S PROPOSED RESOLUTION TO INCUR DEBT TO IMPLEMENT THE ACT; DECLARING AN EMERGENCY.

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

## Section 1. Section 6-15A-8 NMSA 1978 (being Laws 1997, Chapter 193, Section 8) is repealed a new Section 6-15A-8 NMSA 1978 is enacted to read:

"6-15A-8. AUTHORIZING LEASE-PURCHASE OF EDUCATION TECHNOLOGY EQUIPMENT--PRELIMINARY RESOLUTION--CONTENTS--NOTICE--FINAL RESOLUTION OF APPROVAL.--

A. If a local school board proposes to lease-purchase education technology equipment, it shall comply with the requirements of this section.

B. At a regular meeting or at a special meeting called for the purpose of considering the lease-purchase of education technology equipment, a local school board shall:

(1) make a determination of the necessity for lease-purchasing the education technology equipment;

(2) determine the estimated cost of the equipment needed;

(3) review a summary of the terms of the proposed lease-purchase agreement;

(4) identify the source of funds for the lease-purchase payments;

(5) if all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes for real property owners in the school district;

(6) set a date not more than four weeks and not less than three weeks in the future for a special meeting to consider a resolution granting final approval to the lease-purchase of education technology equipment; and

(7) direct that notice of the special meeting be published once each week for the two weeks immediately preceding the meeting in a newspaper having general circulation in the school district and that the notice include the information required in Paragraphs (1) through (5) of this subsection.

C. At the special meeting scheduled pursuant to Subsection B of this section, the local school board may adopt a final resolution approving the lease-purchase of education technology equipment only by an affirmative vote of majority of all members of the board.

D. The local school board shall not adopt a resolution for or approve a lease-purchase agreement that exceeds five years."

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

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SENATE BILL 533, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 204

**CHAPTER 204, LAWS 2001**

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING THE INSPECTION OF PUBLIC RECORDS ACT; PROVIDING ADDITIONAL DUTIES FOR THE CUSTODIAN OF PUBLIC RECORDS FOR A PUBLIC BODY.

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

## Section 1. Section 14-2-7 NMSA 1978 (being Laws 1993, Chapter 258, Section 4) is amended to read:

"14-2-7. DESIGNATION OF CUSTODIAN--DUTIES.--Each public body shall designate at least one custodian of public records who shall:

A. receive and respond to requests to inspect public records;

B. provide proper and reasonable opportunities to inspect public records;

C. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

D. post in a conspicuous location at the administrative office of each public body a notice describing:

(1) the right of a person to inspect a public body's records;

(2) procedures for requesting inspection of public records;

(3) procedures for requesting copies of public records;

(4) reasonable fees for copying public records; and

(5) the responsibility of a public body to make available public records for inspection."

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SENATE BILL 539, AS AMENDED

# CHAPTER 205

**CHAPTER 205, LAWS 2001**

AN ACT

RELATING TO LIBRARIES; CREATING A TRIBAL LIBRARIES ENDOWMENT FUND.

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

## Section 1. A new section of Chapter 18, Article 2 NMSA 1978 is enacted to read:

"FUND CREATED--ADMINISTRATION--PURPOSE.--

A. The "tribal libraries endowment fund" is created in the state treasury. The fund shall consist of all money appropriated to the fund and any grants, gifts and bequests made to the fund. Any money in the fund shall not revert to the general fund at the end of any fiscal year.

B. The tribal library program of the library division of the office of cultural affairs shall administer the tribal libraries endowment fund and shall make disbursements from the earnings on the investment of the fund for the purpose of funding the establishment, development and administration of tribal libraries in New Mexico.

C. The library division of the office of cultural affairs may adopt rules and procedures as necessary or appropriate to administer the tribal libraries endowment fund after consultation with the tribal librarians."

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SENATE BILL 546, AS AMENDED

# CHAPTER 206

**CHAPTER 206, LAWS 2001**

AN ACT

RELATING TO CONTRACTS; ENACTING THE SERVICE CONTRACT REGULATION ACT TO IMPOSE RESTRICTIONS AND REQUIREMENTS ON SALES OF SERVICE CONTRACTS; PROVIDING FOR THE SUPERINTENDENT OF INSURANCE TO ADMINISTER THAT ACT; PROVIDING CIVIL PENALTIES FOR VIOLATION.

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

## Section 1. SHORT TITLE.--Sections 1 through 19 of this act may be cited as the "Service Contract Regulation Act".

## Section 2. DEFINITIONS.--As used in the Service Contract Regulation Act:

A. "administrator" means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider;

B. "consumer" means a person who purchases, other than for resale, property used primarily for personal, family or household purposes and not for business or research purposes;

C. "holder" means a resident of this state who:

(1) purchases a service contract; or

(2) is legally in possession of a service contract and is entitled to enforce the rights of the original purchaser of the service contract;

D. "maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance;

E. "major manufacturing company" means a person who:

(1) manufactures or produces and sells products under its own name or label or is a wholly owned subsidiary of the person who manufactures or produces products; and

(2) maintains or its parent company maintains a net worth or stockholders' equity of at least one hundred million dollars ($100,000,000).

F. "property" means all property, whether movable at the time of purchase or a fixture, that is used primarily for personal, family or household purposes;

G. "provider" means a person who is contractually obligated to a holder or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, property;

H. "service contract" means a contract pursuant to

which a provider, in exchange for separately stated

consideration, is obligated for a specified period to a holder to repair, replace or perform maintenance on, or indemnify or reimburse the holder for the costs of repairing, replacing or performing maintenance on, property that is described in the service contract and that has an operational or structural failure as a result of a defect in materials, workmanship or normal wear and tear, including:

(1) a contract that includes a provision for

incidental payment of indemnity under limited circumstances, including towing, rental and emergency road service and food spoilage; and

(2) a contract that provides for the repair,

replacement or maintenance of property for damages that result from power surges or accidental damage from handling;

I. "superintendent" means the superintendent of insurance of the insurance division of the public regulation commission; and

J. "warranty" means a warranty provided solely by a manufacturer, importer or seller of property for which the manufacturer, importer or seller did not receive separate consideration and that:

(1) is not negotiated or separated from the sale of the property;

(2) is incidental to the sale of the property; and

(3) guarantees to indemnify the consumer for

defective parts, mechanical or electrical failure, labor or other remedial measures required to repair or replace the property.

## Section 3. EXCLUSIONS FROM ACT.--The provisions of the Service Contract Regulation Act do not apply to:

A. a warranty;

B. a maintenance agreement;

C. a service contract provided by a public utility on its transmission device if the service contract is regulated by the public regulation commission;

D. a service contract sold or offered for sale to a person who is not a consumer; or

E. a service contract for property if the purchase price of the property is less than two hundred fifty dollars ($250) and the consideration for the service contract is less than twenty-five dollars ($25.00).

## Section 4. PROHIBITION OF SALE OF SERVICE CONTRACT UNLESS REGISTERED.-- A provider shall not issue, sell or offer for sale service contracts in this state unless he has been registered with the superintendent pursuant to the provisions of the Service

**Contract Regulation Act. The provisions of this section shall not apply to major manufacturing companies' service contracts.**

## Section 5. REGISTRATION REQUIREMENTS.--

A. A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the superintendent:

(1) a registration application on a form prescribed by the superintendent;

(2) proof that he has complied with the

requirements for security pursuant to Section 7 of the Service Contract Regulation Act;

(3) the name, address and telephone number of each administrator with whom the provider intends to contract; and

(4) a fee of five hundred dollars ($500).

B. A provider's registration is valid for one year after the date the registration is filed. A provider may renew his registration if, before the registration expires, he submits to the superintendent an application on a form prescribed by the superintendent and a fee of five hundred dollars ($500).

C. The provisions of this section shall not apply to major manufacturing companies' service contracts.

## Section 6. SECURITY REQUIRED FOR REGISTRATION OF PROVIDER.--

A. To assure the faithful performance of a provider's obligations to his contract holders, a provider shall maintain a deposit with the superintendent as provided in this section.

B. A provider of a service contract shall deposit fifty thousand dollars ($50,000) unless the contract covers the following, in which case he shall deposit one hundred thousand dollars ($100,000):

(1) a motor vehicle; and

(2) mechanical, plumbing and electrical systems and appliances at a residential dwelling when the service contract was sold in conjunction with the sale of the residential dwelling.

C. Deposits required pursuant to Subsection B of this section shall be:

(1) a surety bond issued by a surety company authorized to do business in New Mexico on a form acceptable to the superintendent;

(2) securities of the type eligible for deposit by an insurance company;

(3) cash; or

(4) a clean and irrevocable letter of credit issued by a financial institution acceptable to the superintendent.

D. Additional financial security may be required of any provider when it is determined by the superintendent that an additional deposit is necessary for the protection of the public.

E. The provisions of this section shall not apply to major manufacturing companies' service contracts.

## Section 7. TRANSACTIONS EXEMPT FROM PREMIUM TAX.--The premium tax imposed pursuant to Chapter 59A, Article 6 NMSA 1978 does not apply to any business transacted pursuant to the provisions of the Service Contract Regulation Act.

## Section 8. TRANSACTIONS NOT SUBJECT TO NEW MEXICO INSURANCE CODE--EXCEPTIONS.--

A. Except as otherwise provided in the Service Contract Regulation Act, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of the New Mexico Insurance Code, except, when applicable, the provisions of Chapter 59A, Article 16 NMSA 1978.

B. A provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority or license from the superintendent to issue, sell, offer for sale or administer service contracts.

## Section 9. RIGHT OF HOLDER TO RETURN SERVICE CONTRACT FOR REFUND.--

A. A service contract is void and a provider shall refund to the holder the purchase price of the service contract if the holder has not made a claim under the service contract and the holder returns the service contract to the provider:

(1) within twenty days after the date the

provider mails a copy of the service contract to the holder;

(2) within ten days after the purchaser receives a copy of the service contract if the provider furnishes the holder with the copy at the time the contract is purchased; or

(3) within a longer period specified in the

service contract.

B. The right of a holder to return a service contract pursuant to this section applies only to the original purchaser of the service contract.

C. A service contract must include a provision that clearly states the right of a holder to return a service contract pursuant to this section.

D. The provider shall refund to the holder or credit to the account of the holder the purchase price of the service contract within sixty days after a service contract is returned pursuant to Subsection A of this section. If the provider fails to refund the purchase price or credit the account of the holder within that time, the provider shall pay the holder a penalty of ten percent of the purchase price for each thirty-day period or portion thereof that the refund and any accrued penalties remain unpaid.

## Section 10. INFORMATION REQUIRED IN SERVICE CONTRACT.--

A. A service contract shall:

(1) be written in language that is understandable and printed in a typeface that is easy to read;

(2) include the amount, if applicable, of any deductible that the holder is required to pay;

(3) include the name, address and telephone number of the provider and, if applicable:

(a) the name, address and telephone number of the administrator; and

(b) the name of the holder, if provided by the holder; however, the names and addresses of the foregoing persons are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale;

(4) include the purchase price of the service contract;

(5) include a description of the property covered by the service contract;

(6) specify the duties of the provider and any limitations, exceptions or exclusions;

(7) if the service contract covers a motor vehicle, indicate whether replacement parts that are not made for or by the original manufacturer of the motor vehicle may be used to comply with the terms of the service contract;

(8) include, if applicable, any restrictions on transferring or renewing the service contract;

(9) include the terms, restrictions or

conditions for canceling the service contract before it expires and the procedure for canceling the service contract. The conditions for canceling the service contract shall include the provisions of Section 13 of the Service Contract Regulation Act;

(10) include the duties of the holder under the contract, including the duty to protect against damage to the property covered by the service contract or to comply with any instructions included in the owner's manual for the property;

(11) indicate whether the service contract authorizes the holder to recover consequential damages; and

(12) indicate whether any defect in the property covered by the service contract existing on the date the contract is purchased is not covered under the service contract.

B. A provider shall not allow, make or cause to be made a false or misleading statement in any of his service contracts or intentionally omit a material statement that causes a service contract to be misleading. The superintendent may require the provider to amend any service contract that the superintendent determines is false or misleading.

## Section 11. RECEIPT FOR AND COPY OF SERVICE CONTRACT REQUIRED.--

A. A provider shall provide a receipt for, or other written evidence of, the purchase of a service contract.

B. The provider shall furnish a copy of the service contract to the holder within a reasonable time after the contract is purchased.

## Section 12. CANCELLATION OF SERVICE CONTRACT.--

A. No service contract that has been in effect for at least seventy days may be canceled by the provider before the expiration of the agreed term or one year after the effective date of the service contract, whichever occurs first, except on any of the following grounds:

(1) failure by the holder to pay an amount when due;

(2) conviction of the holder of a crime that

results in an increase in the service required under the service contract;

(3) discovery of fraud or material

misrepresentation by the holder in obtaining the service contract or in presenting a claim for service thereunder; or

(4) discovery of either of the following if it occurred after the effective date of the service contract and substantially and materially increased the service required under the service contract:

(a) an act or omission by the holder; or

(b) a violation by the holder of any

condition of the service contract.

B. No cancellation of a service contract may become effective until at least fifteen days after the notice of cancellation is mailed to the holder.

## Section 13. BUSINESS NAME RESTRICTIONS.--

A. Except as otherwise provided in this section, a provider shall not include in the name of his business:

(1) the words "insurance", "casualty", "surety", "mutual" or any other word or term that implies that he is engaged in the business of transacting insurance or is a surety company; or

(2) a name that is deceptively similar to the name or description of an insurer or surety company or the name of another provider.

B. A provider may include the word "guaranty" or a similar word in the name of his business.

C. This section does not apply to a provider who, before January 1, 2002, includes in the name of his business a name that does not comply with the provisions of Subsection A of this section. Such a provider shall include in each service contract he issues, sells or offers for sale a statement that the service contract is not a contract of insurance.

## Section 14. PROHIBITION OF REQUIRING PURCHASE OF SERVICE CONTRACT AS A CONDITION OF LOAN APPROVAL OR PURCHASE OF PROPERTY.--No person may require the purchase of a service contract as a condition for the approval of a loan or the purchasing of property.

## Section 15. RECORDS REQUIREMENTS.--

A. A provider shall maintain records of the transactions governed by the Service Contract Regulation Act. The records of a provider shall include:

(1) a copy of each type of service contract that the provider issues, sells or offers for sale;

(2) the name and address of each holder who possesses a service contract under which the provider has a duty to perform, to the extent that the provider knows the name and address of each holder;

(3) a list that includes each location where the provider issues, sells or offers for sale service contracts; and

(4) the date and a description of each claim made by a holder under a service contract.

B. Except as otherwise provided in this subsection, a provider shall retain all records relating to a service contract for at least one year after the contract has expired. A provider who intends to discontinue doing business in this state shall provide the superintendent with satisfactory proof that he has discharged his duties to the holders in this state and shall not destroy his records without the prior approval of the superintendent.

C. The records required to be maintained pursuant to this section may be stored on a computer disk or other storage device for a computer from which the records can be readily printed.

D. The provisions of this section shall not apply to major manufacturing companies' service contracts.

## Section 16. EXAMINATIONS AND INSPECTION OF BOOKS BY SUPERINTENDENT.--

A. The superintendent may conduct examinations to enforce the provisions of the Service Contract Regulation Act pursuant to Chapter 59A, Article 4 NMSA 1978 at such times as he deems necessary.

B. A provider shall, upon the request of the superintendent, make available to the superintendent for inspection any accounts, books and records concerning any service contract issued, sold or offered for sale by the provider that are reasonably necessary to enable the superintendent to determine whether the provider is in compliance with the provisions of the Service Contract Regulation Act.

C. The provisions of this section shall not apply to major manufacturing companies' service contracts.

## Section 17. CIVIL PENALTY FOR VIOLATION.--A person who violates any provision of the Service Contract Regulation Act or an order or rule of the superintendent issued or adopted pursuant thereto may be assessed a civil penalty by the superintendent of not more than five thousand dollars ($5,000) for each act or violation, not to exceed an aggregate amount of one hundred thousand dollars ($100,000) for violations of a similar nature. For the purposes of this section, violations shall be deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred.

## Section 18. RULEMAKING.--The superintendent may adopt rules necessary to carry out the provisions of the Service Contract Regulation Act.

## Section 19. Section 59A-16-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 269, as amended) is amended to read:

"59A-16-1. SCOPE OF ARTICLE.--The provisions of Chapter 59A, Article 16 NMSA 1978 as applicable shall apply as to insurers, fraternal benefit societies, nonprofit health care plans, health maintenance organizations, prepaid dental services organizations, motor clubs, agents, brokers, solicitors, adjusters, providers of services contracts pursuant to the Service Contract Regulation Act and all other persons engaged in any business which is now or hereafter subject to the superintendent's supervision under the Insurance Code, as well as all alien and foreign insurers delivering or issuing for delivery in New Mexico any certificate or other evidence of coverage. For the purposes of that article, the societies, organizations, clubs and

persons shall be included within the meaning of "insurer", and contracts issued by them are included within the meaning of "policy"."

## Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2002.

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SENATE BILL 556, AS AMENDED

# CHAPTER 207

**CHAPTER 207, LAWS 2001**

AN ACT

RELATING TO WATER; PROVIDING FOR MUNICIPAL AUTHORITY TO LIMIT NEW DOMESTIC WATER WELL DRILLING; 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 3, Article 53 NMSA 1978 is enacted to read:

"NEW DOMESTIC WATER WELLS--MUNICIPAL AUTHORITY.--

A. A municipality may, by ordinance, restrict the drilling of new domestic water wells, except for property zoned agricultural, if the property line of the applicant is within three hundred feet of the municipal water distribution lines and the property is located within the exterior boundaries of the municipality.

B. No municipality may deny authorization for a new domestic water well permit to an applicant if the total cost to the applicant of extending the municipal water distribution line, meter and hook-up to the applicant's residence exceeds the cost of drilling a new domestic water well.

C. A municipality that fails to authorize the drilling of a new domestic water well shall provide domestic water service within ninety days to the property owner under the municipal water provider's usual and customary charges and rate schedules.

D. A municipality shall file with the state engineer its municipal ordinance restricting the drilling of new domestic water wells.

E. An applicant for a domestic water well located within the exterior boundaries of a municipality with a new domestic water well drilling ordinance shall obtain a permit to drill the well from the municipality subsequent to the state engineer's approval.

F. A municipality with a domestic water well drilling ordinance shall act upon a new domestic water well permit application within thirty days of receipt of the request.

G. A municipality shall notify the state engineer of all municipal permit denials for domestic well authorization.

H. An applicant may appeal the decision of the municipality to the district court in the county of the municipality.

I. Nothing in this section shall limit the authority of the state engineer to administer water rights as provided by law.

J. The state engineer shall not be liable for actions taken in accordance with a municipal ordinance authorizing restriction of domestic well drilling within the exterior boundaries of a qualified municipality."

## Section 2. 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 USE TO STATE ENGINEER--HEARINGS.--The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, are declared to be public waters and to belong to the public and to be 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 following provisions:

A. a person, firm or corporation desiring to use public waters described in this section for watering livestock; 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 on a form to be prescribed by him. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to so use the 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; and provided that as part of an application for livestock watering use on state or federal land, the applicant shall submit proof that he:

(1) is legally entitled to place his livestock on the state or federal land where the water is to be used; and

(2) 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; and

B. whenever a person, firm or corporation or the state desires to use not to exceed three acre-feet of public water described in this section 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 he finds that the proposed use will not permanently impair any existing rights of others, he shall grant the application. If he finds that the proposed use sought will permanently impair such rights, then there shall be advertisement and hearing as provided in the case of applications made under Section 72-12-3 NMSA 1978."

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SENATE BILL 602, AS AMENDED

# CHAPTER 208

**CHAPTER 208, LAWS 2001**

AN ACT

RELATING TO GAMING; AMENDING THE GAMING CONTROL ACT TO PROVIDE FOR GAMING MACHINES THAT ACCEPT CURRENCY; DECLARING AN EMERGENCY.

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) 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 or more than ninety-six percent;

I. meet the standards and specifications set by laws or regulations of the states of Nevada and New Jersey for gaming machines, whichever are more stringent;

J. offer only games authorized and examined by the board; and

K. display the gaming machine license issued for that machine in an easily accessible place, before and during the time that a machine is available for use."

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

immediately.

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WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 209

**CHAPTER 209, LAWS 2001**

AN ACTMAKING AN APPROPRIATION TO THE NEW MEXICO OFFICE OF INDIAN AFFAIRS FOR ANIMAL CONTROL IN THE COMMUNITY OF SHIPROCK.

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

## Section 1. APPROPRIATION.--Ten thousand dollars ($10,000) is appropriated from the general fund to the New Mexico office of Indian affairs for expenditure in fiscal year 2002 to contract for animal control in the community of Shiprock. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

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SENATE BILL 702, AS AMENDED

# CHAPTER 210

**CHAPTER 210, LAWS 2001**

AN ACT

RELATING TO HIGHWAYS; PROVIDING TERMS AND CONDITIONS FOR CERTAIN RIGHT-OF-WAY AGREEMENTS; DECLARING AN EMERGENCY.

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

## Section 1. A new section of Chapter 11 NMSA 1978 is enacted to read:

"LEGISLATIVE FINDINGS.--The legislature finds that:

A. due to the United States supreme court decision in *Strate v. A-1 Contractors*, there is uncertainty in the allocation of jurisdiction between the state and a tribe within rights of way granted to the state by a tribe, and all future road projects through tribal land are put in jeopardy of being postponed, delayed or left unresolved;

B. New Mexico has entered into agreements with the Navajo Nation through the state police and various counties to resolve issues of jurisdiction in law enforcement as well as many other areas;

C. New Mexico has traditionally negotiated right- of-way agreements for either a definite term or for the life of the highway;

D. the state land office has negotiated regarding easements permitted through state land, and the terms of those agreements are either for the life of the highway or for a fixed term that is not permitted to exceed thirty-five years;

E. the state highway and transportation department has negotiated and agreed to pay Indian nations for easements through Indian lands in the past;

F. New Mexico wants to foster and develop improved government-to-government relations between the Navajo Nation and the state; and

G. New Mexico desires to resolve the uncertainty presented by the *Strate* decision regarding jurisdiction within grants of rights of way by the Navajo Nation and to reconcile questions regarding the granting of rights of way through negotiation with the Navajo Nation."

## Section 2. A new section of Chapter 11 NMSA 1978 is enacted to read:

"AGREEMENTS RELATING TO JURISDICTION ON HIGHWAYS AND RIGHTS OF WAY THROUGH NAVAJO NATION TRIBAL LAND.--The agencies of the state that are involved in constructing highways, providing law enforcement or providing emergency services along the state highways that cross over Navajo Nation land shall initiate negotiations with the Navajo Nation for the purpose of entering into cooperative agreements, if none exist, to provide for:

A. the coordination of law enforcement and emergency services required to ensure the health and safety of travelers on the state highways on rights of way granted to the state highway and transportation department by the Navajo Nation; and

B. the areas of shared jurisdiction between the various state agencies and the Navajo Nation, the areas of jurisdiction that are the sole responsibility of the state agency and the areas of jurisdiction that are the sole responsibility of the Navajo Nation regarding the provision of services in the rights of way granted to the state highway and transportation department by the Navajo Nation."

## Section 3. A new Section 67-3-71.1 NMSA 1978 is enacted to read:

"67-3-71.1. RIGHT-OF-WAY AGREEMENTS--NAVAJO NATION--TERMS.--

A. When acquiring a right of way for a public highway from the Navajo Nation, the secretary or his designee shall negotiate the terms and conditions of the grant with a person designated by the Navajo Nation. New Mexico and the Navajo Nation, as sovereign governments, are primarily interested in cooperating with one another and coordinating services and functions so that resources of the state and the Navajo Nation are used efficiently and to the greatest benefit of all persons traveling on the state and federal highways crossing the Navajo Nation. Right-of-way agreements shall be developed from negotiations between the Navajo Nation and the state, and shall include the following:

(1) the term of a right of way, which in no case shall be construed to be a perpetual easement or a grant in fee simple but may be a term that does not extend beyond the life of the state highway, as long as the right of way is used by the state highway and transportation department for constructing, maintaining, rehabilitating, operating or administering the public highway;

(2) the terms and conditions for closing the public highway in the event of emergency, for public safety purposes or for religious, ceremonial or cultural purposes;

(3) the authority of the state highway and transportation department regarding the assignment or grant of easements through the right of way;

(4) the manner and timeliness required of notice from either the state highway and transportation department or the Navajo Nation regarding the initiation of negotiations to grant an easement to third parties or the initiation of construction, expansion or removal of facilities by or belonging to third parties within the easement;

(5) the terms and conditions regarding consideration for the right-of-way grant;

(6) the method of dispute resolution that will be used to resolve disputes arising between the state and the Navajo Nation regarding the agreement or issues arising from the implementation of the agreement;

(7) the areas of shared jurisdiction between the state highway and transportation department and the Navajo Nation, and the areas of jurisdiction that will be the sole responsibility of the state highway and transportation department or the Navajo Nation; and

(8) any other rights or responsibilities that the state or the Navajo Nation believe should be appurtenant to a grant of right of way by the Navajo Nation to the state highway and transportation department.

B. The state highway and transportation department shall negotiate the terms of the right-of-way agreement in good faith with the Navajo Nation and shall make all attempts to conclude the negotiations in a timely manner. If the state highway and transportation department and the Navajo Nation are unable to complete a right-of-way agreement within twelve months from the date of first contact between the state highway and transportation department and the Navajo Nation requesting negotiations regarding a right-of-way agreement as evidenced by the date of a letter sent by either the Navajo Nation or the state highway and transportation department requesting negotiation regarding a particular right of way, the parties, unless they agree otherwise, shall engage mediators to help facilitate the process of reconciling the issues in dispute, at the shared expense of both parties.

C. Nothing in a grant of right of way shall operate to diminish or be construed to operate to diminish the jurisdiction of the Navajo Nation over the right of way except as expressly provided in the grant of right of way to the department.

D. Nothing in a right-of-way agreement between the state highway and transportation department and the Navajo Nation shall be construed to be a waiver of the sovereign immunity of either the state or the Navajo Nation."

**Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 709, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 211

**CHAPTER 211, LAWS 2001**

AN ACT

RELATING TO PUBLIC FACILITIES; AMENDING THE TORT CLAIMS ACT TO PROVIDE FOR LIMITATION OF LIABILITY UNDER JOINT POWERS AGREEMENTS.

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

## Section 1. Section 41-4-4 NMSA 1978 (being Laws 1976, Chapter 58, Section 4, as amended) is amended to read:

"41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--AUTHORIZING EXCEPTIONS.--

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by the New Mexico Religious Freedom Restoration Act and by Sections 41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity provided in those sections does not waive immunity granted pursuant to the Governmental Immunity Act.

B. Unless an insurance carrier provides a defense, a governmental entity shall provide a defense, including costs and attorney fees, for any public employee when liability is sought for:

(1) any tort alleged to have been committed by the public employee while acting within the scope of his duty; or

(2) any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee under the substantive law of a jurisdiction other than New Mexico, including other states, territories and possessions and the United States of America, if the public employee was acting within the scope of his duty.

D. A governmental entity shall pay any settlement or any final judgment entered against a public employee for:

(1) any tort that was committed by the public employee while acting within the scope of his duty; or

(2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico that occurred while the public employee was acting within the scope of his duty.

E. A governmental entity shall have the right to recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his duty, the public employee acted fraudulently or

with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

F. Nothing in Subsections B, C and D of this section shall be construed as a waiver of the immunity from liability granted by Subsection A of this section or as a waiver of the state's immunity from suit in federal court under the eleventh amendment to the United States constitution.

G. The duty to defend as provided in Subsection B of this section shall continue after employment with the governmental entity has been terminated if the occurrence for which damages are sought happened while the public employee was acting within the scope of duty while the public employee was in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of his duty while in the employ of the governmental entity.

I. A jointly operated public school, community center or athletic facility that is used or maintained pursuant to a joint powers agreement shall be deemed to be used or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978.

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another governmental entity for operations, events or programs that include sports or athletic events or activities, child-care or youth programs, after-school or before-school activities or summer or vacation programs at the facility.

K. A fire station that is used for community activities pursuant to a joint powers agreement between the fire department or volunteer fire department and another governmental entity shall be deemed to be operated or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978. As used in this subsection, "community activities" means operations, events or programs that include sports or athletic events or activities, child care or youth programs, after-school or before-school activities, summer or vacation programs, health or education programs and activities or community events."

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# CHAPTER 212

**CHAPTER 212, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CHANGING CRITERIA REGARDING USE OF SAFETY BELTS AND CHILD PASSENGER RESTRAINTS.

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

## Section 1. Section 66-7-369 NMSA 1978 (being Laws 1983, Chapter 252, Section 2, as amended) is amended to read:

"66-7-369. CHILD PASSENGER RESTRAINT--ENFORCEMENT.--

A. A person shall not operate a passenger car, van or pickup truck in this state, except for an authorized emergency vehicle, public transportation or a school bus, unless all passengers less than eighteen years of age are properly restrained.

B. Each person less than eighteen years of age shall be properly secured in a child passenger restraint device or by a safety belt, unless all seating positions equipped with safety belts are occupied, as follows:

(1) children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;

(2) children one year of age through four years of age, regardless of weight, or children who weigh less than forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards; and

(3) children five years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Failure to be secured by a child passenger restraint device or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE CORPORATIONS AND TRANSPORTATION

COMMITTEE SUBSTITUTE FOR SENATE BILL 752

# CHAPTER 213

**CHAPTER 213, LAWS 2001**

AN ACT

RELATING TO GAME MANAGEMENT; PROVIDING FOR BIG GAME DEPREDATION DAMAGE STAMPS; PROVIDING FOR THE USE OF RECEIPTS TO ALLEVIATE DAMAGE CAUSED BY BIG GAME DEPREDATION; MAKING AN APPROPRIATION.

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:

"BIG GAME DEPREDATION DAMAGE STAMPREQUIRED--DISPOSITION OF RECEIPTS.--

A. Each license to hunt big game shall include a big game depredation damage stamp. The department of game and fish shall, by rule, set the fee for the stamp; provided that the fee shall not exceed five dollars ($5.00) for each resident license or ten dollars ($10.00) for each nonresident license.

B. No license to hunt big game shall be considered to be a proper and valid license unless it indicates, by a stamp, check off or other official mark, that the fee for the big game depredation damage stamp has been paid.

C. Revenues received by the department of game and fish from the sale of big game depredation damage stamps shall be deposited to the credit of the big game depredation damage fund."

## Section 2. A new section of Chapter 17 NMSA 1978 is enacted to read:

"BIG GAME DEPREDATION DAMAGE FUND--CREATION--EXPENDITURE.--

A. The "big game depredation damage fund" is created in the state treasury. The fund consists of appropriations made to the fund, revenues received by the department of game and fish from the sale of big game depredation damage stamps

and earnings from the investment of the fund. The fund shall be administered by the department and money in the fund is appropriated to the department to carry out the provisions of Subsection B of this section. Payments from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the director of the department or his authorized representative. Balances in the fund shall not revert to any other fund.

B. The department of game and fish shall, by rule, establish a program to correct damage to federal, state or private land caused by big game and to prevent such damage in the future. Pursuant to rules adopted by the department, expenditures from the big game depredation damage fund shall be made by the department to carry out the established program; provided that money in the fund shall not be expended for any administrative costs."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 758

# CHAPTER 214

**CHAPTER 214, LAWS 2001**

AN ACT

RELATING TO CRIME VICTIMS; AMENDING CERTAIN PROVISIONS OF THE CRIME VICTIMS REPARATION ACT.

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

## Section 1. Section 31-22-3 NMSA 1978 (being Laws 1981, Chapter 325, Section 3, as amended) is amended to read:

"31-22-3. DEFINITIONS.--As used in the Crime Victims Reparation Act:

A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;

B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received or which are readily available to him from:

(1) the offender;

(2) social security, medicare and medicaid;

(3) workers' compensation;

(4) proceeds of a contract of insurance payable to the victim;

(5) a contract providing prepaid hospital and other health care services or benefits for disability, except for the benefits of any life insurance policy;

(6) applicable indigent funds; or

(7) cash donations;

C. "commission" means the crime victims reparation commission;

D. "dependents" means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim's income at the time of his death or disability and includes the child of a victim born after his death or disability;

E. "family relationship group" means any person related to another person within the fourth degree of consanguinity or affinity;

F. "injury" means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior or ability to cope with the ordinary demands of life;

G. "permanent total disability" means loss of both legs or arms, loss of one leg and one arm, total loss of eyesight, paralysis or other physical condition permanently incapacitating the worker from performing any work at any gainful occupation;

H. "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents; and

I. "victim" means:

(1) a person in New Mexico who is injured or killed by any act or omission of any other person that is a crime enumerated in Section 31-22-8 NMSA 1978;

(2) a resident of New Mexico who is injured or killed by such a crime occurring in a state other than New Mexico if that state does not have an eligible crime victims compensation program; or

(3) a resident of New Mexico who is injured or killed by an act of international terrorism, as provided in 18 U.S.C. Section 2331."

## Section 2. Section 31-22-8 NMSA 1978 (being Laws 1981, Chapter 325, Section 8, as amended) is amended to read:

"31-22-8. CRIMES ENUMERATED.--

A. The crimes to which the Crime Victims Reparation Act applies and for which reparation to victims may be made are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

(1) arson resulting in bodily injury;

(2) aggravated arson;

(3) aggravated assault or aggravated battery;

(4) dangerous use of explosives;

(5) negligent use of a deadly weapon;

(6) murder;

(7) voluntary manslaughter;

(8) involuntary manslaughter;

(9) kidnapping;

(10) criminal sexual penetration;

(11) criminal sexual contact of a minor;

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

(13) abandonment or abuse of a child;

(14) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978; and

(15) aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978.

B. No award shall be made for any loss or damage to property."

## Section 3. Section 31-22-14 NMSA 1978 (being Laws 1981, Chapter 325, Section 14, as amended) is amended to read:

"31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--

PRELIMINARY AWARD.--

A. No order for the payment of reparation shall be made unless application has been made within two years after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 31-22-8 NMSA 1978 that had been reported to the police within thirty days after its occurrence unless a longer period is allowed pursuant to Subsection F of this section. In no event shall reparation be given unless application has been made within two years after the injury or death, except for minors who are victims of criminal activity under the provisions of Section 30-6-1 NMSA 1978, regarding abandonment or abuse of a child, Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, or Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor. The date of incident for minors who are victims of these types of criminal activity shall be the date the victim attains the age of eighteen years or the date that the criminal activity is reported to a law enforcement agency, whichever occurs first.

B. No award of reparation shall be in excess of twenty thousand dollars ($20,000) per victim except that the commission may award up to an additional thirty thousand dollars ($30,000) for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a permanent total disability. The extraordinary losses compensated may include:

(1) loss of wages;

(2) the cost of home health care;

(3) the cost of making a home or automobile accessible;

(4) the cost of training in the use of special application; or

(5) job training.

C. Except as provided by Subsection E of this section, the commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States or the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation Act. If the claimant

receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made, the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

D. If the claimant receives an award of reparation from the commission and also receives an award pursuant to a civil judgment arising from a criminal occurrence for which a reparation award was paid, the claimant shall refund to the state the amount of the reparation paid to him. The commission may negotiate a reasonable settlement regarding repayment of the reparation award if special circumstances exist.

E. If it appears that a final award of reparation will be made by the commission, a preliminary award may be authorized by the director of the commission or the commission's designee when the commission chairman concurs. The amount of the preliminary award shall be deducted from any final award made by the commission.

F. The commission may grant a waiver to the requirement in Subsection A of this section that a crime be reported to the police within thirty days of its occurrence for:

(1) a victim of domestic violence or sexual assault if reported to the police within one hundred eighty days of the occurrence; or

(2) a crime against a child that was reported within thirty days of its occurrence to the children, youth and families department, a domestic violence or sexual assault service provider, a teacher or a health care provider; provided that a police report shall be filed before the commission approves payment."

## Section 4. Section 31-22-18 NMSA 1978 (being Laws 1981, Chapter 325, Section 18, as amended) is amended to read:

"31-22-18. CONFIDENTIALITY OF RECORDS, REPORTS AND CLAIM FILES.--Any record or report acquired by the commission, the confidentiality of which is protected by law, rule or regulation, shall be disclosed only under the same terms and conditions which protected its confidentiality prior to such acquisition. The claim file, which contains confidential reports, records and personal information, shall not be released."

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SENATE BILL 769

# CHAPTER 215

**CHAPTER 215, LAWS 2001**

AN ACT

RELATING TO DOMESTIC AFFAIRS; AMENDING A CERTAIN SECTION OF THE UNIFORM PARENTAGE ACT.

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

## Section 1. Section 40-11-15 NMSA 1978 (being Laws 1986, Chapter 47, Section 15, as amended) is amended to read:

"40-11-15. JUDGMENT OR ORDER.--

A. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

B. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued.

C. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

(1) whether the alleged or presumed father has absconded or could not be located; and

(2) whether equitable defenses are applicable.

D. A determination of parentage and adjudication of support is binding on:

(1) a signatory on an acknowledgment of paternity;

(2) a nonresident party subject to the court's jurisdiction pursuant to Section 40-6A-201 NMSA 1978; and

(3) the child, if:

(a) the determination was based on an acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

(b) the child was a party or was represented in the proceeding by a guardian ad litem;

(c) there is a stipulation or admission in the final order that the parties are the parents of the child; or

(d) in a proceeding to dissolve a marriage or establish support, a final order expressly identified the child as a "child of the marriage", "issue of the marriage", "child of the parties" or similar words that indicate the parties are the parents of the child and, if applicable, the court had personal jurisdiction over any nonresident party pursuant to Section 40-6A-201 NMSA 1978.

E. Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, nothing in this section shall deprive a state agency of its right to reimbursement from an appropriate party should the child be a past or future recipient of public assistance.

F. In determining the amount to be paid by a parent for support of the child, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines of Section 40-4-11.1 NMSA 1978.

G. Bills for pregnancy, childbirth and genetic testing are admissible as evidence without requiring

third-party foundation testimony and constitute prima facie evidence of amounts incurred."

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SENATE BILL 800, AS AMENDED

# CHAPTER 216

**CHAPTER 216, LAWS 2001**

AN ACT

RELATING TO LICENSING; AUTHORIZING THE REQUIREMENT OF PROFESSIONAL LIABILITY INSURANCE AS A CONDITION OF ISSUANCE AND RENEWAL OF A REAL ESTATE SALESPERSON'S OR BROKER'S LICENSE; ENACTING A NEW SECTION OF THE NMSA 1978.

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

## Section 1. A new Section 61-29-4.2 NMSA 1978 is enacted to read:

"61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--PROFESSIONAL LIABILITY INSURANCE--MAXIMUM COST OF PREMIUM--MINIMUM COVERAGE.--

A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that he has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.

B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed one hundred fifty dollars ($150) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars ($100,000) for an individual claim and not less than a five hundred thousand dollar ($500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars ($1,000).

C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.

D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 805, AS AMENDED

# CHAPTER 217

**CHAPTER 217, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING A SECTION OF THE PROPERTY TAX CODE TO EXEMPT NOT-FOR-PROFIT MUSEUM PROPERTY FROM THE PROPERTY TAX.

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

## Section 1. Section 7-36-7 NMSA 1978 (being Laws 1973, Chapter 258, Section 15, as amended) is amended to read:

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

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

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

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but:

(a) this does not include property all or a part of the value of which is exempt because of the application of the veteran, disabled veteran or head-of-family exemption;

(b) this provision does not excuse an owner from obligations to report his property as required by regulation of the department adopted under Section 7-38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978; and

(c) this includes property of a museum that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) is used to provide educational services; and 3) grants free admission to each student who attends a public school in the county in which the museum is located;

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

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

value, of the salable mineral extracted from or processed by the mineral property is copper."

**Section 2. APPLICABILITY.--The provisions of this act apply to property valued for property taxation purposes for the 2002 property tax year and subsequent tax years.**

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SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 858, AS AMENDED

# CHAPTER 218

**CHAPTER 218, LAWS 2001**

AN ACT

RELATING TO CIVIL ACTIONS; PROVIDING FOR PROTECTION OF CONDUCT IN FURTHERANCE OF A PERSON'S EXERCISE OF THE RIGHT TO FREE SPEECH AND TO PARTICIPATE IN THE QUASI-JUDICIAL PROCESSES OF GOVERNMENT IN CONNECTION WITH ISSUES OF PUBLIC CONCERN; ESTABLISHING PROCEDURES FOR EARLY DISMISSAL OR TERMINATION OF ABUSIVE LITIGATION, AWARD OF COSTS AND ATTORNEY FEES; ENACTING SECTIONS OF THE NMSA 1978.

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

**Section 1. FINDINGS AND PURPOSE.--The legislature declares that it is the public policy of New Mexico to protect the rights of its citizens to participate in quasi-judicial proceedings before local and state governmental tribunals. Baseless civil lawsuits seeking or claiming millions of dollars have been filed against persons for exercising their right to petition and to participate in quasi-judicial proceedings before governmental tribunals. Such lawsuits can be an abuse of the legal process and can impose an undue financial burden on those having to respond to and defend such lawsuits and may chill and punish participation in public affairs and the institutions of democratic government. These lawsuits should be subject to prompt dismissal or judgment to prevent the abuse of**

**the legal process and avoid the burden imposed by such baseless lawsuits.**

## Section 2. SPECIAL MOTION TO DISMISS UNWARRANTED OR SPECIOUS LAWSUITS--PROCEDURES--SANCTIONS--SEVERABILITY.--

A. Any action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 241, AS AMENDED

# CHAPTER 219

**CHAPTER 219, LAWS 2001**

AN ACT

RELATING TO FIREARMS; ENACTING THE CONCEALED HANDGUN CARRY ACT; REQUIRING A LICENSE TO CARRY A CONCEALED LOADED HANDGUN; CREATING A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

## Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Concealed Handgun Carry Act".

## Section 2. DEFINITIONS.--As used in the Concealed Handgun Carry Act:

A. "applicant" means a person seeking a license to carry a concealed handgun;

B. "caliber" means the diameter of the bore of the handgun;

C. "category" means whether a handgun is semi-automatic or not semi-automatic;

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, 2002, the department is authorized to issue concealed handgun licenses to qualified applicants. Concealed handgun licenses shall be valid for a period of one year 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 if the applicant:

(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-one 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 if the applicant has 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 or if the applicant has been convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or

drugs, the possession or abuse of a controlled substance or assault, battery or battery against a household member.

## Section 5. APPLICATION FORM--SCREENING OF APPLICANTS--FEE--LIMITATIONS ON LIABILITY.--

A. Effective July 1, 2001, 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 the following:

(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 the following items 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 the 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 6 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 sixty-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 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 the following:

(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 the 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 loses his concealed handgun license or it is 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 proficiency 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.--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.**

**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. 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. provision of authority for a county or municipality to disallow the carrying of a concealed handgun within the limits of the county or municipality;

E. provision of authority for the transfer of a concealed handgun license issued by another state; and

F. creation of a sequential numbering system for all concealed handgun licenses issued by the department and display of numbers on issued concealed handgun licenses.

## Section 12. 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 13. Section 30-7-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 7-2, as amended) is amended to read:

"30-7-2. UNLAWFUL CARRYING OF A DEADLY WEAPON.--

A. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

(1) in the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;

(2) in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property;

(3) by a peace officer in accordance with the policies of his law enforcement agency who is certified pursuant to the Law Enforcement Training Act;

(4) by a peace officer in accordance with the policies of his law enforcement agency who is employed on a temporary basis by that agency and who has successfully completed a course of firearms instruction prescribed by the New Mexico law enforcement academy or provided by a certified firearms instructor who is employed on a permanent basis by a law enforcement agency; or

(5) by a person in possession of a valid concealed handgun license issued to him by the department of public safety pursuant to the provisions of the Concealed Handgun Carry Act.

B. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

C. Whoever commits unlawful carrying of a deadly weapon is guilty of a petty misdemeanor."

**Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 277

# CHAPTER 220

**CHAPTER 220, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; CREATING A JOINT INTERIM LEGISLATIVE REDISTRICTING COMMITTEE; DECLARING AN EMERGENCY.

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

**Section 1. REDISTRICTING COMMITTEE CREATED--TERMINATION.--There is created a joint interim legislative committee, which shall be known as the "redistricting committee".**

**The committee shall function from the date of its appointment until January 14, 2002.**

**Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--The redistricting committee shall be composed of sixteen members. Eight members of the house of representatives shall be appointed by the speaker of the house of representatives and eight members of the senate shall be appointed by the committees' committee of the senate, or, if the senate appointment is made in the interim, by the president pro tempore of the senate after consultation and agreement of a majority of the members of the committees' committee. 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; provided that in no event shall either of the parties 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. One co-chairman shall be selected by the speaker of the house of representatives and one co-chairman by the committees' committee, or, if the senate appointment is made in the interim, by the president pro tempore of the senate after consultation and agreement of a majority of the members of the committees' committee. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.**

**Section 3. DUTIES.--**

A. After appointment of its members, the redistricting committee shall hold one organizational meeting to develop a work plan and budget for its interim tasks. 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 committee shall:

(1) examine the statutes, constitutional provisions, rules and court decisions governing redistricting in New Mexico;

(2) use the guidelines for redistricting adopted by the New Mexico legislative council so that the procedures, criteria and standards for redistricting plans meet statutory and constitutional requirements;

(3) conduct public hearings to provide a forum for public involvement in the redistricting process; and

(4) recommend appropriate redistricting legislation to the forty-fifth legislature.

B. In developing redistricting plans for congressional, legislative, public regulation commission, state board of education and magistrate court districts, the committee shall use only one version of federal census bureau data if the census bureau issues more than one version of data for the 2000 decennial census.

**Section 4. SUBCOMMITTEES.--Subcommittees of the redistricting committee shall be created only by majority vote of all members appointed to the committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the committee.**

**Section 5. REPORT.--The redistricting committee shall recommend proposed redistricting plans to a special session of the forty-fifth legislature called for the purpose of redistricting congressional, legislative, public regulation commission, state board of education and selected magistrate court districts.**

**Section 6. STAFF.--The legislative council service shall provide staff for the redistricting committee.**

**Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 306, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 221

**CHAPTER 221, LAWS 2001**

AN ACT

RELATING TO WATER; PROVIDING ACEQUIA AND COMMUNITY DITCH ASSOCIATIONS THE POWER TO BORROW.

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

## Section 1. Section 72-14-29 NMSA 1978 (being Laws 1957, Chapter 80, Section 1) is amended to read:

"72-14-29. LOANS FROM NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND.--The interstate stream commission is authorized to make loans, on such terms and for such length of time not exceeding fifty years as it shall deem proper, to irrigation and similar districts organized under the laws of the state, to acequia and community ditch associations and to municipalities and other political subdivisions of the state, out of any unpledged funds in the New Mexico irrigation works construction fund for any of the following purposes:

A. doing all engineering and design work necessary for a project;

B. construction of a project; or

C. rehabilitation of any existing project."

## Section 2. Section 73-2-28 NMSA 1978 (being Laws 1965, Chapter 145, Section 1) is amended to read:

"73-2-28. ACEQUIA AND COMMUNITY DITCH ASSOCIATIONS.--Acequia and community ditch associations are political subdivisions of this state. As political subdivisions of the state, acequia and community ditch associations are authorized to receive loans from the interstate stream commission from the New Mexico irrigation works construction fund."

## Section 3. Section 73-9-1 NMSA 1978 (being Laws 1919, Chapter 41, Section 1) is amended to read:

"73-9-1. ORGANIZERS' QUALIFICATIONS--EXEMPT AREAS--EXCEPTION.--

A. Whenever a majority of the resident freeholders owning more than one-half of the lands, or the evidence of title to the lands, in any district in the state desire to provide for the irrigation of the lands, they may propose the organization of an irrigation

district under the provisions of Chapter 73, Article 9 NMSA 1978. When so organized, each district shall have the powers conferred by law upon irrigation districts. Provided that where ditches, canals or reservoirs were constructed before March 18, 1909, those ditches, canals, reservoirs and franchises and the lands irrigated from them shall be exempt from the operation of Chapter 73, Article 9 NMSA 1978, unless the district is formed to purchase, acquire or lease the ditches, canals, reservoirs and their franchises; or unless a statement, signed by at least four-fifths of the owners of any such ditch, canal or reservoir and of the franchises and water rights of them and of the lands irrigated from them, is filed with the board of county commissioners of each county in which the ditch, canal, reservoir and lands are situate, giving their consent that the ditch, canal, reservoir, franchises, water rights and lands may be included in one or more irrigation districts organized under the provisions of Chapter 73, Article 9 NMSA 1978, which statement shall be recorded in the office of the county clerk of the county.

B. Nothing in this section shall be construed to affect the status of an acequia or community ditch association as a political subdivision of the state if the acequia or community ditch association was established prior to the formation of the irrigation district and has been governed by officers elected pursuant to Chapter 73, Article 2 or 3 NMSA 1978 continuously since the formation of the irrigation district."

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HOUSE BILL 358, AS AMENDED

# CHAPTER 222

**CHAPTER 222, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CHANGING CERTAIN PROVISIONS DESCRIBING UNLAWFUL ACTS OF MANUFACTURERS, DISTRIBUTORS OR THEIR REPRESENTATIVES.

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

## Section 1. Section 57-16-5 NMSA 1978 (being Laws 1973, Chapter 6, Section 5, as amended) is amended to read:

"57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--REPRESENTATIVES.--It is unlawful for any manufacturer, distributor or representative to:

A. coerce or attempt to coerce a dealer to order or accept delivery of a motor vehicle, appliances, equipment, parts or accessories therefor or any other commodity that the motor vehicle dealer has not voluntarily ordered;

B. coerce or attempt to coerce a dealer to order or accept delivery of a motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer;

C. coerce or attempt to coerce a dealer to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

D. refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to a motor vehicle dealer having a franchise or contractual arrangement for the retail sale of motor vehicles sold or distributed by the manufacturer, distributor or representative, those motor vehicles, parts or accessories covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor or representative to be available for immediate delivery; provided, however, the failure to deliver a motor vehicle, parts or accessories shall not be considered a violation of Chapter 57, Article 16 NMSA 1978 if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or representative or an agent thereof has no control;

E. coerce or attempt to coerce a motor vehicle dealer to enter into an agreement with the manufacturer, distributor or representative or to do any other act prejudicial to the dealer by threatening to cancel a franchise or a contractual agreement existing between the manufacturer, distributor or representative and the dealer; provided, however, that notice in good faith to a motor vehicle dealer of the dealer's violation of the terms or provisions of the franchise or contractual agreement does not constitute a violation of Chapter 57, Article 16 NMSA 1978;

F. terminate or cancel the franchise or selling agreement of a dealer without due cause. Due cause means a material breach by a dealer, due to matters within the dealer's control, of a lawful provision of a franchise or selling agreement. As used in this subsection, "material breach" means a contract violation that is substantial and significant. In determining whether due cause exists under this subsection, the court shall take into consideration only the dealer's sales in relation to the business available to the dealer; the dealer's investment and obligations; injury to the public welfare; the adequacy of the dealer's sales and service facilities, equipment and parts; the qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles; the dealer's failure to comply with the requirements of the franchise; and the harm to the manufacturer or distributor. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail of the

termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for termination or cancellation; and the manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail at least sixty days before the contractual term of his franchise or selling agreement expires that it will not be renewed, stating the specific grounds for nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty days following the written notice. During the sixty-day period, either party may in appropriate circumstances petition a district court to modify the sixty-day stay or to extend it pending a final determination of proceedings on the merits. The court may grant preliminary and final injunctive relief;

G. use false, deceptive or misleading advertising in connection with his business;

H. offer to sell or to sell a motor vehicle to a motor vehicle dealer in this or any other state of the United States at a lower actual price than the actual price offered to any other motor vehicle dealer in this state for the same model vehicle similarly equipped or to utilize any device, including sales promotion plans or programs that result in a lesser actual price; provided, however, the provisions of this subsection do not apply to sales to a motor vehicle dealer for resale to a unit of the United States government, the state or its political subdivisions; and provided, further, the provisions of this subsection do not apply to sales to a motor vehicle dealer of a motor vehicle ultimately sold, donated or used by the dealer in a driver education program; and provided, further, that the provisions of this subsection do not apply if a manufacturer, distributor or representative offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. As used in this section, "actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor or representative, whether paid to the dealer or the ultimate purchaser of the vehicle. This provision does not apply to sales by the manufacturer, distributor or representatives to the United States government or its agencies. The provisions of this subsection dealing with vehicle prices in another state and defining actual price do not apply to a manufacturer or distributor if all of the manufacturer's or distributor's dealers within fifty miles of a neighboring state are given all cash or credit incentives available in the neighboring state, whether the incentives are offered by the manufacturer or distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle;

I. willfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of the discrimination may be to lessen substantially competition or tend to create a monopoly or to injure or destroy the business of a competitor;

J. offer to sell or to sell parts or accessories to a motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a comparable part or accessory at a lower actual price than the actual price charged to

any other motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, in those cases where motor vehicle dealers have a franchise to operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing in this section prevents a manufacturer, distributor or representative from selling to the motor vehicle dealer who operates and services as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

K. prevent or attempt to prevent by contract or otherwise a motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, if the dealer at all times meets any reasonable capital standards agreed to between the dealer and the manufacturer, distributor or representative, and if the change by the dealer does not result in a change in the executive management control of the dealership;

L. prevent or attempt to prevent by contract or otherwise a motor vehicle dealer or an officer, partner or stockholder of a motor vehicle dealer from selling or transferring a part of the interest of any of them to any other person or party; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or representative except that the manufacturer, distributor or representative shall not withhold consent to the sale, transfer or assignment of the franchise to a qualified buyer capable of being licensed in New Mexico and who meets the manufacturer's or distributor's uniformly applied requirement for appointment as a dealer. Uniform application shall not prevent the application of a separate standard of consent for sale, transfer or assignment to minority or women dealer candidates, and shall not require the application of an identical standard to all persons in all situations. The requirement of uniform application shall be met if the manufacturer applies the same set of standards, which takes into account business performance and experience, financial qualifications, facility requirements and other relevant characteristics; provided that, if two dealers, persons or situations are identical, given the characteristics considered in the standards, the two dealers, persons or situations shall be treated identically, except as provided in this subsection. Upon request, a manufacturer or distributor shall provide its dealer with a copy of the standards that are normally relied upon by the manufacturer or distributor to evaluate a proposed sale, transfer or assignment. A manufacturer, distributor or representative shall send a letter by certified mail approving or withholding consent within sixty calendar days of receiving the completed application forms and related information requested by a manufacturer or distributor as provided below. A manufacturer, distributor or representative shall send its existing motor vehicle dealer the necessary application forms and identify the related information required within twenty calendar days of receiving written notice from the existing motor vehicle dealer of the proposed sale or transfer. No manufacturer, distributor or representative shall require any information not requested in the twenty-day period, and submission of the information

requested within that period together with a completed form of the application provided shall constitute a completed application form. Any request for consent shall be deemed granted, and the manufacturer, distributor or representative shall be estopped from denying the consent, if the consent has not been expressly withheld during the applicable sixty-day period;

M. obtain money, goods, services, anything of value or any other benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and the other person, unless the benefit is promptly accounted for and transmitted to the motor vehicle dealer;

N. require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve any person from liability imposed by Chapter 57, Article 16 NMSA 1978;

O. require any motor vehicle dealer to provide installment financing with a specified financial institution;

P. establish an additional franchise, including any franchise for a warranty or service facility outside of the relevant market area of the dealer establishing the facility, but excluding the relocation of existing franchises, for the same line-make in a relevant market area where the same line-make is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer; provided, however, that the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer. The sole fact that the manufacturer, distributor or representative desires further penetration of the market is not grounds for establishing an additional franchise; provided, further, that the manufacturer, distributor or representative shall give a ninety-day written notice by registered mail to all same line-make dealers in a relevant market area of its intention to establish an additional franchise;

Q. offer to sell, lease or to sell or lease any new motor vehicle to a person, except a distributor, at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in a lower actual price;

R. sell, lease or provide motorcycles, parts or accessories to any person not a dealer or distributor for the line-make sold, leased or provided. The provisions of this subsection does not apply to sales, leases or provisions of motor vehicles, parts or accessories by a manufacturer, distributor or representative to the United States government or its agencies or the state or its political subdivisions;

S. offer any finance program, either directly or through any affiliate, based on the physical location of the selling dealer or the residence of the buyer. The provisions of this subsection do not apply to a manufacturer or distributor that has no dealer within fifty miles of a state line or if all of the manufacturer's or distributor's

dealers within that fifty miles are given all cash or credit incentives available in the neighboring state, whether the incentives are offered by the manufacturer or the distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle;

T. force a dealer to sell or relocate a franchise with another manufacturer located at the same physical location or consider the existence of another line-make at a dealership for product allocation, successorship, location approval and capitalization; provided that a manufacturer or distributor may require:

(1) that the dealer meet the manufacturer's capitalization requirements;

(2) that the dealer meet the manufacturer's facilities requirements; and

(3) that the dealer not have committed fraudulent acts;

U. enforce a right of first refusal or option to purchase the dealership by a manufacturer or distributor or to require a dealer to grant a right or option to a manufacturer or distributor;

V. be licensed as a dealer or perform warranty or other service or own an interest, directly or indirectly, in a person licensed as a dealer or performing warranty or other service; provided that a manufacturer or distributor may own a person licensed as a dealer for a reasonable time in order to dispose of an interest acquired as a secured party or as part of a dealer development program;

W. fail to recognize and approve the transfer of a dealership to a person named as a successor, donee, beneficiary or devisee in a valid testamentary or trust instrument; provided that a manufacturer or distributor may impose standards or criteria used in a transfer;

X. impose capitalization requirements not necessary to assure that the dealer can meet its financial obligations; or

Y. compel a dealer through a finance subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements or directly or indirectly to terminate a dealer, except as allowed by Subsection F of this section, through the actions of a finance subsidiary of the manufacturer or distributor. This subsection shall not limit the right of a financing entity to engage in business practices in accordance with the usage of the trade in which it is engaged."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 364, AS AMENDED

# CHAPTER 223

**CHAPTER 223, LAWS 2001**

AN ACT

RELATING TO HEALTH CARE; AMENDING THE NEW MEXICO INSURANCE CODE TO PROVIDE FOR MULTIPLE-EMPLOYER HEALTH CARE SELF-INSURANCE.

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

## Section 1. Section 59A-15-20 NMSA 1978 (being Laws 1991, Chapter 125, Section 26) is amended to read:

"59A-15-20. MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS--

REGULATIONS.--

A. The superintendent, after a public hearing, shall, no later than October 1, 2001, adopt reasonable rules and regulations governing any employee welfare benefit plan that is a multiple-employer welfare arrangement. The regulations at a minimum shall provide for:

(1) registration of all such plans and standards requiring the maintenance of specified levels of reserves;

(2) minimum solvency requirements;

(3) accounting standards and reporting requirements;

(4) standards for appropriate investment of assets;

(5) standards for excess or stop-loss insurance coverage;

(6) specified levels of contributions that any such plan, or any trust established under such a plan, must meet;

(7) methods for equitable assessment of member employers for any funding shortfall; and

(8) standards for adequate governance.

B. The rules and regulations shall provide for compliance with the Patient Protection Act and provide standards for minimum benefits, including coverage of all benefits required of health insurance under other sections of the Insurance Code.

C. The rules and regulations shall provide that all employees or association members shall be eligible for participation in the plan.

D. Any standards for determining or assuring solvency shall not be applicable to plans that are fully insured by carriers authorized to transact insurance in New Mexico. If at any time a plan does not meet the standards established, the superintendent may take action pursuant to the Insurance Code."

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HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 406

# CHAPTER 224

**CHAPTER 224, LAWS 2001**

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING THAT THE ADULT PAROLE BOARD SHALL ALLOW A VICTIM OF AN OFFENDER'S CRIME OR A FAMILY MEMBER OF THE VICTIM TO BE PRESENT DURING THE OFFENDER'S PAROLE HEARING; PROVIDING THE VICTIM OR A FAMILY MEMBER OF THE VICTIM WITH AN OPPORTUNITY TO SPEAK TO THE PAROLE BOARD DURING THE HEARING; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 31-21-25 NMSA 1978 (being Laws 1975, Chapter 194, Section 4, as amended) is amended to read:

"31-21-25. POWERS AND DUTIES OF THE BOARD.--

A. The parole board shall have the powers and duties of the former state board of probation and parole pursuant to Sections 31-21-6 and 31-21-10 through 31-21-17 NMSA 1978 and such additional powers and duties relating to the parole of adults as are enumerated in this section.

B. The parole board shall have the following powers and duties to:

(1) grant, deny or revoke parole;

(2) conduct or cause to be conducted such investigations, examinations, interviews, hearings and other proceedings as may be necessary for the effectual discharge of the duties of the board;

(3) summon witnesses, books, papers, reports, documents or tangible things and administer oaths as may be necessary for the effectual discharge of the duties of the board;

(4) maintain records of its acts, decisions and orders and notify each corrections facility of its decisions relating to persons who are or have been confined therein;

(5) adopt an official seal of which the courts shall take judicial notice;

(6) employ such officers, agents, assistants and other employees as may be necessary for the effectual discharge of the duties of the board;

(7) contract for services, supplies, equipment, office space and such other provisions as may be necessary for the effectual discharge of the duties of the board; and

(8) adopt such rules and regulations as may be necessary for the effectual discharge of the duties of the board.

C. The parole board shall provide a prisoner or parolee with a written statement of the reason or reasons for denying or revoking parole.

D. The parole board shall adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee.

E. When the parole board conducts a parole hearing for an offender, and upon request of the victim or family member the board shall allow the victim of the offender's crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the board during the hearing in public or private, the board shall grant that request. As used in this subsection, "family member of the victim" means a mother, father, sister, brother, child or spouse of the victim or a person who has custody of the victim."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 500, AS AMENDED

# CHAPTER 225

**CHAPTER 225, LAWS 2001**

AN ACT

RELATING TO HEALTH FACILITY RECEIVERSHIPS; EXPANDING THE DEFINITION OF "HEALTH FACILITY" AS USED IN THE HEALTH FACILITY RECEIVERSHIPACT; PROVIDING FOR COURT LIMITATION OF AUTHORITY OF DEPUTY RECEIVER; AUTHORIZING RULEMAKING.

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

## Section 1. Section 24-1E-1 NMSA 1978 (being Laws 1996, Chapter 35, Section 4) is amended to read:

"24-1E-1. SHORT TITLE.--Chapter 24, Article 1E NMSA 1978 may be cited as the "Health Facility Receivership Act"."

## Section 2. Section 24-1E-2 NMSA 1978 (being Laws 1996, Chapter 35, Section 5) is amended to read:

"24-1E-2. DEFINITIONS.--As used in the Health Facility Receivership Act:

A. "department" means the department of health;

B. "health facility" means:

(1) a health facility as defined in Subsection D of Section 24-1-2 NMSA 1978 other than a child-care center or facility, whether or not licensed by the state of New Mexico; or

(2) a community-based program providing services funded, directly or indirectly, in whole or in part, by the home and community-based medicaid waiver program or by developmental disabilities, traumatic brain injury or other medical disabilities programs;

C. "person" includes a natural person and any other form of entity recognized by law;

D. "receiver" means the secretary, upon appointment pursuant to the Health Facility Receivership Act; and

E. "secretary" means the secretary of health."

## Section 3. Section 24-1E-4 NMSA 1978 (being Laws 1996, Chapter 35, Section 7) is amended to read:

"24-1E-4. HEARING ON PETITION.--

A. Except in the case of an ex parte hearing under the Receivership Act, the district court shall hold a hearing on the petition within ten days after the petition is filed or as soon thereafter as practicable. The health facility shall be given notice of the hearing at least five days before the hearing date.

B. In the case of an ex parte hearing under the Receivership Act, the district court may enter an order appointing the secretary as temporary receiver, with all the rights and responsibilities of a receiver, for ten days or until a hearing can be held on the petition.

C. Following hearing, the district court shall appoint the secretary as receiver if it finds that any of the conditions of Subsection A of Section 24-1E-3 NMSA 1978 exists.

D. Following any regular or ex parte hearing, the district court may appoint a qualified person, experienced in health facility management, to act as deputy receiver. The person appointed as deputy receiver shall be free of conflict of interest with the health facility that is in receivership.

E. The receiver's bond shall be deemed satisfied by his bond under the Surety Bond Act. If a deputy receiver is not a public employee covered under the Surety Bond Act, he shall obtain a fidelity and performance bond in an amount determined by the court. The cost of the bond shall be paid from the receivership estate."

## Section 4. A new section of the Health Facility Receivership Act is enacted to read:

"RULEMAKING.--No later than December 31, 2001, the secretary shall promulgate rules to implement the provisions of the Health Facility Receivership Act.

As a minimum, the rules shall establish:

A. conditions under which a petition for a health facility receivership may be filed;

B. the duties, authority and responsibilities of

the deputy receiver and the health facility;

C. the specific authority of the deputy receiver to impose financial conditions and requirements on the health facility;

D. minimum qualifications for deputy receivers; and

E. provisions that will be requested for inclusion in district court orders entered pursuant to the Health Facility Receivership Act."

## Section 5. A new section of the Health Facility Receivership Act is enacted to read:

"FACILITY MAY SEEK MODIFICATION OR TERMINATION.--A health facility under receivership may petition the court at any time for modification or termination of the order of receivership."

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HOUSE BILL 742, AS AMENDED

# CHAPTER 226

**CHAPTER 226, LAWS 2001**

AN ACT

RELATING TO THE GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED; CREATING THE HANDICAPPED HOUSING MODIFICATION PERMANENT FUND; ESTABLISHING THE RESIDENTIAL ACCESSIBILITY MODIFICATION PROGRAM; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

## Section 1. A new section of Chapter 28, Article 10 NMSA 1978 is enacted to read:

"HANDICAPPED HOUSING MODIFICATION PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

A. The "handicapped housing modification permanent fund" is created in the state treasury. The fund shall consist of money appropriated to the fund and any gifts, donations or bequests made to the fund. 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, and earnings from investment of the fund shall be credited to the fund. Money in the fund shall not revert at the end of any fiscal year and

shall not be expended for any purpose, except that an annual distribution shall be made to the fund for the handicapped in accordance with Subsection B of this section.

B. On July 1 of fiscal year 2002 and on July 1 of each fiscal year thereafter, an annual distribution shall be made from the handicapped housing modification permanent fund to the fund for the handicapped in an amount equal to three hundred thousand dollars ($300,000) until that amount is less than an amount equal to five percent of the average of the year-end market values of the handicapped housing modification permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be five percent of the average of the year-end market values of the handicapped housing modification permanent fund for the immediately preceding five calendar years."

## Section 2. Section 28-10-2 NMSA 1978 (being Laws 1973, Chapter 349, Section 2, as amended) is amended to read:

"28-10-2. GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED--POWERS AND DUTIES.--The governor's committee on concerns of the handicapped shall establish and maintain a comprehensive statewide program designed to encourage and promote attention to the concerns of the training and employment of the handicapped persons in this state. To further this purpose, the committee shall:

A. cooperate with the president's committee on employment of the handicapped and other federal efforts on behalf of handicapped concerns;

B. cooperate with all employers and training leaders, both public and private, in locating or developing employment opportunities for the handicapped;

C. encourage and assist in the organization and operation of committees at the community level, the chairmen of which shall automatically become members of the advisory council authorized under Section 28-10-4 NMSA 1978;

D. assist state, local and federal agencies to coordinate their activities to secure maximum utilization of funds and efforts that aid in the training and employment of the handicapped;

E. enter into written agreements with public and private employers, unions and rehabilitation agencies for the purpose of achieving the maximum employment of handicapped individuals;

F. inform handicapped job seekers of specific facilities available to assist them in locating suitable training and employment;

G. conduct educational programs via publications and other means to acquaint the public, the legislature and the governor with the abilities and the accomplishments of handicapped persons;

H. promote the elimination of architectural barriers in construction so as to make buildings used by the public readily accessible to and usable by persons with physical limitations;

I. make such rules as it determines advisable for the conduct of its own business;

J. designate standing subcommittees related to state planning, community organization, public relations and information, legislative action, federal coordination, state coordination, youth, medical rehabilitation, employers and awards;

K. designate such special subcommittees as necessary for undetermined periods to carry out special short-term programs;

L. establish and administer a residential accessibility modification program to assist low-income handicapped persons to make accessibility modifications to residential dwellings as needed to enable those handicapped persons to remain in their homes or to leave institutional settings and be reintegrated into the community; and

M. give advice and testimony on handicapped concerns to the governor or the legislature or any committee established by them, upon request."

## Section 3. Section 28-10-5 NMSA 1978 (being Laws 1973, Chapter 349, Section 5) is amended to read:

"28-10-5. FUND FOR THE HANDICAPPED CREATED.--

A. There is created in the state treasury a "fund for the handicapped". All funds, gifts, donations, bequests and other income of the governor's committee on concerns of the handicapped shall be deposited by the director of the committee in that fund and shall be available to the committee to further the purpose of Sections 28-10-1 through 28-10-8.1 NMSA 1978 or for the purposes stated by the donor or grantor of the funds.

B. Distributions made to the fund for the handicapped from the handicapped housing modification permanent fund shall constitute a separate account in the fund and are appropriated to the governor's committee on concerns of the handicapped for the purpose of carrying out a residential accessibility modification program.

C. Money in the fund for the handicapped shall not revert but shall be used only as provided in Sections 28-10-1 through 28-10-8.1 NMSA 1978."

**Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 749, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 227

**CHAPTER 227, LAWS 2001**

AN ACT

RELATING TO COMMERCIAL LAW; ENACTING THE UNIFORM ARBITRATION ACT; ESTABLISHING STANDARDS FOR ARBITRATION PROCEEDINGS; REPEALING SECTIONS OF THE NMSA 1978.

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

## Section 1. SHORT TITLE--DEFINITIONS.--

(a) The provisions of this act may be cited as the "Uniform Arbitration Act".

(b) As used in the Uniform Arbitration Act:

(1) "arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

(2) "arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(3) "court" means a court of competent jurisdiction in this state;

(4) "disabling civil dispute clause" means a provision modifying or limiting procedural rights necessary or useful to a consumer, borrower, tenant or employee in the enforcement of substantive rights against a party drafting a standard form contract or lease, such as, by way of example, a clause requiring the consumer, tenant or employee to:

(a) assert a claim against the party who prepared the form in a forum that is less convenient, more costly or more dilatory than a judicial forum established in this state for resolution of the dispute;

(b) assume a risk of liability for the legal fees of the party preparing the contract, but a seller, lessor or lender may exact for a buyer, tenant or borrower an obligation to reimburse the seller, lessor or lender for a reasonable fee paid to secure enforcement of a promise to pay money;

(c) forego access to the discovery of evidence as provided in the rules of procedure of a convenient judicial forum available to hear and decide a dispute between the parties;

(d) present evidence to a purported neutral person who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral person;

(e) forego recourse to appeal from a decision not based on substantial evidence or disregarding the legal rights of the consumer, tenant or employee;

(f) decline to participate in a class action; or

(g) forego an award of attorney fees, civil penalties or multiple damages otherwise available in a judicial proceeding;

(5) "knowledge" means actual knowledge;

(6) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

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

(8) "standard form contract or lease" means a written instrument prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees.

## Section 2. NOTICE.--

(a) Except as otherwise provided in the Uniform Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform

the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

## Section 3. WHEN THE UNIFORM ARBITRATION APPLIES.--

(a) The Uniform Arbitration Act governs an agreement to arbitrate made on or after the effective date of that act.

(b) The Uniform Arbitration Act governs an agreement to arbitrate made before the effective date of that act if all the parties to the agreement or to the arbitration proceeding so agree in a record.

## Section 4. EFFECT OF AGREEMENT TO ARBITRATE--NONWAIVABLE PROVISIONS.--

(a) Except as otherwise provided in Subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of the requirements of the Uniform Arbitration Act to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of Section 6(a), 7(a), 9, 18(a), 18(b), 27 or 29;

(2) agree to unreasonably restrict the right under Section 10 to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under Section 12 to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under Section 17 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under the Uniform Arbitration Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive or the parties may not vary the effect of the requirements of this section or Section 3(a), 8, 15, 19, 21(d) or (e), 23, 24, 25, 26(a) or (b), 30, 31, 32 or 33.

**Section 5. DISABLING CIVIL DISPUTE CLAUSE VOIDABLE.--In the arbitration of a dispute between a consumer, borrower, tenant or employee and another party, a disabling civil dispute clause contained in a document relevant to the dispute is unenforceable against and voidable by the consumer, borrower, tenant or employee. If the enforcement of such a clause is at issue as a preliminary matter in connection with arbitration, the consumer, borrower, tenant or employee may seek judicial relief to have the clause declared unenforceable in a court having personal jurisdiction of the parties and subject matter jurisdiction of the issue.**

## Section 6. APPLICATION FOR JUDICIAL RELIEF.--

(a) Except as otherwise provided in Section 28, an application for judicial relief under the Uniform Arbitration Act must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under the Uniform Arbitration Act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

## Section 7. VALIDITY OF AGREEMENT TO ARBITRATE.--

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to an agreement to arbitrate, the arbitration proceeding

may continue pending final resolution of the issue by the court, unless the court otherwise orders.

## Section 8. MOTION TO COMPEL OR STAY ARBITRATION.--

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not pursuant to Subsection (a) or (b) order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in Section 28.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

## Section 9. PROVISIONAL REMEDIES.--

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under Subsection (a) or (b).

## Section 10. INITIATION OF ARBITRATION.--

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under Section 16(c) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

## Section 11. CONSOLIDATION OF SEPARATE ARBITRATION PROCEEDINGS.--

(a) Except as otherwise provided in Subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

## Section 12. APPOINTMENT OF ARBITRATOR--SERVICE AS A NEUTRAL ARBITRATOR.--

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

## Section 13. DISCLOSURE BY ARBITRATOR.--

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) a financial or personal interest in the outcome of the arbitration proceeding; and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator. If an arbitrator discloses a fact required by Subsection (a) or (b) to be disclosed and a party timely objects to the

appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under Section 24(a)(2) for vacating an award made by the arbitrator.

(c) If the arbitrator did not disclose a fact as required by Subsection (a) or (b), upon timely objection by a party, the court under Section 24(a)(2) may vacate an award.

(d) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under Section 24(a)(2).

(e) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under Section 24(a)(2).

## Section 14. ACTION BY MAJORITY.--If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Section 16(c).

## Section 15. IMMUNITY OF ARBITRATOR--COMPETENCY TO TESTIFY--ATTORNEY'S FEES AND COSTS.--

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by Section 13 does not cause any loss of immunity under this section.

(d) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing on a motion to vacate an award under Section 24(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of Subsection (d), and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

## Section 16. ARBITRATION PROCESS.--

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under Subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 12 to continue the proceeding and to resolve the controversy.

## Section 17. REPRESENTATION BY LAWYER.--A party to an arbitration proceeding may be represented by a lawyer.

## Section 18. WITNESSES--SUBPOENAS--DEPOSITIONS--DISCOVERY.--

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

(d) If an arbitrator permits discovery under Subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness

apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

## Section 19. JUDICIAL ENFORCEMENT OF PRE-AWARD RULING BY

ARBITRATOR.--If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 20. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section 23, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies or corrects the award under Section 24 or 25.

## Section 20. AWARD.--

(a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

## Section 21. CHANGE OF AWARD BY ARBITRATOR.--

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in Section 25(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(b) A motion under Subsection (a) must be made and notice given to all parties within twenty days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(d) If a motion to the court is pending under Section 23, 24 or 25, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in Section 25(a)(1) or (3);

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to Sections 20(a), 23, 24 and 25.

## Section 22. REMEDIES--FEES AND EXPENSES OF ARBITRATION PROCEEDING.--

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by Subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 23 or for vacating an award under Section 24.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under Subsection (a), the arbitrator shall specify in the award the basis in fact justifying

and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

## Section 23. CONFIRMATION OF AWARD.--After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the 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 21 or 25 or is vacated pursuant to Section 24.

## Section 24. VACATING AWARD.--

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was:

(A) evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) corruption by an arbitrator; or

(C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to Section 16, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under Section 16(c) not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 10 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to Section 20 or within ninety days after

the movant receives notice of a modified or corrected award pursuant to Section 21, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in Subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in Subsection (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (a)(3), (4) or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Section 20(b) for an award. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

## Section 25. MODIFICATION OR CORRECTION OF AWARD.--

(a) Upon motion made within ninety days after the movant receives notice of the award pursuant to Section 20 or within ninety days after the movant receives notice of a modified or corrected award pursuant to Section 21, the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under Subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

## Section 26. JUDGMENT ON AWARD--ATTORNEY'S FEES AND LITIGATION EXPENSES.--

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under Section 23, 24 or 25, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying or correcting an award.

## Section 27. JURISDICTION.--

(a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Uniform Arbitration Act.

## Section 28. VENUE.--A motion pursuant to Section 6 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

## Section 29. APPEALS.--

(a) An appeal may be taken from:

(1) an order denying a motion to compel arbitration;

(2) an order granting a motion to stay arbitration;

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a final judgment entered pursuant to the Uniform Arbitration Act.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

**Section 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Arbitration Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

**Section 31. RELATIONSHIP TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The provisions of the Uniform Arbitration Act governing the legal effect, validity and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.**

**Section 32. SAVING CLAUSE.--The Uniform Arbitration Act does not affect an action or proceeding commenced or right accrued before that act takes effect, subject to Section 3 of that act.**

**Section 33. REPEAL.--Sections 44-7-1 through 44-7-22 NMSA 1978 (being Laws 1971, Chapter 168, Sections 1 through 23) are repealed.**

**Section 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 768, AS AMENDED

# CHAPTER 228

**CHAPTER 228, LAWS 2001**

AN ACT

RELATING TO DRUGS; AUTHORIZING AND RELEASING FROM LIABILITY PERSONS WHO ADMINISTER OPIOID ANTAGONISTS; RELEASING FROM LIABILITY LICENSED HEALTH CARE PROFESSIONALS; DECLARING AN EMERGENCY.

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

## Section 1. AUTHORITY TO ADMINISTER OPIOID ANTAGONISTS--RELEASE FROM LIABILITY.--

A. A person authorized under federal, state or local government regulations, other than a licensed health care professional permitted by law to administer an opioid antagonist, may administer an opioid antagonist to another person if:

(1) he, in good faith, believes the other person is experiencing a drug overdose; and

(2) he acts with reasonable care in administering the drug to the other person.

B. A person who administers an opioid antagonist to another person pursuant to Subsection A of this section shall not be subject to civil liability or criminal prosecution as a result of the administration of the drug.

## Section 2. HEALTH CARE PROFESSIONALS--RELEASE FROM LIABILITY.--A licensed health care professional who is permitted by law to prescribe an opioid antagonist, if acting with reasonable care, may prescribe, dispense, distribute or administer an opioid antagonist without being subject to civil liability or criminal prosecution.

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

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HOUSE BILL 813, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 229

**CHAPTER 229, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLE INSURANCE; REVISING REPORTING REQUIREMENTS FOR INSURANCE CARRIERS; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 66-5-205.1 NMSA 1978 (being Laws 1989, Chapter 214, Section 1, as amended) is amended to read:

"66-5-205.1. UNINSURED MOTORIST CITATION--REQUIREMENTS TO BE FOLLOWED AT TIME OF ACCIDENT--SUBSEQUENT PROCEDURES--INSURER NOTIFICATION REQUIREMENTS--SUSPENSION PROCEDURES.--

A. When a law enforcement officer issues a driver who is involved in an accident a citation for failure to comply with the provisions of the Mandatory Financial Responsibility Act, the law enforcement officer shall at the same time:

(1) issue to the driver cited a temporary operation sticker, valid for thirty days after the date the sticker is issued, and forward by mail or delivery to the department a duplicate of the issued sticker; and

(2) remove the license plate from the vehicle and send it with the duplicate of the sticker to the department or, if it cannot be removed, permanently deface the plate.

B. The department shall return or replace, in its discretion, a license plate removed under the provisions of Paragraph (2) of Subsection A of this section or replace a license plate defaced under that paragraph when the person cited for failure to comply with the provisions of the Mandatory Financial Responsibility Act furnishes proof of compliance to the department and pays to the division a reinstatement fee of twenty-five dollars ($25.00). If a person to whom the temporary operation sticker is issued furnishes to the department, within fifteen days after the issuance of the sticker, evidence of financial responsibility in compliance with the Mandatory Financial Responsibility Act and in effect on the date and at the time of the issuance of the sticker, the department shall replace or return the license plate and waive the twenty-five dollar ($25.00) reinstatement fee.

C. The secretary shall adopt and promulgate rules prescribing the form and use of the sticker required to be issued under Subsection A of this section.

D. The secretary shall adopt and promulgate rules requiring insurance carriers to report canceled, terminated and newly issued motor vehicle insurance policies each month to the department. Information pertaining to each motor vehicle shall be made a part of that vehicle file for one year.

E. Within ten days of notification by the insurance carrier of a termination or cancellation of a motor vehicle insurance policy, the department shall demand satisfactory evidence from the owner of the motor vehicle that he meets the requirements of the Mandatory Financial Responsibility Act. Failure to provide evidence of financial responsibility within twenty days after the department has mailed its demand for proof:

(1) constitutes reasonable grounds to believe that a person is operating a motor vehicle in violation of the provisions of Section 66-5-205 NMSA 1978; and

(2) requires the department to suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

F. The department shall notify the superintendent of insurance if an insurance carrier fails to provide monthly reports to the department regarding motor vehicle insurance policy information as required by Subsection D of this section."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 847

# CHAPTER 230

**CHAPTER 230, LAWS 2001**

AN ACT

RELATING TO TAXATION; SEQUESTERING CERTAIN TAX PAYMENTS UNTIL RISK OF LITIGATION HAS ENDED; GRANTING AUTHORITY TO THE SECRETARY OF TAXATION AND REVENUE TO ADJUST DISTRIBUTIONS OF OIL AND GAS REVENUES; AMENDING CERTAIN SECTIONS OF THE TAX ADMINISTRATION ACT.

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

## Section 1. Section 7-1-6 NMSA 1978 (being Laws 1978, Chapter 55, Section 1, as amended) is amended to read:

"7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

A. All money received by the department with respect to laws administered under the provisions of the Tax Administration Act shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that for 1989 and every subsequent year, money received with respect to the Income Tax Act during the period starting with the fifth day prior to the due date for payment of income tax for the year and ending on the tenth day following that due date shall be deposited before the close of the tenth business day after receipt of the money.

B. Money received or disbursed by the department shall be accounted for by the department as required by law or regulation of the secretary of finance and administration.

C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation, the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

D. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts administered under Subsection A of Section 7-1-2 NMSA 1978 shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized under this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

E. All revenues collected or received by the department pursuant to the taxes or tax acts administered under Subsection B of Section 7-1-2 NMSA 1978 shall be credited to the extraction taxes suspense fund and are appropriated for the purpose of making the disbursements authorized under this section or otherwise authorized or required by law to be made from the extraction taxes suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts administered under Subsection C of Section 7-1-2 NMSA 1978 may be credited to the tax administration suspense fund, unless otherwise directed by law to be credited to another fund or agency, and are appropriated for the purpose of making disbursements authorized under this section or otherwise authorized or required by law.

G. All revenues collected or received by the department pursuant to the provisions of Section 52-5-19 NMSA 1978 shall be credited to the workers' compensation collections suspense fund and are appropriated for the purpose of

making the disbursements authorized under this section or otherwise authorized or required by law to be made from the workers' compensation collections suspense fund.

H. Disbursements to cover expenditures of the department shall be made only upon approval of the secretary or the secretary's delegate.

I. Miscellaneous receipts from charges made by the department to defray expenses pursuant to the provisions of Section 9-11-6.2 NMSA 1978 and similar charges are appropriated to the department for its use.

J. From the tax administration suspense fund, there may be disbursed each month amounts approved by the secretary or the secretary's delegate necessary to maintain a fund hereby created and to be known as the "income tax suspense fund". The income tax suspense fund shall be used for the payment of income tax refunds."

## Section 2. Section 7-1-6.20 NMSA 1978 (being Laws 1985, Chapter 65, Section 6) is amended to read:

"7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES SUSPENSE FUND--DISTRIBUTION.--

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through

7-1-6.23 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.

B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Severance Tax Act shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund."

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# CHAPTER 231

**CHAPTER 231, LAWS 2001**

AN ACT

RELATING TO FINANCE; ENACTING THE MINOR LEAGUE BASEBALL STADIUM FUNDING ACT; AUTHORIZING MUNICIPALITIES TO REQUIRE VENDORS TO COLLECT A STADIUM SURCHARGE ON REVENUES ARISING FROM ACTIVITIES AT A MINOR LEAGUE BASEBALL STADIUM; PROVIDING LEGISLATIVE AUTHORIZATION FOR THE NEW MEXICO FINANCE AUTHORITY TO MAKE A LOAN FOR A MINOR LEAGUE BASEBALL STADIUM FROM THE PUBLIC PROJECT REVOLVING FUND; EXEMPTING THE STADIUM SURCHARGE FROM THE GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX; DECLARING AN EMERGENCY.

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

## Section 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Minor League Baseball Stadium Funding Act".

## Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the costs of land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining minor league baseball stadiums have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern minor league baseball stadiums are essential in retaining and attracting minor league baseball teams to the state; and

(3) even after utilizing local financial resources, municipalities need additional means to provide complete funding for functional and modern minor league baseball stadiums.

B. The purpose of the Minor League Baseball Stadium Funding Act is to provide an additional method of accessing the capital markets with the assistance of the New Mexico finance authority to meet the need for a complete funding package for functional and modern minor league baseball stadiums.

## Section 3. DEFINITIONS.--As used in the Minor League Baseball Stadium Funding Act:

A. "authority" means the New Mexico finance authority;

B. "chief executive officer" means the mayor or chief administrative officer of a municipality when designated in writing by the mayor to perform duties required by the Minor League Baseball Stadium Funding Act;

C. "governing body" means the council, commission or other group of elected officials of a municipality in which is vested the legislative authority of a municipality;

D. "loan" means a loan or other financial arrangement pursuant to which money is lent or otherwise made available by the authority to a municipality to pay for some or all of the costs of land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a minor league baseball stadium;

E. "loan payments" means all payments of principal, interest, premiums, charges, expenses or other obligations required to be paid by a municipality to the authority to repay the loan;

F. "minor league baseball stadium" means a stadium, including land, buildings and related improvements, primarily designed and intended for use by minor league baseball teams as a venue for playing baseball games;

G. "municipality" means a municipality located in a class A county with a population of more than two hundred thousand according to the 1990 federal decennial census;

H. "stadium surcharge" means a surcharge on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to the minor league baseball stadium or related to activities occurring at the stadium;

I. "vendor" means every person, corporation, partnership or other entity, including a division or department of a municipality, providing products or services sold at or related to the minor league baseball stadium; and

J. "vendor contract" means a contract, agreement or other written arrangement between a municipality and a vendor pursuant to which the vendor provides products or services sold at or related to the minor league baseball stadium.

## Section 4. AUTHORIZATION OF SURCHARGE--USE OF PROCEEDS.--

A. A municipality may impose a stadium surcharge by majority vote of the governing body. If a stadium surcharge has been imposed, the municipality shall include

a stadium surcharge in each vendor contract, and each vendor contract shall be signed by the chief executive officer.

B. Before establishing the amount of the stadium surcharge to be included in each vendor contract, the municipality shall notify the authority in writing of the proposed amount of the loan requested for the minor league baseball stadium and of the proposed amount of the surcharge to be included in each vendor contract. The authority shall review the proposed amount of the stadium surcharge and shall make a written recommendation to a municipality setting forth the minimum amount of the surcharge to be set forth in the loan and related documents. The minimum amount of the stadium surcharge shall never be less than five percent and may be any higher percentage recommended by the authority or otherwise established by the municipality.

C. After receipt of the written recommendation from the authority, a municipality shall establish the amount of the stadium surcharge to be included in each vendor contract, provided that the amount of the surcharge to be set forth in the loan and related documents shall be at least the minimum amount recommended by the authority.

D. The receipts from the stadium surcharge may be used by the municipality for all or any portion of:

(1) loan payments;

(2) costs of constructing, renovating, operating, maintaining or improving the minor league baseball stadium; or

(3) costs of collecting and otherwise administering the surcharge.

E. A municipality shall establish a fund for construction, renovation, operation, maintenance and improvement of a minor league baseball stadium for deposit of all receipts from the stadium surcharge that exceed the required loan payments, and all receipts deposited in that fund shall be used for such purposes and may also be used for the costs of collection and otherwise administering the surcharge.

## Section 5. COLLECTION OF SURCHARGE--REMITTANCE TO THE MUNICIPALITY.--

A. Every vendor shall collect the stadium surcharge on behalf of the municipality and shall act as a trustee therefor.

B. The stadium surcharge shall be collected by vendors from the users of products or services subject to the surcharge. Users shall be charged separately for the stadium surcharge from the cost of the product or service subject to the surcharge or the vendor shall institute accounting controls or procedures sufficient to identify the

amount of the surcharge owed to a municipality for each sale, transaction or exchange subject to the surcharge.

C. All receipts from the stadium surcharge shall be remitted by vendors to the treasurer of the municipality no later than the tenth day of the month following collection of the receipts. The treasurer of the municipality shall deposit the receipts in a separate account and shall act as trustee of the receipts on behalf of the authority so long as any loan is unpaid.

## Section 6. AUDITS.--A municipality shall provide by ordinance a method to either audit or otherwise ensure that vendors subject to the stadium surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

## Section 7. ENFORCEMENT--PENALTIES.--

A. An action to enforce the imposition and collection of a stadium surcharge by a vendor may be brought by a municipality.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. Any judgment issued by a district court requiring stadium surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at twelve percent on past-due amounts, attorney fees and costs to a municipality.

## Section 8. AUTHORIZATION OF PROJECT.--

A. Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the authority to make a loan from the public project revolving fund to a municipality to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a minor league baseball stadium on terms and conditions established by the authority.

B. Prior to receiving the loan, the governing body shall approve the loan and related documents by an ordinance to be adopted by a majority of the members of the governing body. The ordinance shall pledge the stadium surcharge receipts to make the loan payments. In addition to pledging stadium surcharge receipts for making loan payments, the ordinance shall pledge legally available gross receipts tax revenues distributed to a municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 in an amount satisfactory to the authority and in an amount at least sufficient to make the loan payments. No action shall be brought questioning the legality of the pledge of receipts and revenues, the ordinance, the loan, the proceedings, the stadium surcharge or any other matter concerning the loan after thirty days from the date of publication of the

ordinance approving the loan and related documents and pledging stadium surcharge receipts and gross receipts tax revenues of the municipality to make the loan payments.

C. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the stadium surcharge or any loan from the authority secured by a pledge of the stadium surcharge and gross receipts tax revenues, unless the loan has been paid in full or provisions have been made for full payment.

**Section 9. CUMULATIVE AND COMPLETE AUTHORITY.--The Minor League Baseball Stadium Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a minor league baseball stadium, establishing the stadium surcharge and completing the acts authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state, and shall constitute full authority for the exercise of powers granted herein, including but not limited to the pledging of stadium surcharge receipts and gross receipts tax revenues by the governing body to make loan payments to the authority.**

**Section 10. LIBERAL INTERPRETATION.--The Minor League Baseball Stadium Funding Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of the act.**

**Section 11. SEVERABILITY.--If any part or application of the Minor League Baseball Stadium Funding Act is held invalid, the remainder or its application to other situations or persons shall not be affected.**

**Section 12. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:**

"EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--STADIUM SURCHARGE.--Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed pursuant to the Minor League Baseball Stadium Funding Act."

**Section 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 907, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 232

**CHAPTER 232, LAWS 2001**

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING THAT ALL MOTOR VEHICLE ACCIDENTS INVOLVING A SCHOOL BUS BE INVESTIGATED BY A LAW ENFORCEMENT OFFICER CERTIFIED AS AN ACCIDENT RECONSTRUCTIONIST; ENACTING A NEW 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:**

"MOTOR VEHICLE ACCIDENTS INVOLVING A SCHOOL BUS--INVESTIGATION BY A LAW ENFORCEMENT OFFICER CERTIFIED AS AN ACCIDENT RECONSTRUCTIONIST.--All motor vehicle accidents involving a school bus that result in a fatality or life threatening injury shall be investigated by a law enforcement officer certified as an accident reconstructionist."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 911, AS AMENDED

# CHAPTER 233

**CHAPTER 233, LAWS 2001**

AN ACT

RELATING TO VOTING SYSTEMS; UPDATING STATUTES CONCERNING VOTING SYSTEMS; PROVIDING STANDARDS FOR CERTAIN VOTING SYSTEMS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 1-9-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 184, as amended) is amended to read:

"1-9-1. SECRETARY OF STATE--DUTIES.--

A. The secretary of state shall study, examine and approve all voting systems used in elections for public office in New Mexico. Any type of voting systems not approved by the secretary of state shall not be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes; equipment that is not an integral part of a voting system, but that can be used as an adjunct to it, is considered to be a component of the system."

## Section 2. 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 commission standards and conform to state information technology rules, standards and practices and be tested by an independent authority.

B. Any 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 this state."

## Section 3. Section 1-9-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 188, as amended) is amended to read:

"1-9-5. REQUIREMENT TO PURCHASE AND USE VOTING

SYSTEMS.--

A. Voting systems shall be used in all precincts in all statewide elections.

B. The county clerk of each county shall provide one voting system in each precinct for use in the general and primary elections when the total number of registered voters in that precinct amounted to fewer than six hundred at the close of registration.

C. At least one additional voting system shall be provided in such precinct for every six hundred registered voters in that precinct.

D. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, which systems may be used in any election for public office. The acquisition of these systems may be in excess of the number provided in this section.

E. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting or electronic vote tabulating system shall have a warranty equal to the warranty required of a new voting or electronic vote tabulating system."

## Section 4. Section 1-9-6 NMSA 1978 (being Laws 1975, Chapter 255, Section 116, as amended) is amended to read:

"1-9-6. VOTING SYSTEMS--USE IN OTHER ELECTIONS.--

A. The county clerk may provide for the use of voting systems in other elections or for educational purposes; provided, however, that the county clerk shall make available:

(1) to the school district for use in the school district election, a sufficient number of voting systems necessary to conduct the election in those polling places located within that county; and

(2) to a municipality located in the county, a sufficient number of voting systems to conduct the municipal election.

B. The county clerk shall schedule the use of the voting systems."

## Section 5. Section 1-9-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 190, as amended) is amended to read:

"1-9-7. VOTING SYSTEMS--ACQUISITION.--

A. Ninety days prior to each primary and general election, the board of county commissioners of each county shall make application to the state board of finance for those additional voting systems required by the Election Code.

B. The additional voting systems shall be of a type approved by the secretary of state. They shall be purchased by the state board of finance. The cost of the voting systems, including all transportation costs, shall be paid out of the electronic voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems."

## Section 6. Section 1-9-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 191, as amended) is amended to read:

"1-9-8. BOARD OF FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting systems upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of voting systems;

(2) the county will pay therefor the cost of the voting systems, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the voting systems is the responsibility of the county; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated."

## Section 7. Section 1-9-12 NMSA 1978 (being Laws 1975, Chapter 255, Section 120, as amended) is amended to read:

"1-9-12. CARE AND CUSTODY OF SYSTEMS--CARE AND CUSTODY OF KEYS AND SEALS--RESPONSIBILITY FOR TRANSPORTATION--REPAIR AND PROGRAMMING--CHARGE FOR SUCH USE, TRANSPORTATION OR PROGRAMMING.--

A. The county clerk shall have custody of all voting systems, shall keep them in good repair and shall be responsible for their transportation to and from polling places.

B. The county clerk shall have care and custody of and be responsible for the keys and seals for the voting systems and shall be responsible for the programming of the systems. All keys for the voting systems shall be kept in a secure place in the county clerk's office until such time as supplies are available to program or maintain the voting systems. When voting systems are being programmed for any election or maintained after an election, the county clerk or the county clerk's assigned deputy who is knowledgeable in the procedure of programming voting systems shall have custody of the keys and shall assure the security of the keys at all times during the period the voting systems are being programmed or maintained. In any event, all keys shall be returned to the office of the county clerk at the end of each day for safekeeping; providing that if the deputy is programming the voting systems outside of the county seat and it is impractical for the deputy to return the keys at the end of the day, the county clerk may give written authorization in advance to the deputy to retain the keys for as long as is needed to program the voting systems outside of the county seat, and a copy of the authorization with the deputy named therein shall be kept on file in the county clerk's office subject to public inspection. The county clerk shall submit an affidavit to the secretary of state describing the method to be used in keeping the voting system keys secure. This affidavit shall be submitted to the secretary of state in January of each even-numbered year for the secretary of state's approval or disapproval. The security method approved by the secretary of state shall be the only method of safekeeping the voting system keys until a new affidavit is submitted and approved. Failure of the county clerk to assure the security of voting system keys in his custody shall constitute a neglect to discharge the duties of his office.

C. A reasonable fee may be charged by the county for the use, transportation and programming of the voting systems, but in no case shall such fee exceed the actual cost to the county."

## Section 8. Section 1-9-13 NMSA 1978 (being Laws 1975, Chapter 255, Section 121, as amended) is amended to read:

"1-9-13. VOTING SYSTEM TECHNICIANS--APPROVAL OF CONTRACTS.--

A. The secretary of state shall approve all contracts, employment or otherwise, between a county and a voting system technician. Approval shall be based on the following:

(1) adequacy of the training and expertise of the voting system technician; and

(2) reasonableness of the compensation for the contracted services, based upon the type of election and the number of systems to be used.

B. Voting system technicians shall be certified by the secretary of state as to their adequacy of training and expertise on electronic voting systems.

C. For purposes of this section, "voting system technician" means any person who programs, clears, inspects and repairs electronic voting systems for compensation.

D. The secretary of state shall adopt rules governing the use, maintenance and repair of electronic voting systems."

## Section 9. Section 1-9-14 NMSA 1978 (being Laws 1983, Chapter 226, Section 1, as amended) is amended to read:

"1-9-14. COMPUTER VOTING DEVICES--AUTHORITY OF THE SECRETARY OF STATE TO TEST.--

A. Notwithstanding any other provision of the Election Code, the secretary of state shall provide for the testing and evaluation of internal computers designed for the purpose of recording and tabulating votes within polling places in New Mexico. Any person who has an internal computer which is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have his equipment examined and tested. At the time application is made, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the computer voting system. As part of the examination, the secretary of state shall require the system to be independently

inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of an internal computer for recording and tabulating votes and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more precincts in any state or local government election, provided that such field tests shall be conducted at no cost to the state or any local government. These tests and inspections shall be completed within six months of the date of application.

B. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall submit that report for consideration by a committee consisting of the secretary of state, the state chief information officer and a county clerk who is appointed by and serves at the pleasure of the governor and who is appointed with regard to political party affiliation so that no more than two members of the committee are from one political party. The committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code. Such report shall be a public record.

C. If the committee recommends that the internal computer for recording and tabulating votes is suitable for use in polling places for the conduct of elections in New Mexico, such equipment shall be deemed approved for use in elections in this state no later than January 1 of the succeeding year.

D. In the event the committee approves the use of internal computers for use in polling places for the conduct of elections in New Mexico, then the secretary of state shall prescribe by rule promulgated under the provisions of the State Rules Act specifications for internal computers designed for the purpose of providing for a system of recording and tabulating votes within polling places. The prescribed specifications shall have as their purpose securing the secrecy of the ballot, protecting against fraud in the voting process, preserving in all respects the purity of elections, facilitating voting by the voters of this state and carrying out the provisions of the Election Code with respect to the administration of the conduct of elections in New Mexico."

## Section 10. 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 systems shall meet the following standards:

(1) the system shall be an electronic computer-controlled voting system which provides for direct electronic recording and tabulating of votes cast;

(2) the operating system software, firmware, of the system shall be stored in nonvolatile memory and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up 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 pluggable. 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 +-15 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 electronic voting 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 the federal election commission shall be considered in so far as it is applicable."

## Section 11. 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 systems shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting system which provides for the direct electronic tabulation of votes cast;

(2) the operating software of the vote tabulating system shall be stored in a nonvolatile memory (firmware) and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up 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 pluggable. 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 +- 15 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 which is a minimum six inches wide and a maximum twenty-four inches long, in dual columns and printed on both sides. The ballot should 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 the errant ballot. 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 the federal election commission shall be considered in so far as it is applicable."

## Section 12. Section 1-9-17 NMSA 1978 (being Laws 1985, Chapter 207, Section 16, as amended) is amended to read:

"1-9-17. ELECTRONIC VOTING SYSTEMS--BOARD OF FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of electronic voting systems and the necessary support equipment upon receipt of the application of the board of county commissioners.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of electronic voting systems and the necessary support equipment;

(2) the county will pay for the cost of such systems and support equipment, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the systems and support equipment is the responsibility of the county clerk; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated."

## Section 13. Section 1-9-18 NMSA 1978 (being Laws 1985, Chapter 207, Section 17) is amended to read:

"1-9-18. ELECTRONIC VOTING SYSTEMS--METHOD OF PAYMENT BY COUNTIES.--

A. The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring electronic voting systems and support equipment an amount sufficient to enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.

B. The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the electronic voting systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the electronic voting system revolving fund if the electronic voting systems were originally purchased with money from the electronic voting system revolving fund."

## Section 14. Section 1-9-19 NMSA 1978 (being Laws 1985, Chapter 207, Section 18) 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 the fiscal year the electronic voting system revolving fund exceeds four million dollars ($4,000,000), the amount in excess of four million dollars ($4,000,000) shall revert to the general fund."

## Section 15. A new section of the Election Code is enacted to read:

"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 touch-screen direct recording electronic voting system.

B. The system shall:

(1) meet performance and test standards of the federal election commission;

(2) be an electronic computer-controlled voting system that provides for direct recording and tabulating of votes cast;

(3) have internal operating system software, firmware, that:

(a) is specifically designed and engineered for the election application;

(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) shall include comprehensive diagnostics to ensure that failures do not go undetected;

(4) have a battery back-up system that will, at a minimum, allow voting to continue uninterrupted for two hours without external power;

(5) have an internal audit trail system such that all pre-election, election day and post-election events, including all random ballot images system 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 commission 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 systems 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 pluggable;

(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 the 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, the public counter total

and the protective counter number. The poll worker must be able to request as many copies as necessary by state law. The system shall include an optional feature to allow reports to be sent to a printer, to the screen or to a file.

F. The system central processing unit must be designed so that no executable code can be launched from random access memory. If the operating system is open or widely used, it must 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. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log and the 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 back-up power fail.

L. The system shall have a self-contained, internal back-up 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 back-up 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 back-up 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 16. REPEAL.--Sections 1-9-3, 1-9-4 and 1-9-10 NMSA 1978 (being Laws 1969, Chapter 240, Sections 186, 187 and 193, as amended) are repealed.

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HOUSE BILL 931, AS AMENDED

# CHAPTER 234

**CHAPTER 234, LAWS 2001**

AN ACT

RELATING TO ELECTIONS; REDUCING THE REQUIRED SIZE OF NOMINATING PETITIONS.

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

## Section 1. Section 1-8-30 NMSA 1978 (being Laws 1973, Chapter 228, Section 4, as amended) is amended to read:

"1-8-30. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--NOMINATING PETITION--FILING AND FORM.--

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters, which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate at the same time shall file a nominating petition, which shall be on the form prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of the county of _____, New Mexico, and a member of the _____ party, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on the first Tuesday of June, 20 _____, and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____ _____ _____ _____

(usual (name printed (address as city or

signature) as registered) registered) rt. no.)

2. _____ _____ _____ _____

(usual (name printed (address as (city or

signature) as registered) registered) rt. no.).".

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

## Section 2. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter 322, Section 6, as amended) is amended to read:

"1-8-50. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITION FORM.--

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a determination of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

FOR ANY OFFICE EXCEPT PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county of _____, New Mexico, hereby nominate _____, who resides at _____ in the county of _____, New Mexico, as an independent candidate for the office of _____, to be voted for at the general election, or United States representative special election to be held on _____,_____

(month) (day) (year)

and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special election.

1. _____ _____ _____ _____

(usual (name printed (address as (city)

signature) as registered) registered)

2. _____ _____ _____ _____

(usual (name printed (address as (city).".

signature) as registered) registered)

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county of _____, New Mexico, by endorsement hereon, petition that the name of _____ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November _____, _____. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election.".

E. The secretary of state shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

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HOUSE BILL 932

# CHAPTER 235

**CHAPTER 235, LAWS 2001**

AN ACT

RELATING TO THE NEW MEXICO YOUTH CONSERVATION CORPS; CHANGING PROVISION FOR CORPS MEMBER TO EARN ADDITIONAL COMPENSATION OR AN EDUCATIONAL TUITION VOUCHER AT A NEW MEXICO INSTITUTION OF HIGHER EDUCATION.

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

## Section 1. Section 9-5B-9 NMSA 1978 (being Laws 1992, Chapter 91, Section 9) is amended to read:

"9-5B-9. EDUCATION--TRAINING.--

A. Corps members shall be encouraged to increase their opportunities for employment by education and training. Corps personnel shall seek cooperative agreements with community colleges, vocational schools and other institutions of higher learning in an effort to aid corps members in achieving their educational goals. Corps

personnel shall provide opportunities for corps members to achieve basic education, literacy and high school or equivalency diplomas.

B. On completion of employment, a corps member who has twelve full months of employment as a corps member during a period not to exceed forty-eight months and who has received satisfactory evaluations throughout his employment is entitled to receive as additional compensation five hundred dollars ($500) or a one thousand dollar ($1,000) educational tuition voucher at a New Mexico institution of higher education. The educational tuition voucher is valid for two years. If the corps member receives a satisfactory employment evaluation and the program manager determines that the corps member's employment was less than twelve months in a four-year period due to circumstances beyond the corps member's control, the program manager may authorize a partial compensation payment or a partial educational tuition voucher to that corps member."

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HOUSE BILL 938, AS AMENDED

# CHAPTER 236

**CHAPTER 236, LAWS 2001**

AN ACT

RELATING TO REAL PROPERTY; PROVIDING FOR A TRANSFER ON DEATH DEED.

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

## Section 1. A new section of Chapter 45, Article 6 NMSA 1978 is enacted to read:

"REAL PROPERTY--TRANSFER ON DEATH DEED.--

A. An interest in real property may be titled in transfer on death form by recording a deed signed and acknowledged by the record owner of the interest and designating a grantee beneficiary or beneficiaries of the interest. The deed transfers ownership of that interest upon the death of the owner. A transfer on death deed need not be supported by consideration.

B. The signature, consent or agreement of or notice to a grantee beneficiary of a transfer on death deed is not required for any purpose during the lifetime of the record owner.

C. An interest in real property is titled in transfer on death form by executing, acknowledging and recording in the office of the county clerk in the county where the real property is located, prior to the death of the owner, a deed in substantially the following form:

"TRANSFER ON DEATH DEED

_____ (Name of owner) as owner transfers on death to _____ (name of beneficiary), as grantee beneficiary, the following described interest in real property. THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIPUNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL PROPERTY.

(description)

Witness_____ hand _____ and

seal _____ this _____ day of 20 __

_____ (Seal)

(Here add acknowledgment(s))".

D. A designation of the grantee beneficiary may be revoked by the record owner at any time prior to the death of the record owner, by the record owner executing, acknowledging and recording in the office of the county clerk in the county where the real property is located an instrument describing the interest and revoking the designation. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required.

E. A designation of the grantee beneficiary may be changed by the record owner at any time prior to the death of the record owner, by the record owner executing, acknowledging and recording a subsequent transfer on death deed. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required. A subsequent transfer on death beneficiary designation revokes a prior designation to the extent there is a conflict between the two designations.

F. A transfer on death deed executed, acknowledged and recorded in accordance with this section is not revoked by the provisions of a will.

G. A joint tenancy in real property is not effected by a transfer on death deed, and the rights of a surviving joint tenant shall prevail over a grantee beneficiary named in a transfer on death deed. If a joint tenant has executed a transfer on death deed, and if that joint tenant is the last surviving joint tenant, then the transfer on death deed is effective on that joint tenant's death.

H. Title to the interest in real estate recorded in transfer on death form shall vest in the designated grantee beneficiary or beneficiaries on the death of the record owner.

I. Grantee beneficiaries of a transfer on death deed take the record owner's interest in the real estate at death subject to all conveyances, assignments, contracts, mortgages, liens and security pledges made by the record owner or to which the record owner was subject during the record owner's lifetime and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property.

J. If the assets of the estate are insufficient, a transfer resulting from a transfer on death deed is not effective against the estate of a deceased party to the extent needed to pay any claims against the estate and the statutory allowances to the surviving spouse and children.

K. If a grantee beneficiary dies prior to the death of the record owner and an alternative grantee beneficiary has not been designated on the deed, the transfer shall lapse."

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HOUSE BILL 941, AS AMENDED

# CHAPTER 237

**CHAPTER 237, LAWS 2001**

AN ACT

RELATING TO THE HUMAN SERVICES DEPARTMENT; AMENDING A SECTION OF THE HUMAN SERVICES DEPARTMENT ACT CONCERNING THE APPOINTMENT OF EXEMPT EMPLOYEES; DECLARING AN EMERGENCY.

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

## Section 1. Section 9-8-9 NMSA 1978 (being Laws 1977, Chapter 252, Section 10, as amended) is amended to read:

"9-8-9. DIRECTORS.--The secretary shall appoint with the approval of the governor "directors" of divisions established within the department and a director of communications. The positions so appointed are exempt from the Personnel Act."

## Section 2. TEMPORARY PROVISION.--Notwithstanding the provisions of Section 1 of this act, on the effective date of this act

**the director of the medical assistance division of the human services department shall continue to be covered under the Personnel Act until a vacancy occurs in that position.**

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

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HOUSE BILL 943, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 3, 2001

# CHAPTER 238

**CHAPTER 238, LAWS 2001**

AN ACT

RELATING TO INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND; REQUIRING THE STATE INVESTMENT OFFICER TO REPORT SEMIANNUALLY TO THE LEGISLATURE AND TO APPROPRIATE INTERIM LEGISLATIVE COMMITTEES ON THE NEW MEXICO VENTURE CAPITAL INVESTMENT PROGRAM.

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 2000, Chapter 76, Section 1 and also by Laws 2000, Chapter 97, Section 2) is amended to read:**

"7-27-5.15. NEW MEXICO VENTURE CAPITAL FUND 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 venture capital 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 venture capital fund. The amount invested in any one New Mexico venture capital fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to Subsection A of this section, the council shall give consideration to investments in New Mexico venture capital funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee. The state investment officer is authorized to make investments pursuant to Subsection A of this section contingent upon a New Mexico venture capital fund securing paid-in investments from other accredited investors for the balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money which accredited investors have obligated for investment in a New Mexico venture capital fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico venture capital fund" means any limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, product or market development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has a minimum committed capital of 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 U.S.C. 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 of one percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses. If invested capital in the small business investment corporation should at any time fall below one-fourth of one 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 of one percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico venture capital 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 venture capital 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."

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HOUSE BILL 12

# CHAPTER 239

**CHAPTER 239, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING CONDITIONS UNDER WHICH LOCAL SCHOOL BOARDS MAY DENY ENROLLMENT OR RE-ENROLLMENT.

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

## Section 1. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended by Laws 2000, Chapter 15, Section 1 and also by Laws 2000, Chapter 82, 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 and school district testing programs as determined by the state superintendent or both.

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 or private school 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, persons residing within the school district and within the attendance area of a public school;

(b) second, persons who previously attended the public school; and

(c) third, 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 public 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 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 personnel.

F. 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-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsection E of this section. If the maximum would be exceeded by enrollment of an applicant in the second or third 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."

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HOUSE BILL 16, AS AMENDED

# CHAPTER 240

**CHAPTER 240, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WATER QUALITY ACT; PROVIDING FOR WATER QUALITY STANDARDS TO BE BASED ON CREDIBLE SCIENTIFIC DATA.

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

## Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) 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 as defined by regulation by the commission 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; and

L. 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."

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HOUSE BILL 127, AS AMENDED

# CHAPTER 241

**CHAPTER 241, LAWS 2001**

AN ACT

RELATING TO PUBLIC FINANCE; CLARIFYING PROVISIONS THAT GOVERN THE STATE TREASURER'S INVESTMENT OF THE SHORT-TERM INVESTMENT FUND.

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 any local public body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the governmental unit, then a local

public finance official having money of that local public body in his custody 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 any local funds are invested or reinvested for the purpose of short-term investment pursuant to this section, the local public body finance official shall notify and make such funds available to banks, savings and loan associations and credit unions located within the geographical boundaries of their respective governmental unit, subject to the limitation on credit union accounts. To be eligible for such funds, the financial institution shall pay to the local public body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for such short-term investments.

D. The local public body finance official shall specify the length of time each deposit shall be in the short-term investment fund, but in any event the deposit shall not be made for more than one hundred eighty-one days. The state treasurer through the use of the state fiscal agent shall separately track each such deposit and shall make such information available to the public upon written request.

E. The state treasurer shall invest the 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 any political subdivision of the state, including school districts and any post-secondary educational institution.

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; and

(17) the authority established under the New Mexico Finance Authority Act.

I. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit and deposit and account for, in the same manner as funds of local public bodies, funds of any Indian tribe or pueblo in the state if authorized to do so under a joint powers agreement executed by the state treasurer and the governing authority of the Indian tribe or pueblo under the provisions of the Joint Powers Agreements Act."

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HOUSE BILL 171, AS AMENDED

# CHAPTER 242

**CHAPTER 242, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; CLARIFYING THAT A PERSON IN POSSESSION OF A LIMITED DRIVER'S LICENSE MAY LAWFULLY DRIVE TO AND FROM A COURT-ORDERED TREATMENT PROGRAM; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended) 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;

(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;

(3) for a limited license when the person's license was revoked pursuant to an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code, except that a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs may apply for and shall receive a limited license if he complies with the requirements set forth in Subsections C and D of this section; or

(4) 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 or for the second or third time pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license or permit 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;

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

(3) if the person's driver's license is revoked pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978, proof that each motor vehicle to be operated by the person, if he receives a limited license, shall be equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau; and:

(a) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment;

(b) proof that the person is enrolled in school and needs a limited license to travel to and from school; or

(c) proof that the person is enrolled in a court-ordered treatment program and needs a limited license to travel to and from the treatment program.

C. A person who is convicted a second or third time for driving under the influence of intoxicating liquor or

drugs may apply for and shall receive a limited 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 rule by the department and provides the department with documented proof:

(1) of enrollment in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

(2) of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

(3) of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

(4) of enrollment in school and that the person needs a limited license to travel to and from school; or

(5) of enrollment in a court-ordered treatment program and that the person needs a limited license to travel to and from the treatment program.

D. In addition to the requirements set forth in Subsection C of this section, a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs shall provide the department with his judgment and sentence. The judgment and sentence shall attest that the person will be on probation for the entire period that a limited license will be in effect and that, as a condition of probation, the person shall provide proof that each motor vehicle to be operated by the person is equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau. The ignition interlock device shall be installed on the appropriate motor vehicle at the person's expense.

E. Upon receipt of a fully completed application that complies with statutes and rules for a limited license and payment of the fee specified in this subsection, the department shall issue a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited 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.

F. 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.

G. 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 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 386

# CHAPTER 243

**CHAPTER 243, LAWS 2001**

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING THE ISSUANCE OF SPECIAL MOTORCYCLE REGISTRATION PLATES FOR ARMED FORCES VETERANS; ENACTING A NEW SECTION OF THE MOTOR VEHICLE CODE; 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 is enacted to read:

"SPECIAL MOTORCYCLE REGISTRATION PLATES FOR ARMED FORCES VETERANS.--

A. The department shall issue distinctive motorcycle registration plates indicating that the recipient is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, or is retired from the national guard or military reserves, if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of seven dollars ($7.00), which shall be in addition to the regular motorcycle registration fees, any motorcycle owner who is a veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special motorcycle registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. An owner shall make a new application and pay a new fee each year he desires to obtain a special motorcycle registration plate. He will have first priority on that plate for each subsequent year that he makes a timely and appropriate application.

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the special motorcycle registration plate, centered above the registration number. Replacement or different veteran-designation decals shall be available for purchase from the department at a reasonable charge to be set by the secretary. The department shall furnish the following veteran-designation decals with the armed forces veteran motorcycle registration plate to a:

(1) medal of honor recipient;

(2) silver star recipient;

(3) bronze star recipient;

(4) navy cross recipient;

(5) distinguished service cross recipient;

(6) air force cross recipient;

(7) ex-prisoner of war;

(8) disabled veteran;

(9) purple heart veteran;

(10) atomic veteran;

(11) Pearl Harbor survivor;

(12) Navajo code talker;

(13) Vietnam veteran;

(14) Korean veteran;

(15) disabled Korean veteran;

(16) World War II veteran;

(17) World War I veteran;

(18) Grenada veteran;

(19) Panama veteran; or

(20) Desert Storm veteran.

E. The revenue from the fee imposed pursuant to Subsection B of this section shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special motorcycle registration plates for armed forces veterans."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 673, AS AMENDED

# CHAPTER 244

**CHAPTER 244, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING CONDITIONS UNDER WHICH LOCAL SCHOOL BOARDS MAY PROVIDE AND DENY ENROLLMENT OR RE-ENROLLMENT; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended by Laws 2000, Chapter 15, Section 1 and also by Laws 2000, Chapter 82, 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 and local school district testing programs as determined by the state superintendent or both.

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, persons residing within the school district and within the attendance area of a public school;

(b) second, persons who previously attended the public school; and

(c) third, 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 personnel.

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 second and third priorities of enrollment set forth in Subparagraphs (b) and (c) 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-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 or third 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."

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HOUSE BILL 151, AS AMENDED

# CHAPTER 245

**CHAPTER 245, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; CLARIFYING TERMS AND DUTIES REGARDING THE OPERATION OF THE PUBLIC REGULATION COMMISSION; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 8-8-7 NMSA 1978 (being Laws 1998, Chapter 108, Section 7) is amended to read:

"8-8-7. ADMINISTRATIVE SERVICES DIVISION--CHIEF CLERK.--

A. The director of the administrative services division of the commission shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The administrative services division includes the "corporations bureau" and shall perform the following functions:

(1) case docketing;

(2) budget and accounting;

(3) personnel services;

(4) procurement; and

(5) information systems services.

C. The corporations bureau shall perform the functions of the corporations department of the former state corporation commission."

## Section 2. Section 63-7-1 NMSA 1978 (being Laws 1912, Chapter 78, Section 1, as amended) is amended to read:

"63-7-1. PUBLIC REGULATION COMMISSION--TERM DEFINED--OFFICE.--The term "commission", as used in Chapter 63, Article 7 NMSA 1978, means the public regulation commission. The office of the commission shall be located in the city of Santa Fe, New Mexico."

## Section 3. Section 65-2-82 NMSA 1978 (being Laws 1981, Chapter 358, Section 3, as amended) 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. "chief of staff" means the chief of staff 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;

G. "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;

H. "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;

I. "highway" means the public roads, highways, streets and ways in this state;

J. "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;

K. "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;

L. "irregular route" means that the route to be used by a motor carrier is not restricted to any specific highway within the area the motor carrier is authorized to serve;

M. "lease" means an arrangement whereby a motor carrier augments his equipment by use of equipment owned by others;

N. "license" means a license issued pursuant to the Motor Carrier Act to a broker;

O. "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;

P. "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;

Q. "permit" means a permit issued under authority of the laws of this state to contract motor carriers;

R. "person" means an individual, firm, partnership, corporation, company, association or organization and includes any trustee, receiver, assignee or personal representative thereof;

S. "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;

T. 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;

U. "shipper" means a person who consigns or receives goods for transportation;

V. "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;

W. "state" means New Mexico;

X. "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

Y. "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 4. Section 65-2-106 NMSA 1978 (being Laws 1981, Chapter 358, Section 27) is amended to read:

"65-2-106. WITNESSES--FEES AND CHARGES--ATTENDANCE AND TESTIMONY REQUIRED--PRODUCTION OF DOCUMENTS REQUIRED--COMPELLING ATTENDANCE AND TESTIMONY--OATHS--CERTIFICATIONS--SUBPOENAS--SERVICE--QUORUM--INVESTIGATION--TAKING TESTIMONY.--

A. Each witness who appears before the commission by its order shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state out of the public regulation commission motor transportation fund upon the presentation of proper vouchers; but no witness subpoenaed at the instance of parties other than the commission is entitled to compensation from the state for attendance and travel.

B. No person shall be excused from attending and testifying or from producing books and papers before the commission or in obedience to the subpoena of the commission, whether the subpoena is signed or issued by one or more of the members of the commission in any investigation held by or before the commission or in any cause or proceeding in any court by or against the commission, relative to matters provided for in the Motor Carrier Act, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided that nothing contained in this section shall be construed as requiring any person to produce any books or papers or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning that he may be required to testify or produce evidence, documentary or otherwise, before the commission or in obedience to its subpoena or in any such cause or proceedings; provided that no person testifying is exempted from prosecution and punishment for perjury committed in so testifying.

C. In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission or any member of the commission or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this state or any judge thereof, on application of a member of the commission, may issue an attachment for the person and compel him to comply with the subpoena and to attend before the commission and produce the

documents and give his testimony upon the matters as may be lawfully required, and the court or judge has the power to punish for contempt as in cases of disobedience of a like subpoena issued by or from the court or a refusal to testify therein.

D. Each of the members of the commission, for the purposes mentioned in the Motor Carrier Act and in all hearings before the commission, may administer oaths, certify to official acts, issue subpoenas and compel the attendance of witnesses and the production of books and papers.

E. Whenever the commission makes any order or determination or issues any subpoena, notice or writ, notice thereof may be served on the person affected by delivering a copy of the order, subpoena, notice or writ, signed by or in the name of any member of the commission, to any person or an officer or agent of that person as in the case of civil process, which service may be executed by any member of the commission, any employee of the commission, the New Mexico state police or any sheriff in this state. A copy of the order, subpoena, notice or writ, with the service endorsed thereon, shall be returned to the commission and entered of record as a part of the proceeding, and the endorsement and return shall be prima facie evidence that the order, subpoena, notice or writ has been duly served.

F. Any two commissioners constitute a quorum to conduct hearings, decide motions and make orders, and the concurrence of at least two commissioners is required to make any order or determine any matter before the commission. The commission may, however, by writing under its seal, authorize any commissioner, its chief of staff or other person to investigate and take testimony as to any matter pending before it."

**Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 296

# CHAPTER 246

**CHAPTER 246, LAWS 2001**

AN ACT

RELATING TO STATE AGENCIES; RENAMING THE BUREAU OF MINES AND MINERAL RESOURCES; UPDATING AND CLARIFYING THE BUREAU'S MISSION.

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

## Section 1. Section 19-13-6 NMSA 1978 (being Laws 1967, Chapter 158, Section 6) is amended to read:

"19-13-6. KNOWN GEOTHERMAL RESOURCES FIELDS.--

A. The commissioner shall, after consultation with the director of the bureau of geology and mineral resources, make a classification of geothermal areas that he has determined may be capable of producing geothermal resources in commercial quantities. These geothermal areas shall be classified as "known geothermal resources fields".

B. If any lands to be leased are within a known geothermal resources field, the lands shall be leased to the highest responsible qualified bidder under rules prescribed by the commissioner. The rules prescribed by the commissioner shall include notice to the public of the terms and conditions of the sale and procedures of conducting the sale, including the receipt of written bids on a competitive basis and the issuing of the lease."

## Section 2. Section 22-8-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 90, as amended by Laws 1999, Chapter 43, Section 1 and also by Laws 1999, Chapter 253, Section 1) is amended to read:

"22-8-34. FEDERAL MINERAL LEASING FUNDS.--

A. Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall be distributed as follows:

(1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and

(2) the remainder shall be distributed to the common school permanent fund."

## Section 3. Section 69-1-1 NMSA 1978 (being Laws 1927, Chapter 115, Section 1, as amended) is amended to read:

"69-1-1. BUREAU OF GEOLOGY AND MINERAL RESOURCES--CREATION--DIRECTOR.--

A. There is established a "bureau of geology and mineral resources" of the state that is a division of the New Mexico institute of mining and technology and under the direction of its board of regents. The board shall appoint, as a director, a suitable person to be known as the director of the bureau of geology and mineral resources and, upon his nomination, such assistants and employees as the board deems necessary. The board may also determine the compensation of all persons employed by the bureau of geology and mineral resources, including the director, and may remove them in accordance with established personnel procedures.

B. The director of the bureau of geology and mineral resources shall be known as the state geologist."

## Section 4. Section 69-1-2 NMSA 1978 (being Laws 1927, Chapter 115, Section 2, as amended) is amended to read:

"69-1-2. PURPOSES AND FUNCTIONS.--The objects and duties of the bureau of geology and mineral resources are as follows:

A. to collect, compile and publish information relative to New Mexico, geology, mining, milling, metallurgy and oil and natural gas and the refining thereof;

B. to collect typical geological and mineral specimens and samples of products; to collect photographs, models and drawings related to mines, mills, smelters, oil wells, natural gas wells and the refineries of oil and natural gas in New Mexico;

C. to collect a library and bibliography of literature pertaining to the progress of geology, hydrogeology, mining, milling, smelting and oil and natural gas production and refining in New Mexico;

D. to map and study the geological formations of the state with special reference to their economic mineral resources, both metallic and nonmetallic, and to their location and physical and chemical characteristics pertinent to ground water resources;

E. to examine the topography and physical features of the state with reference to their practical bearing upon the citizens of New Mexico, as well as potential risks to them, including geologic hazards such as landslides, soil instabilities, earthquakes and volcanic eruptions;

F. to study the mining, milling, smelting operations and oil and natural gas production and the refining of the same carried on in the state with special reference to their improvement;

G. to prepare and publish bulletins and reports with the necessary illustrations and maps, which shall embrace both a general and detailed description of the natural resources and geology, mines, mineral deposits, both metallic and nonmetallic, ground water resources, oil wells, natural gas wells, smelters, mills, oil refineries and natural gas refineries;

H. to make qualitative and quantitative examinations of rocks and mineral samples and specimens;

I. to assist in the education of miners, industries and the general public through lectures, publications and other means of information dissemination;

J. to consider such other scientific and economic problems and questions as in the judgment of the board of regents of New Mexico institute of mining and technology shall be deemed of value to the people of the state;

K. to communicate special information on New Mexico geology, ground water hydrology, mining, both metallic and nonmetallic, oil and natural gas and to serve as a bureau of exchange and information on the mineral, oil and natural gas and ground water resources of New Mexico;

L. to cooperate with other universities in New Mexico, the state mine inspector, the state engineer and other departments of state government as may be mutually beneficial and to cooperate with the United States geological survey and with other federal agencies in accordance with the regulations of those institutions;

M. to coordinate with the mining and minerals division and the secretary of energy, minerals and natural resources in the formulation of overall policy in the area of mining and minerals;

N. to assist the secretary of energy, minerals and natural resources with those projects that come within the expertise and jurisdiction of the bureau of geology and mineral resources; and

O. to assist the state engineer in refining understanding of the stratigraphy, structure and aquifer characteristics of geological formations in ground water basins."

## Section 5. Section 69-2-1 NMSA 1978 (being Laws 1927, Chapter 115, Section 3, as amended) is amended to read:

"69-2-1. ANNUAL REPORTS OF PROGRESS AND CONDITION.--

A. The board of regents of the New Mexico institute of mining and technology shall prepare an annual report showing the progress and condition of the

bureau of geology and mineral resources, together with such other information as it deems necessary or useful or as the board may require.

B. The board of regents of the New Mexico institute of mining and technology shall provide the secretary of energy, minerals and natural resources with a copy of the annual report."

## Section 6. Section 69-2-3 NMSA 1978 (being Laws 1927, Chapter 115, Section 4, as amended) is amended to read:

"69-2-3. BUREAU REPORTS--PRINTING AND SALE.--The regular and special reports of the bureau of geology and mineral resources shall be printed as the board of regents of the New Mexico institute of mining and technology may direct, and the reports may be distributed or sold by the board as the interests of the state or science may demand. The money now in the possession of the bureau that has been obtained and that is hereafter obtained from the sale of the reports shall be used in such manner as the board may direct."

## Section 7. Section 69-2-6 NMSA 1978 (being Laws 1947, Chapter 218, Section 1) is amended to read:

"69-2-6. APPROPRIATION--COOPERATIVE SURVEY.--There is appropriated for the bureau of geology and mineral resources twenty thousand dollars ($20,000) annually of the money received by the state from the mineral leasing land act fund, pursuant to Title 30 U.S.C., Section 191. The money appropriated hereunder shall be used to pay the expenses incurred in matching federal funds in connection with a cooperative geologic and ground water survey of the state."

## Section 8. Section 69-2-7 NMSA 1978 (being Laws 1967, Chapter 143, Section 1) is amended to read:

"69-2-7. GEOTHERMAL ENERGY SOURCE--REPORTS.--

A. Any person drilling a hole on state lands to a depth of ten feet or more who encounters or whose drill cuts into a geothermal energy source of one hundred degrees centigrade or more shall, within ninety days from the date of the penetration, report in writing to the director the depth, location and nature of the geothermal energy source.

B. As used in this section:

(1) "geothermal energy" means the natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from or created by or that may be extracted from, this natural heat;

(2) "state lands" includes all land owned by the state, all land owned by school districts, beds of navigable rivers and lakes, submerged lands and lands in which mineral rights or geothermal resources have been reserved to the state; and

(3) "director" means the director of the bureau of geology and mineral resources."

## Section 9. Section 69-3-6 NMSA 1978 (being Laws 1957, Chapter 108, Section 1, as amended) is amended to read:

"69-3-6. PENETRATION OF WATER STRATUM BY MINE DISCOVERY OR DRILL HOLE--PLUGGING--REPORTS--EXCEPTIONS.--Any person drilling a mine lode discovery or mine drill hole to a depth of ten feet or more who encounters or whose drill cuts into a water body or water-bearing stratum shall:

A. plug at a horizon and in the manner provided by the rules of the state engineer; and

B. within ninety days from the date of the discovery, report in writing the depth, location and manner of plugging the water body or water-bearing stratum to the state engineer at the state capitol and to the director of the bureau of geology and mineral resources at Socorro, New Mexico."

## Section 10. Section 69-8-3 NMSA 1978 (being Laws 1961, Chapter 136, Section 3, as amended) is amended to read:

"69-8-3. MINING SAFETY ADVISORY BOARD.--

A. There is created a "mining safety advisory board", referred to in Chapter 69, Article 8 NMSA 1978 as the "board", consisting of thirteen members, of whom six shall represent industry, six shall be nonsupervisory production or maintenance employees and one, who shall serve as chairman and vote on all motions, shall represent the public and shall be the director of the bureau of geology and mineral resources. Two members of the board shall be appointed from each of the following industries: coal, copper, molybdenum, potash, sand and gravel and uranium. The members of the board shall be appointed by the governor for terms of six years or until their successors are appointed and qualified. Vacancies shall be filled by appointment for the unexpired term by the governor in the same manner as the original appointments. The inspector and the secretary of energy, minerals and natural resources shall be ex-officio members of the board but shall have no vote and receive no additional compensation for duties performed in connection with the board.

B. Members of the board and committees appointed by the board shall receive no salary but shall receive compensation in accordance with the provisions of

the Per Diem and Mileage Act. The inspector is authorized and directed to provide the board with such clerical, technical, legal and other assistance as shall be necessary to permit the board to perform its duties as provided in the Mining Safety Act.

C. The board shall hold two regular meetings each year in the second and fourth quarters of the calendar year, at places within this state to be determined by the board. Special meetings may be called at any time by the governor, the chairman or the inspector or by any three board members. Complete minutes and records of all board meetings, proceedings and actions shall be kept and preserved."

## Section 11. Section 69-25A-4 NMSA 1978 (being Laws 1979, Chapter 291, Section 4, as amended) is amended to read:

"69-25A-4. COAL SURFACE MINING COMMISSION--DUTIES.--

A. The "coal surface mining commission" is created. The commission shall consist of:

(1) the director of the bureau of geology and mineral resources of the New Mexico institute of mining and technology or his designee;

(2) the director of the department of game and fish or his designee;

(3) the secretary of environment or his designee;

(4) the chairman of the soil and water conservation commission or his designee;

(5) the director of the agricultural experiment station of New Mexico state university or his designee;

(6) the state engineer or his designee;

(7) the commissioner of public lands or his designee; and

(8) two public members who shall be appointed by the governor with the advice and consent of the senate. The public members shall have, by education, training or experience, expertise related to mining or mine reclamation.

B. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

C. The commission shall convene upon the call of the chairman or a majority of its members.

D. A majority of the commission is a quorum for the transaction of business. However, no action of the commission is valid unless concurred in by at least three of the members present.

E. The commission shall perform those duties as specified in the Surface Mining Act relating to the promulgation of regulations and as specified in Section

69-25A-29 NMSA 1978 relating to appeals from the decisions of the director.

F. No member of the commission who performs a function or duty under the Surface Mining Act may have a direct or indirect financial interest in any activity undertaken by the commission.

G. The public members shall receive per diem and mileage pursuant to the Per Diem and Mileage Act."

## Section 12. Section 69-36-6 NMSA 1978 (being Laws 1993, Chapter 315, Section 6, as amended) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of geology and mineral resources of the New Mexico institute of mining and technology or his designee;

(2) the secretary of environment or his designee;

(3) the state engineer or his designee;

(4) the commissioner of public lands or his designee;

(5) the director of the department of game and fish or his designee; and

(6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and his alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom he is the alternate.

B. The chairman of the soil and water conservation commission and the director of the agricultural experiment station of New Mexico state university or their designees shall be nonvoting members of the commission.

C. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

D. The commission shall convene upon the call of the chairman or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business. However, no action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and his alternate, shall receive, or shall have received during the previous two years, more than ten percent of his income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state stating:

(1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;

(2) the identity of the source of money or other valuable consideration; and

(3) whether the money or other valuable consideration was in excess of ten percent of his gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action."

## Section 13. 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. "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 Atomic Energy Act of 1954;

B. "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;

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

D. "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;

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

F. "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;

G. "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;

H. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

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

J. "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;

K. "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;

L. "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;

M. "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;

N. "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;

O. "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;

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

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

## Section 14. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended) is amended to read:

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

(1) the secretary of environment or a member of his staff designated by him;

(2) the director of the department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the chairman of the oil conservation commission or a member of his staff designated by him;

(5) the director of the state 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; and

(9) three representatives of the public to be appointed by the governor for terms of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act.

B. No member of the commission shall receive, or shall have received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act.

C. The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act, to the department of environment."

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HOUSE BILL 351

# CHAPTER 247

**CHAPTER 247, LAWS 2001**

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; RENAMING THE PUBLIC BUILDING ENERGY EFFICIENCY AND WATER CONSERVATION ACT; AMENDING THE ACT TO PROVIDE THAT ENERGY CONSERVATION MEASURES MAY INCLUDE MODIFICATIONS TO TRAFFIC CONTROL SYSTEMS AND VEHICLES AND THAT UTILITY COST SAVINGS AND CONSERVATION-RELATED COST SAVINGS MAY BE PLEDGED AND USED FOR PAYMENTS.

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

## Section 1. Section 6-23-1 NMSA 1978 (being Laws 1993, Chapter 231, Section 1, as amended) is amended to read:

"6-23-1. SHORT TITLE.--Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Facility Energy Efficiency and Water Conservation Act"."

## Section 2. Section 6-23-2 NMSA 1978 (being Laws 1993, Chapter 231, Section 2, as amended) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Facility Energy Efficiency and Water Conservation Act:

A. "conservation-related cost savings" means cost savings, other than utility cost savings, in the operating budget of a governmental unit that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract;

B. "energy conservation measure" means a training program or a modification to a facility, including buildings, systems or vehicles that is designed to reduce energy consumption or conservation-related operating costs and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) solar heating and cooling systems or other renewable energy systems;

(8) cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) energy conservation measures that provide long-term operating cost reductions;

(10) maintenance and operation management systems that provide long-term operating cost reductions;

(11) traffic control systems; or

(12) alternative fuel options or accessories for vehicles;

C. "governmental unit" means an agency, political subdivision, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

D. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures;

E. "qualified provider" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the energy, minerals and natural resources department for energy conservation measures or the office of the state engineer for water conservation measures;

F. "utility cost savings" means the amounts saved by a governmental unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract; and

G. "water conservation measures" means a training program, change in maintenance practices or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs."

## Section 3. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures recommended in the proposal is not likely to exceed the amount of utility cost savings and conservation-related cost savings over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the utility cost savings and conservation-related cost savings will meet or exceed the costs of the conservation measures.

B. A guaranteed utility savings contract shall include:

(1) a written guarantee from the qualified provider that annual utility cost savings and conservation-related cost savings shall meet or exceed the cost of the conservation measures; and

(2) a requirement that the qualified provider maintain a direct financial relationship with the governmental unit, irrespective of the source of financing for the energy or water conservation measures to be implemented.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed ten years; provided, however, only utility cost savings, conservation-related cost savings and special funds authorized pursuant to the Public Facility Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act.

E. A governmental unit may enter into a guaranteed utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act."

## Section 4. Section 6-23-5 NMSA 1978 (being Laws 1993, Chapter 231, Section 5, as amended) is amended to read:

"6-23-5. CONTRACT APPROVAL REQUIRED.--

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:

(1) for school districts, by the superintendent of public instruction;

(2) for state agencies:

(a) if the facilities, systems or vehicles are owned, leased or otherwise controlled by the general services department, by the secretary of general services; and

(b) if the facilities, systems or vehicles are not owned, leased or otherwise controlled by the general services department, by the executive head of the state agency;

(3) for municipalities and counties, by the governing body of the municipality or county; and

(4) for all post-secondary educational institutions and the state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, by the commission on higher education.

B. The approval required under this section shall be given upon:

(1) a determination that the contracts and agreements comply with the provisions of the Public Facility Energy Efficiency and Water Conservation Act and other applicable law;

(2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and

(3) certification by the office of the state engineer that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable."

## Section 5. Section 6-23-6 NMSA 1978 (being Laws 1993, Chapter 231, Section 6, as amended) is amended to read:

"6-23-6. CONTRACTS AND AGREEMENTS NOT A GENERAL OBLIGATION OF THE GOVERNMENTAL UNIT.--Payment obligations of a governmental unit pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to a guaranteed utility savings contract are not general obligations of the governmental unit and are collectible only from utility cost savings and conservation-related cost savings appropriated by the legislature and other revenues pledged for that purpose in accordance with the Public Facility Energy Efficiency and Water Conservation Act."

## Section 6. Section 6-23-6.1 NMSA 1978 (being Laws 1997, Chapter 42, Section 7, as amended) is amended to read:

"6-23-6.1. REPORTING AND RETENTION OF UTILITY COST SAVINGS FOR STATE AGENCIES.--

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, which estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water or energy by fuel type; and

(4) a record of monthly per-unit cost of water or energy by fuel type.

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than ten years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or ten years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the

subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district."

## Section 7. Section 6-23-7 NMSA 1978 (being Laws 1993, Chapter 231, Section 7, as amended) is amended to read:

"6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND CREATED--USE.--

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Paragraph (7) of Subsection D of Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the state department of public education solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the superintendent of public

instruction that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act.

E. The superintendent of public instruction shall submit to the legislative finance committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund."

## Section 8. Section 6-23-8 NMSA 1978 (being Laws 1993, Chapter 231, Section 8, as amended) is amended to read:

"6-23-8. MUNICIPALITIES--USE OF CERTAIN REVENUES AUTHORIZED.--Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge utility cost savings, conservation-related cost savings or any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality pursuant to Section 7-1-6.4 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality."

## Section 9. Section 6-23-9 NMSA 1978 (being Laws 1993, Chapter 231, Section 9, as amended) is amended to read:

"6-23-9. COUNTIES--USE OF CERTAIN REVENUES

AUTHORIZED.--Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge utility cost savings, conservation-related cost savings or any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any or all of

the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county."

## Section 10. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10, as amended) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--

A. Income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 and special funds of institutions may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act. Any money so appropriated shall be deposited in a special fund or account of the institution or fund and, except as provided in Subsection B of this section, that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

B. In the absence of an appropriation for payments pursuant to Subsection A of this section, when entering into a guaranteed utility savings contract, an institution may pledge resulting utility cost savings or conservation-related cost savings for payments to be made under the contract, provided that the utility cost savings or conservation-related cost savings are subject to appropriation by the legislature."

## Section 11. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--A

multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting.

If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. A contract for professional services, except for services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems and except for services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125, may not exceed a term of four years, including all extensions and renewals, except that a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding."

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HOUSE BILL 405

# CHAPTER 248

**CHAPTER 248, LAWS 2001**

AN ACT

RELATING TO LIQUOR; REVISING THE PROVISIONS FOR PUBLIC CELEBRATION PERMITS FOR WINEGROWERS AND SMALL BREWERS; CLARIFYING JOINT SALES PROVISIONS; AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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

## Section 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than one hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) conduct wine tastings and sell, by the glass or by the bottle or sell in unbroken packages for consumption off the premises but not for resale, wine of his own production or wine produced by another New Mexico winegrower on the winegrower's premises;

(9) at no more than three off-premises locations, conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production or wine produced by another New Mexico winegrower after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(10) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act; and

(11) at public celebrations on or off the winegrower's premises, after the winegrower has paid the applicable fees and been issued the appropriate permit, to conduct wine tastings, sell by the glass or the bottle or sell in unbroken packages, for consumption off premises but not for resale, wine produced by or for the winegrower.

C. Except as limited by Subsection D of Section 60-7A-1 NMSA 1978, sales of wine as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle or in unbroken packages for consumption off premises but not for resale, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars ($25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars ($100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars ($250) per year."

## Section 2. Section 60-6A-26.1 NMSA 1978 (being Laws 1985, Chapter 217, Section 5, as amended) is amended to read:

"60-6A-26.1. SMALL BREWER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

(1) become a manufacturer or producer of beer;

(2) package, label and export beer, whether manufactured, bottled or produced by him or any other person;

(3) sell only beer that is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) deal in warehouse receipts for beer;

(5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee or produced and bottled by or for another New Mexico small brewer on the small brewer's premises;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;

(7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer;

(8) at no more than two other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer or beer produced and bottled by or for another New Mexico small brewer; and

(9) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients.

C. Sales and tastings of beer authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday.

D. At public celebrations off the small brewer's premises in any local option district permitting the sale of alcoholic beverages, the holder of a small brewer's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the department for a "small brewer's public celebration permit" to be issued under rules

adopted by the director. Upon request, the alcohol and gaming division of the department may issue to a holder of a small brewer's license a public celebration permit for a location at the public celebration that is to be shared with other small brewers and winegrowers. As used in this subsection, "public celebration" includes a state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis."

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HOUSE BILL 531

# CHAPTER 249

**CHAPTER 249, LAWS 2001**

AN ACT

RELATING TO EMPLOYMENT; ENACTING PROVISIONS APPLYING TO INDIAN TRIBES AND THEIR EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAW.

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

## Section 1. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "department" means the labor department;

B. "division" means the employment security division of the labor department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

C. "secretary" means the secretary of labor or an employee of the department exercising authority lawfully delegated to the employee by the secretary."

## Section 2. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended by Laws 2000, Chapter 3, Section 4 and also by Laws 2000, Chapter 7, Section 4) is amended to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for him;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. All individuals performing services for any employing unit 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. Individuals performing services for contractors, subcontractors or agents that are performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless such contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) any employing unit which:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars ($450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit 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) any 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 such other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) any employing unit not an employer by reason of any other paragraph of this subsection:

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(b) which, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under the Unemployment Compensation Law;

(5) any employing unit 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) any employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section

51-1-50 NMSA 1978; 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 such 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) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact;

(b) such service is either outside the usual course of business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) such service is performed for an employing unit that: 1) paid remuneration in cash of twenty thousand dollars ($20,000) or more to individuals in such employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not such weeks were consecutive, and regardless of whether such individuals were employed at the same time;

(b) such service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the Immigration and Nationality Act; and

(c) for purposes of this paragraph, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of such crew leader: 1) if such crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of such crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing such services are not, by written agreement or in fact, within the meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) 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 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; and

(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 (26 U.S.C. Section 3304), the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of such election;

(k) service performed, as part of an unemployment work-relief or work-training program assisted or financed in whole or part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution 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 such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event 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 him constitute employment, all the services of such individual for such period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him where any of such service is excepted by Subparagraph (f) of Paragraph (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 he performs no services and with respect to which no wages are payable to him and during which he is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by regulation what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom he furnishes individuals in agricultural labor that such individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by regulation prescribe. The secretary may by regulation prescribe that a week

shall be deemed to be "in", "within" or "during" 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 any individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of his last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wages required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of such farm and its tools and equipment, if the major part of such service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection A of Section 51-1-13 NMSA 1978 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 regulations prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty 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 its employ under a plan or system established by an employing unit that makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:

(a) retirement if such payments are made by an employer to or on behalf of any employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to such employee or class of such employees and does not include any payments 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 such payments are received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death; provided the individual in its employ has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his service with such employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) any payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) any payment made, or benefit furnished to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(7) any payment made to, or on behalf of, an employee or his 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) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such 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 such 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 3. A new section of the Unemployment Compensation Law, Section 51-1-59 NMSA 1978, is enacted to read:

"51-1-59. COVERAGE OF INDIAN TRIBES.--

A. The legislature finds that:

(1) the state of New Mexico recognizes and respects the Indian tribes and pueblos as governments that possess the inherent right of self-government;

(2) under the Federal Unemployment Tax Act, federal law now expressly exempts Indian tribes and requires that state law provide that an Indian tribe may elect to make contributions for employment or make reimbursable payments in lieu of contributions; and

(3) in order to comply with the change in federal law, state law must be amended to provide for the treatment of Indian tribes under the state unemployment insurance system.

B. Benefits based on service in employment of an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service in employment for other employers pursuant to the Unemployment Compensation Law.

C. An Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe may make contributions in the same manner and under the same conditions as other employers or may elect to reimburse the fund with payments equal to the amounts of benefits attributable to service in the employ of the tribe, unit, subdivision, subsidiary or enterprise.

D. If an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe elects to make payments in lieu of contributions, the following provisions shall apply:

(1) as used in this section, "electing entity" means a tribe, tribal unit or a subdivision, subsidiary or business enterprise, wholly owned by a tribe, that elects to make payments in lieu of contributions. The tribe as a whole may be an electing entity or an individual tribal unit, subdivision, subsidiary or enterprise, or a combination of these may be electing entities;

(2) an electing entity may elect to make payments in lieu of contributions by filing a written notice of its election with the division not later than thirty days prior to the beginning of the taxable year for which its election shall first be effective; except that, if an election is made prior to July 1, 2001, at the option of the

electing entity the election shall be deemed to be effective December 21, 2000 or January 1, 2001; and

(3) once an election is made, payments in lieu of contributions will be used by the electing entity for the following two taxable years.

E. The following provisions apply to payments in lieu of contributions made by an electing entity:

(1) at the end of each calendar quarter, the division shall bill each electing entity for an amount calculated pursuant to this subsection; except that, in calculating the initial payments due for an electing entity that has made an election prior to July 1, 2001, the secretary shall bill the electing entity for the period elapsed since December 21, 2000;

(2) each calendar quarter, each electing entity making payments in lieu of contributions shall pay to the division an amount equal to twenty-five percent of the total benefit charges made to the electing entity during the four calendar quarters ending the preceding June 30. The due date for the payments shall be the tenth day of the first month of each calendar quarter;

(3) in the event that an electing entity making payments in lieu of contributions incurred no benefit charges during the four calendar quarters ending the preceding June 30, the electing entity shall pay to the division, each calendar quarter, an amount equal to one-eighth of one percent of the electing entity's annual taxable wages paid for such period for employment as estimated by the secretary. The due date for the payments shall be the tenth day of the first month of the calendar quarter;

(4) for each calendar quarter, the secretary shall determine the amount paid by each electing entity subject to payment in lieu of contributions and the amount of benefits charged to the electing entity's account; provided that an electing entity shall not be relieved of charges for benefits paid to an individual who was separated from the employ of that electing entity for any reason. Each electing entity who has made payments in an amount less than the amount of benefits charged to the electing entity's account shall pay the balance of the amount charged within twenty-five days of the notification by the division. If the quarterly payment made by an electing entity pursuant to Paragraph (2) or (3) of this subsection exceeds the amount of benefits charged to the electing entity's account, the excess payment shall be refunded on a quarterly basis;

(5) payments made by an electing entity pursuant to the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the electing entity;

(6) two or more electing entities may file a joint application for the establishment of a group account for the purpose of sharing the cost of benefits paid

that are attributable to service in the employ of the entities. The application shall identify and authorize a group representative to act as the group's agent for the purpose of this paragraph. Upon its approval of the application, the division shall establish a group account for the electing entities effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the secretary or upon application by the group. Each group account shall be liable for the prepayment of payments in lieu of contributions as provided in Paragraphs (2), (3) and (4) of this subsection. Each member of the group account shall be liable to the division for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment for such member during the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group. The secretary shall prescribe rules as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, the accounts and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of payments. Each group account may apportion liability for amounts due to the group representative as the group shall determine; and

(7) past-due payments in lieu of contributions are subject to the same penalties that are applied to past-due contributions under Section 51-1-12 NMSA 1978.

F. Contributions or payments in lieu of contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent per month from and after such date until payment is received by the division. Interest collected pursuant to this subsection shall be paid into the employment security department fund.

G. Any person, group of individuals, partnership or employing unit that acquires the organization, trade or business or substantially all the assets thereof from an Indian tribe or tribal entity shall notify the division in writing by registered mail not later than five days prior to the acquisition. Unless such notice is given, such acquisition shall be void as against the division, if, at the time of the acquisition, any contributions or payments in lieu of contributions are due and unpaid by the tribe or tribal entity, and the assets so acquired shall, if otherwise allowed by law, be subject to attachment for the debt.

H. If an Indian tribe or a tribal entity fails to make a contribution or payment in lieu of contribution pursuant to the Unemployment Compensation Law, the division shall mail a notice of nonpayment or delinquency to the noncomplying tribe or tribal entity at its last known address as shown in division records. If the payment is not made within ninety days of the date the notice is mailed, the account of the

noncomplying tribe or tribal entity shall be terminated. Notice of the termination shall be mailed to the tribe or tribal entity at its last known address shown in division records. The notice shall be accompanied by a written description of protest rights pursuant to Section 51-1-8 NMSA 1978. Termination of an account pursuant to this subsection terminates the tribe or tribal entity's participation as a contributing employer.

I. The secretary may reinstate the account of an Indian tribe or tribal entity that loses coverage pursuant to Subsection H of this section if the tribe or the tribal entity pays all contributions, payments in lieu of contributions, interest, penalties, surcharges and fees that are due and owing.

J. If an Indian tribe or tribal entity fails to make contributions or payments in lieu of contributions pursuant to this section, including any assessed interest and penalties, within ninety days of a notice of nonpayment or delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor.

K. Notices of payment and reporting delinquency to an Indian tribe or a tribal entity shall include an explanation that failure to make full payment within the prescribed time will cause the tribe or the tribal entity to:

(1) be liable for taxes pursuant to the Federal Unemployment Tax Act;

(2) lose the option to make payments in lieu of contributions; and

(3) lose its status as an employer under the Unemployment Compensation Law and will cause services performed for the tribe or tribal entity to not be treated as "employment" under that law.

L. Extended benefits paid that are attributable to service in the employ of an Indian tribe or tribal entity and not reimbursed by the federal government shall be the responsibility of the Indian tribe or tribal entity.

M. Nothing in this section shall be deemed to be a waiver of tribal sovereignty or sovereign immunity, either directly or indirectly. Compliance by an Indian tribe or tribal entity with the provisions of this section shall not be deemed to directly or indirectly waive tribal sovereignty or sovereign immunity."

**Section 4. TEMPORARY PROVISION--TRANSITION.--The labor department shall waive any unpaid contributions, including interest and penalties, from an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe due between January 1, 2000 and December 21, 2000 if, before January 31, 2004, the tribe, tribal unit or subdivision, subsidiary or business**

**enterprise pays to the unemployment compensation fund an amount equal to the total benefits actually paid from the fund between January 1, 2000 and December 21, 2000 to the employees of that tribe, tribal unit or subdivision, subsidiary or business enterprise.**

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HOUSE LABOR AND HUMAN RESOURCES

COMMITTEE SUBSTITUTE

FOR HOUSE BILL 619

# CHAPTER 250

**CHAPTER 250, LAWS 2001**

AN ACT

RELATING TO RURAL INFRASTRUCTURE; AMENDING THE RURAL INFRASTRUCTURE ACT; TRANSFERRING DUTIES OF THE ENVIRONMENTAL IMPROVEMENT BOARD TO THE SECRETARY OF ENVIRONMENT; EXPANDING THE PURPOSE OF THE ACT TO INCLUDE FINANCING OF WASTEWATER FACILITIES; PROVIDING FOR FLEXIBLE INTEREST RATES.

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

## Section 1. Section 75-1-2 NMSA 1978 (being Laws 1973, Chapter 333, Section 2, as amended) is amended to read:

"75-1-2. DEFINITIONS.--As used in the Rural Infrastructure Act:

A. "department" means the department of environment;

B. "fund" means the rural infrastructure revolving loan fund;

C. "local authority" means any incorporated city, town or village, county, mutual domestic association, public water cooperative association or sanitation district whose water supply facility serves a population of less than ten thousand;

D. "operate and maintain" means all necessary activities, including but not limited to replacement of equipment or appurtenances to assure the dependable and economical function of a water supply facility in accordance with its intended purpose;

E. "secretary" means the secretary of environment;

F. "wastewater facility" includes but is not limited to collection lines, pumping equipment, treatment works and disposal piping or process units; and

G. "water supply facility" includes but is not limited to the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works and distribution systems."

## Section 2. Section 75-1-2.1 NMSA 1978 (being Laws 1983, Chapter 173, Section 3, as amended) is amended to read:

"75-1-2.1. PURPOSE OF ACT.--The purpose of the Rural Infrastructure Act is to provide financial assistance to local authorities for the construction or modification of water supply and wastewater facilities to correct demonstrably hazardous or inadequate conditions."

## Section 3. Section 75-1-3 NMSA 1978 (being Laws 1973, Chapter 333, Section 3, as amended) is amended to read:

"75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

A. A special fund is created to be known as the "rural infrastructure revolving loan fund". Money appropriated to the fund or to the department to carry out the provisions of the Rural Infrastructure Act may be used to make loans and grants to local authorities, individually or jointly, for water supply or wastewater facilities. Appropriations made to the fund but not expended at the end of the fiscal year for which appropriated shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the balance in the fund shall be credited to the fund. In addition, when the proceeds from the issuance of severance tax bonds appropriated to the fund are deposited in the state treasury, interest earned on that money during the period from deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

B. Ten percent of any appropriation to the fund or to the department to carry out the provisions of the Rural Infrastructure Act shall be set aside for emergency grants and loans pursuant to Section 75-1-5 NMSA 1978.

C. All water supply and wastewater facilities shall be designed in compliance with the engineering requirements established by the secretary after consulting with and considering the recommendations of the professional engineering societies operating in New Mexico. The secretary shall also establish, by regulations, guidelines for the ranking of projects for top priority based on public health needs.

D. The department shall administer the fund and shall make grant and loan disbursements in accordance with the Rural Infrastructure Act. The secretary shall adopt regulations to govern the application procedure and requirements for disbursing grants and loans under the Rural Infrastructure Act, including requirements consistent with the purpose of the act for determining the eligibility and priority of local authorities for such grants and loans.

E. Receipts from the repayment of loans, including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978, shall be deposited in the fund by the department, including receipts from the repayment of loans made pursuant to appropriations to carry out the purposes of the Water Supply Construction Act made prior to the effective date of the Rural Infrastructure Act.

F. Loans and grants made pursuant to the provisions of the Rural Infrastructure Act shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act."

## Section 4. Section 75-1-4 NMSA 1978 (being Laws 1973, Chapter 333, Section 4, as amended) is amended to read:

"75-1-4. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to local authorities that:

(1) agree to operate and maintain the water supply facilities so that the facilities 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 a written assurance, signed by an attorney, that the local authority has proper title, easements and rights of way to the property upon or through which the water supply facility proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

(5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose; and

(6) agree to properly maintain financial records and to conduct an audit of the project's financial records.

B. Except as otherwise provided in the Rural Infrastructure Act, a loan shall be for a period of time not to exceed twenty years. Loans may be interest free or bear an annual interest rate set by the secretary that is at or below market interest rates. The repayment of loans shall be in annual installments beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

C. No loan recipient eligible to receive a grant under the Rural Infrastructure Act shall receive grants in any one year totaling more than two hundred thousand dollars ($200,000).

D. The maximum assistance, including both loans and grants, which a local authority may receive under the Rural Infrastructure Act in any one year is five hundred thousand dollars ($500,000).

E. Plans and specifications for a water supply or wastewater facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority. Interim loan disbursements to pay for engineering and other professional services may be made by the department prior to the approval of the plans and specifications.

F. Privately owned water supply or wastewater facilities are not eligible for assistance under the Rural Infrastructure Act.

G. Grants and loans shall be made only for eligible items. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, archaeological surveys and contracted construction. The costs of water rights, land, system acquisition, easements and rights of way, refinancing of program loans, legal costs and fiscal agents' fees are eligible items only for loan funds. Local authority administrative costs shall not be included as eligible items.

H. In the event the local authority fails to make the prescribed loan repayment, the department is authorized to set water or wastewater user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of this loan and proper operation and maintenance."

## Section 5. Section 75-1-5 NMSA 1978 (being Laws 1987, Chapter 175, Section 4, as amended) is amended to read:

"75-1-5. EMERGENCY LOANS AND GRANTS.--Ten percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out

the provisions of the Rural Infrastructure Act shall be reserved for emergencies and shall be allocated by the department only upon approval of the state board of finance. This amount shall not be deposited in the fund and shall be allocated only for emergency loans and grants. Emergency loans and grants shall be made in accordance with the applicable provisions for loans pursuant to the Rural Infrastructure Act; provided that a grant shall not exceed two hundred thousand dollars ($200,000). At the end of the third quarter of each fiscal year, the unexpended balance of the reserved amount may be transferred by the department to the fund for use in accordance with the Rural Infrastructure Act."

## Section 6. Section 75-1-6 NMSA 1978 (being Laws 1988, Chapter 28, Section 7, as amended) is amended to read:

"75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS AND ZERO PERCENT LOANS.--

A. No more than twenty-five percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act shall be reserved for average residential user cost reduction grants or zero percent loans to reduce average residential user cost to a reasonable level for eligible financially needy loan recipients whose water supply or wastewater facilities serve less than three thousand persons.

B. Average residential user cost reduction grants and zero percent loans shall be allocated by the department in accordance with the provisions for grants and loans pursuant to the Rural Infrastructure Act, provided that an average residential user cost reduction grant or zero percent loan shall not exceed two hundred thousand dollars ($200,000). Such grants and loans shall reduce only the principal and interest portion of the average residential user cost to a reasonable cost as determined by the department.

C. A zero percent loan or average residential user cost reduction grant shall be approved by the department when, after construction bids have been received, the following conditions have been met by the local authority whose average residential user costs are in need of reduction:

(1) the construction project is designed using the most cost-effective and dependable option;

(2) the system is designed with adequate built-in expansion capacity;

(3) other sources of grant funds have been sought and are not available in a timely manner;

(4) the project cannot feasibly be reduced in scope or phased so as to bring it within available loan funds and within reasonable user cost; and

(5) the local authority's median household income is less than ninety percent of the statewide non-metropolitan median household income based on the most

current federal decennial census."

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SENATE BILL 181

# CHAPTER 251

**CHAPTER 251, LAWS 2001**

AN ACT

RELATING TO MORTGAGES; CHANGING PROVISIONS OF THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT TO BRING MOST MORTGAGE PRACTITIONERS UNDER THE ACT'S REGISTRATION AND LICENSING REQUIREMENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan Company and Loan Broker Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "division" means the financial institutions division of the regulation and licensing department;

C. "director" means the director of the financial institutions division of the regulation and licensing department;

D. "dwelling" means a residential structure, including a home, individual condominium unit, manufactured home or modular home, that contains one to four units and is permanently attached to real property;

E. "loan broker" means any person who acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan, or both;

F. "mortgage loan" means a loan secured by a dwelling permanently affixed to real property; and

G. "mortgage loan company" means a person who, directly or indirectly:

(1) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan;

(2) holds himself out as being able to serve as an agent for a person who makes mortgage loans; or

(3) holds himself out as being able to make mortgage loans."

## Section 2. Section 58-21-3 NMSA 1978 (being Laws 1983, Chapter 86, Section 3) is amended to read:

"58-21-3. REGISTRATION CERTIFICATE REQUIRED.--It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company or loan broker without first filing an application with the director and obtaining a registration certificate under the Mortgage Loan Company and Loan Broker Act."

## Section 3. Section 58-21-4 NMSA 1978 (being Laws 1983, Chapter 86, Section 4, as amended) is amended to read:

"58-21-4. APPLICATION FOR REGISTRATION OR RENEWAL.--Each application for registration or renewal as a mortgage loan company or loan broker shall be filed in writing with the director, shall be verified and shall contain the following:

A. the name of the applicant and of each of the applicant's affiliates, engaged in the business of a loan broker or a mortgage loan company, and the name under which the applicant will conduct business in New Mexico, together with the articles of incorporation or articles of partnership;

B. the location of the applicant's principal office and of each branch office in New Mexico;

C. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director or manager, specifying the capacity and title of each;

D. a financial statement of the applicant verified by a principal of the applicant;

E. the length of time the applicant has been engaged in business in other jurisdictions;

F. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress against the applicant or a director, officer, employee or affiliate of the applicant;

G. the registration fee; and

H. such other information and documentation as the director may require."

## Section 4. Section 58-21-5 NMSA 1978 (being Laws 1983, Chapter 86, Section 5, as amended) is amended to read:

"58-21-5. REGISTRATION FEES--DURATION OF REGISTRATION.--

A. Applicants shall, at the time of application, pay to the division four hundred dollars ($400) for initial registration and three hundred dollars ($300) for each renewal registration. Additionally, the director shall charge and collect from an applicant a fee of ten dollars ($10.00) per day for late filings of a renewal registration or three hundred dollars ($300), whichever is less.

B. A registration shall continue for a period of twelve months from the date of registration. Each registrant shall submit a renewal application at least thirty days before the expiration of his existing registration.

C. A registrant shall pay a replacement license fee of fifty dollars ($50.00)."

## Section 5. Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86, Section 6, as amended) 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, consumer finance companies, 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 6. Section 58-21-8 NMSA 1978 (being Laws 1983, Chapter 86, Section 8, as amended) is amended to read:

"58-21-8. DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION.--The director may deny, suspend or revoke any registration when the applicant or registrant, or a director, officer, employee or affiliate of the applicant or registrant:

A. lacks a good business reputation;

B. has violated a provision of the Mortgage Loan Company and Loan Broker Act;

C. charges, collects or receives fees for procuring, negotiating or securing a loan in excess of the amounts allowed by the Mortgage Loan Company and Loan Broker Act or by rules promulgated pursuant to that act;

D. has committed fraud in connection with a transaction subject to the Mortgage Loan Company and Loan Broker Act;

E. has made a misrepresentation or false statement to or concealed an essential or material fact from a person in the course of the loan broker or mortgage loan company business;

F. has knowingly made or caused to be made a false representation of material fact or has suppressed or withheld from the director information that the applicant or registrant possesses and which if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Mortgage Loan Company and Loan Broker Act;

G. has violated any provisions of any New Mexico statute relating to escrow agents or escrow companies;

H. has refused to permit an examination by the director of his books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company and Loan Broker Act;

I. has been convicted of a felony or any misdemeanor involving moral turpitude; subject, however, to the provisions of the Criminal Offender Employment Act; or

J. appears to be conducting business in a manner that is injurious to persons."

## Section 7. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9, as amended) is amended to read:

"58-21-9. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan companies and loan brokers doing business in New Mexico. In addition to the other duties imposed on him by law, the director shall:

(1) make reasonable rules necessary for the implementation of the Mortgage Loan Company and Loan Broker Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company and Loan Broker Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company and Loan Broker Act.

B. The director may conduct an investigation upon complaint, when it appears that a mortgage loan company or loan broker is conducting business in a manner injurious to persons, or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978."

## Section 8. Section 58-21-11 NMSA 1978 (being Laws 1983, Chapter 86, Section 11) is amended to read:

"58-21-11. KEEPING OF RECORDS.--Every mortgage loan company and loan broker shall make and keep those accounts, correspondence, memoranda, papers, books, data and other records as the director by rule prescribes. All records so required shall be preserved for six years."

## Section 9. Section 58-21-12 NMSA 1978 (being Laws 1983, Chapter 86, Section 12, as amended) is amended to read:

"58-21-12. EXAMINATION OF RECORDS.--All the records required to be maintained by the Mortgage Loan Company and Loan Broker Act are subject to examinations or investigations by representatives of the director within or without

New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. The mortgage loan company or loan broker so examined shall pay a fee for each such examination at the rate of three hundred dollars ($300) per day, or fraction thereof, for each authorized representative engaged in the examination. If the examination is conducted outside the state, the actual cost of travel for the examiners shall also be reimbursed to the state by the mortgage loan company or loan broker so examined."

## Section 10. Section 58-21-15 NMSA 1978 (being Laws 1983, Chapter 86, Section 15) is amended to read:

"58-21-15. INVESTIGATIONS BY DIRECTOR.--

A. The director may make any public or private investigation, within or outside of this state, as he finds necessary to determine whether a person has violated or is about to violate the Mortgage Loan Company and Loan Broker Act or any rule or order of the director under that act or to aid in enforcement of that act or in the rules under that act.

B. The director may publish information concerning a violation of the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit."

## Section 11. Section 58-21-18 NMSA 1978 (being Laws 1983, Chapter 86, Section 18, as amended) is amended to read:

"58-21-18. PERMISSIBLE CHARGES.--In connection with any loan originated, brokered, negotiated or made by a registrant pursuant to the Mortgage Loan Company and Loan Broker Act, a broker may not collect, charge or receive broker fees in excess

of six percent of the principal amount of the loan. A registrant may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by state or federal laws."

## Section 12. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86, Section 19, as amended) 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 applicable federal consumer lending laws."

## Section 13. Section 58-21-22 NMSA 1978 (being Laws 1983, Chapter 86, Section 22) is amended to read:

"58-21-22. PENALTIES.--A person who violates Section 58-21-3, 58-21-18, 58-21-19 or 58-21-21 NMSA 1978 or who violates Section 58-21-20 NMSA 1978, knowing the statement to be false or misleading in any material respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-15 NMSA 1978."

## Section 14. Section 58-21-23 NMSA 1978 (being Laws 1983, Chapter 86, Section 23) is amended to read:

"58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A document is filed when it is received by the director. The director may permit the destruction of any document filed under the Mortgage Loan Company and Loan Broker Act with the division or the director after six years from the date of filing documents."

## Section 15. A new Section 58-21-28 NMSA 1978 is enacted to read:

"58-21-28. ENFORCEMENT.--

A. If the director reasonably believes, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act or any rule promulgated pursuant to that act, the director may, subject to the right of that person to obtain a subsequent hearing pursuant to Subsection B of Section 58-21-14 NMSA 1978, issue a cease and desist order without a prior hearing against the person engaged in the prohibited activities directing him to desist and refrain from further illegal activity.

B. When it appears to the director, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has violated

the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act, the director, in addition to any specific power granted under that act, may, after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

(1) issue a cease and desist order against the person;

(2) censure the person if that person is a registered mortgage loan company or loan broker;

(3) bar or suspend that person from registration in this state as a mortgage loan company or loan broker;

(4) issue an order against an applicant, registered person or other person who violates that act, imposing a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation; or

(5) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable."

## Section 16. A new Section 58-21-29 NMSA 1978 is enacted to read:

"58-21-29. POWER OF COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the Mortgage Loan Company and Loan Broker Act or any rule or order of the director under that act, the district court of the first judicial district for Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-21-28 NMSA 1978 in connection with the transactions constituting violations of the Mortgage Loan Company and Loan Broker Act.

C. The court shall not require the director to post bond in an action under this section."

## Section 17. REPEAL.--Sections 58-21-24 and 58-21-27 NMSA 1978 (being Laws 1983, Chapter 86, Section 24 and Laws 1987, Chapter 343, Section 1) are repealed.

## Section 18. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 5 of this act is January 31, 2002.

B. The effective date of the provisions of

Sections 1 through 4 and 6 through 18 of this act is

July 1, 2001.

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SENATE BILL 199

# CHAPTER 252

**CHAPTER 252, LAWS 2001**

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO THE INVESTMENT OF THE PERMANENT FUNDS; AUTHORIZING THE STATE INVESTMENT OFFICER TO INVEST FOR TAX-EXEMPT PRIVATE ENDOWMENTS WHOSE SOLE BENEFICIARY IS A STATE AGENCY.

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

## Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--

INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds administered under the supervision of the council. The state investment officer shall see that money invested is at all times handled in the best interests of the state.

B. Securities or investments purchased or held may be sold or exchanged for other securities and investments; provided, however, that no sale or exchange shall be at a price less than the going market at the time the securities or investments are sold or exchanged.

C. In purchasing bonds, the state investment officer shall require a certified or original written opinion of a reputable bond attorney or the attorney general of the state certifying the legality of the bonds to be purchased; provided, however, this written opinion may be the approving legal opinion ordinarily furnished with the bond issue.

D. The state investment officer shall formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.

E. The council shall meet at least once each month, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

F. For the purposes of the investment of all funds managed by the investment office, the state investment officer shall manage the funds in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act. With the

approval of the council, the state investment officer may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.

G. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer are exempt from the New Mexico Securities Act of 1986. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency."

## Section 2. Section 6-8-9 NMSA 1978 (being Laws 1957, Chapter 179, Section 9, as amended) is amended to read:

"6-8-9. SECURITIES AND INVESTMENT.--

A. Money made available from the land grant permanent funds for investment for a period in excess of one year may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less than Baa or BBB or the equivalent by a national rating service;

(4) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness rated not less than BB or B or the national association of insurance commissioners' equivalent by a national rating service. An investment made under this paragraph shall be in publicly traded debt issues with an outstanding par value of at least one hundred million dollars ($100,000,000) and issued by a corporation, partnership or trust listed on a national exchange and organized and operating within the United States; provided that investments made pursuant to this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(5) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the mortgage;

(6) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(7) real estate investments, including real property and undivided interests in real property, debt instruments secured by first liens on real property or limited partnership interests; provided that the total value of investments made under this paragraph shall not exceed three percent of the market value of the land grant permanent funds, calculated at the time of investment;

(8) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the land grant permanent funds;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the funds, subject to budgeting and appropriation by the legislature; and

(9) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (6) and (8) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature.

B. Not more than sixty-five percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the land grant permanent funds may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice."

## Section 3. Section 6-8-10 NMSA 1978 (being Laws 1957, Chapter 179, Section 10) is amended to read:

"6-8-10. INVESTMENT STANDARDS.--Investments made pursuant to Sections 6-8-1 through 6-8-16 NMSA 1978 shall be made in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act."

## Section 4. Section 6-8-19 NMSA 1978 (being Laws 1987, Chapter 126, Section 1, as amended) is amended to read:

"6-8-19. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the land grant permanent funds made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) security-lending contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service;

(4) prime bankers' acceptances issued by money center banks;

(5) funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and

(6) time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal

agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraph (1) or (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer."

## Section 5. Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is amended to read:

"6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF INTEREST.--

A. There is created the "private equity investment advisory committee" to the council. The committee consists of the state investment officer, a member of the council appointed by the governor and three members who are qualified by competence and experience in finance and investment and knowledgeable about the private equity investment process and who are appointed by the governor.

B. Members appointed by the governor, except the council member, shall be appointed for three-year terms; provided that the terms of the initial committee members shall be staggered so that the term of one member expires each year. After the initial appointments, all governor-appointed members shall be appointed for three-year terms. Members shall serve until their successors are appointed. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment, but only for the unexpired term.

C. The committee shall review and make recommendations to the council on investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and

7-27-5.26 NMSA 1978 and shall advise the council in matters and policies related to such investments. The committee shall establish policies for national private equity fund investments, New Mexico private equity fund investments and New Mexico film private equity fund investments not less often than annually and shall make copies available to interested parties.

D. Members of the committee shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The committee shall elect annually a chairman from among its members and may elect other officers as necessary. The committee shall meet upon the call of the chairman or the state investment officer.

F. Members of the committee are public employees within the meaning of the Tort Claims Act and are entitled to all immunity and indemnification provided under that act.

G. No person may be a member of the committee if any recommendation, action or decision of the committee will or is likely to result in direct, measurable economic gain to that person or his employer.

H. The state investment officer may enter into contracts with investment advisors for private equity fund investments and film fund investments authorized pursuant to Sections 6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26 NMSA 1978 and may pay budgeted expenses for the advisors from the assets of any fund administered under the supervision of the council, as applicable."

## Section 6. Section 6-8-21 NMSA 1978 (being Laws 1997, Chapter 183, Section 5) is amended to read:

"6-8-21. PRIVATE EQUITY INVESTMENTS.--

A. The state investment officer may make commitments to private equity funds to invest up to six percent of the market value of the land grant permanent funds in accordance with the provisions of this section. If invested capital should at any time exceed six percent of the market value of the land grant permanent funds, no further commitments shall be made until the invested capital is less than six percent of the market value of the land grant permanent funds.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one private equity fund. The amount invested in any one private equity fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in private equity funds whose investments enhance the economic development objectives of the state; provided such investments offer a rate of return and safety comparable to other private equity investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon the approval of the council and upon review of the recommendation of the private equity investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a private equity fund

and which fixed amounts may be invested in that fund in one or more payments over time;

(2) "invested capital" means the original capital contributed less any return of cost by the private equity funds; and

(3) "private equity fund" means a limited partnership, limited liability company or corporation that:

(a) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, new product development, recapitalization or similar business purposes;

(b) holds out prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed private equity funds;

(c) has a minimum committed capital of fifteen million dollars ($15,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing private equity funds."

## Section 7. Section 7-27-5.1 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, as amended) is amended to read:

"7-27-5.1. MARKET RATE INVESTMENTS.--

A. Money made available from the severance tax permanent fund for investment for a period in excess of one year in market rate investments may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less that Baa or BBB or the equivalent by a national rating service;

(4) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness rated not less than BB or B or the national association of insurance commissioners' equivalent by a national rating service. An investment made under this paragraph shall be in publicly traded debt issues with an outstanding par value of at least one hundred million dollars ($100,000,000) and issued by a corporation, partnership or trust listed on a national exchange and organized and operating within the United States; provided that investments made pursuant to this paragraph shall not exceed three percent of the market value of the severance tax permanent fund, calculated at the time of investment;

(5) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the mortgage;

(6) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(7) real estate investments, including real property and undivided interests in real property, debt instruments secured by first liens on real property, or limited partnership interests; provided that the total value of investments made under this paragraph shall not exceed three percent of the market value of the severance tax permanent fund, calculated at the time of investment;

(8) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the severance tax permanent fund;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the fund, subject to budgeting and appropriation by the legislature;

(9) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (6) and (8) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature; and

(10) participation interests in New Mexico real-property-related business loans. The actual amount invested under this paragraph shall not exceed ten percent of the severance tax permanent fund and shall be included in any minimum amount of severance tax permanent fund investments required to be placed in New Mexico certificates of deposit. Investments authorized in this paragraph are subject to the following:

(a) the state investment officer may purchase from eligible institutions a participation interest of up to eighty percent in any loan secured by a first mortgage or a deed of trust on the real property located in New Mexico of an eligible business entity, or its subsidiary, that is operating or shall use loan proceeds to commence operations within New Mexico plus any other guarantees or collateral that may be judged by the eligible institution or the state investment officer to be prudent. To be eligible for investment the following minimum requirements shall be met: 1) the loan proceeds shall be used exclusively for the purpose of expanding or establishing businesses in New Mexico, including the refinancing of such businesses for expansion purposes only. If a portion of the loan proceeds were used for refinancing or repaying an existing loan and payment of principal and interest to the state has not been made

within ninety days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan and begin foreclosure proceedings; 2) eligible business entities shall not include public utilities or financial institutions or shopping centers, apartment buildings or other such passive investments; 3) the minimum loan amount shall be two hundred fifty thousand dollars ($250,000) and may be met by packaging up to ten separate loans satisfying the requirements of this paragraph. The maximum loan amount shall be two million dollars ($2,000,000); 4) the loan maturity shall be not less than five years or more than thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and based on current appraisal of the real property by an appraiser who is licensed or certified in New Mexico and approved by the state investment officer, which shall be made not more than one hundred eighty days from the loan origination date; 6) the interest rate of the loan shall be fixed for five years and shall be adjusted at every fifth anniversary of the note to the rate specified in Item 7) of this subparagraph; 7) the yield on the state's participation interest shall in no case be less than the greater of the then-prevailing yield on United States treasury securities of five-year maturity plus two and one-half percent or the yield received by the lending institution calculated exclusive of servicing fees; 8) if payment of principal or interest has not been made within one hundred eighty days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan, substitute another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure proceedings are commenced, the state and the originating institution shall share in proportion to their participation interest, as provided in this subparagraph, in the legal and other foreclosure expenses and in any loss incurred as a result of a foreclosure sale;

(b) a standardized participation agreement, the form of which shall be approved by the attorney general's office, shall be executed between the investment office and each eligible originating institution. The participation agreement shall provide that the originating institution shall not assign its interest in any loan covered by the agreement without the prior written consent of the state investment officer;

(c) a formal forward commitment program may be instituted by the state investment officer with the approval of the council;

(d) the council shall adopt regulations: 1) defining passive investments; 2) establishing underwriting guidelines; 3) ensuring diversification across a variety of types of collateral, types of businesses and regions of the state; and 4) providing for the review by the state investment officer of servicing and other fees that may be charged by the eligible institution;

(e) eligible institutions include banks, savings and loan associations and credit unions operating in the state; and

(f) real property is defined as land and attached buildings, but excludes all interests that may be secured by a security interest under Article 9 of the Uniform Commercial Code, and mineral resource values.

B. Not more than sixty-five percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraphs (6), (8) and (9) of Subsection A of this section, and no more than ten percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the severance tax permanent fund may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice."

## Section 8. Section 7-27-5.6 NMSA 1978 (being Laws 1987, Chapter 219, Section 2, as amended) is amended to read:

"7-27-5.6. PRIVATE EQUITY INVESTMENTS.--

A. The state investment officer may make commitments to private equity funds to invest up to six percent of the market value of the severance tax permanent fund in accordance with the provisions of this section. If invested capital should at any time exceed six percent of the market value of the severance tax permanent fund, no further commitments shall be made until the invested capital is less than six percent of the market value of the severance tax permanent fund.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one private equity fund. The amount invested in any one private equity fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in private equity funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other private equity investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the private equity investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a private equity fund and which fixed amounts may be invested in that fund in one or more payments over time;

(2) "invested capital" means the original capital contributed less any return of cost by the private equity funds; and

(3) "private equity fund" means a limited partnership, limited liability company or corporation that:

(a) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, new product development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed private equity funds;

(c) has a minimum committed capital of fifteen million dollars ($15,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing private equity funds."

## Section 9. Section 7-27-5.14 NMSA 1978 (being Laws 1990, Chapter 126, Section 4) is amended to read:

"7-27-5.14. FINDINGS AND PURPOSE.--The legislature finds that the health of the New Mexico economy is heavily dependent on the establishment and expansion of small businesses and that the lack of available private equity is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local private equity are developed. The purpose of Section 7-27-5.15 NMSA 1978 is to provide a mechanism whereby the establishment of locally managed private equity funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated."

## Section 10. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended by Laws 2000, Chapter 76, Section 1 and also by Laws 2000, Chapter 97, Section 2) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUND 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 any limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in 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 U.S.C. 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 of one percent of the market value of the severance tax permanent fund by July 1, 2001 to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses. If invested capital in the small business investment corporation should at any time fall below one-fourth of one 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 of one percent of the market value of the fund. As used in this subsection, "invested capital" means the original capital contributed less any return of cost by the private equity funds."

## Section 11. Section 7-27-5.23 NMSA 1978 (being Laws 1997, Chapter 45, Section 3) is amended to read:

"7-27-5.23. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the severance tax permanent fund made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) securities-lending contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service;

(4) prime bankers' acceptances issued by money center banks;

(5) funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company; and

(6) time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraphs (1) and (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage

firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer."

## Section 12. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than one-half of one percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds under this section.

B. If an investment is made under this section, not more than seven million five hundred thousand dollars ($7,500,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico film private equity fund.

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 an investment pursuant to this section only in a New Mexico film private equity fund that invests only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have obtained no less than one-third of the estimated total production costs from other sources;

(3) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(4) have agreed that, while filming in New Mexico, a majority of the production crew will be New Mexico residents; and

(5) have posted a completion bond that has been approved by the New Mexico film division.

D. 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."

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SENATE BILL 232, AS AMENDED

# CHAPTER 253

**CHAPTER 253, LAWS 2001**

AN ACT

RELATING TO PROPERTY TAXATION; CHANGING THE DEADLINE FOR PAYMENT OF DELINQUENT TAXES TO AVOID SALE OF PROPERTY.

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

## Section 1. Section 7-38-65 NMSA 1978 (being Laws 1973, Chapter 258, Section 105, as amended) is amended to read:

"7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL PROPERTY--SALE OF REAL PROPERTY.--

A. 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 2. Section 7-38-66 NMSA 1978 (being Laws 1973, Chapter 258, Section 106, as amended) is amended to read:

"7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--NOTICE OF SALE.--

A. At least twenty days but not more than thirty days before the date of the sale for delinquent taxes, the department shall notify by certified mail, return receipt requested, to the address as shown on the most recent property tax schedule, each property owner whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes, 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, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of sale in accordance with Section 7-38-68 NMSA 1978.

B. The notice shall also:

(1) state the amount of taxes, penalties, interest and costs due;

(2) state the time and place of the sale;

(3) describe the real property that will be sold;

(4) inform the property owner of his right to enter into an installment agreement with the department for payment of delinquent taxes, penalties, interest and costs, in accordance with Section 7-38-68 NMSA 1978;

(5) provide information on the name and phone number of the individual in the department the taxpayer can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and

(6) contain any other information that the department may require by regulation.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is located.

D. Failure of the department to mail a required notice by certified mail, return receipt requested, shall invalidate the sale; provided, however, that return to the department of the notice of the return receipt shall be deemed adequate notice and shall not invalidate the sale.

E. Proof by the taxpayer that all delinquent taxes, penalties, interest and costs had been paid by 5:00 p.m. of the day prior to the date of sale shall prevent or invalidate the sale.

F. Proof by the taxpayer that the taxpayer has, by 5:00 p.m. of the day prior to the date of sale, entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

G. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978."

## Section 3. Section 7-38-67 NMSA 1978 (being Laws 1973, Chapter 258, Section 107, as amended) is amended to read:

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

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

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

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

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

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

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

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

**Section 4. APPLICABILITY.--The provisions of this act apply to sales of real property for delinquent taxes conducted by the taxation and revenue department on or after July 1, 2001.**

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SENATE BILL 356, AS AMENDED

# CHAPTER 254

**CHAPTER 254, LAWS 2001**

AN ACT

RELATING TO PROPERTY TAXATION; CHANGING THE DEADLINE FOR PAYMENT OF DELINQUENT TAXES TO AVOID SALE OF PROPERTY.

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

## Section 1. Section 7-38-65 NMSA 1978 (being Laws 1973, Chapter 258, Section 105, as amended) is amended to read:

"7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL PROPERTY--SALE OF REAL PROPERTY.--

A. 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 2. Section 7-38-66 NMSA 1978 (being Laws 1973, Chapter 258, Section 106, as amended) is amended to read:

"7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--NOTICE OF SALE.--

A. At least twenty days but not more than thirty days before the date of the sale for delinquent taxes, the department shall notify by certified mail, return receipt requested, to the address as shown on the most recent property tax schedule, each property owner whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes, 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, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of sale in accordance with Section 7-38-68 NMSA 1978.

B. The notice shall also:

(1) state the amount of taxes, penalties, interest and costs due;

(2) state the time and place of the sale;

(3) describe the real property that will be sold;

(4) inform the property owner of his right to enter into an installment agreement with the department for payment of delinquent taxes, penalties, interest and costs, in accordance with Section 7-38-68 NMSA 1978;

(5) provide information on the name and phone number of the individual in the department the taxpayer can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and

(6) contain any other information that the department may require by regulation.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is located.

D. Failure of the department to mail a required notice by certified mail, return receipt requested, shall invalidate the sale; provided, however, that return to the department of the notice of the return receipt shall be deemed adequate notice and shall not invalidate the sale.

E. Proof by the taxpayer that all delinquent taxes, penalties, interest and costs had been paid by 5:00 p.m. of the day prior to the date of sale shall prevent or invalidate the sale.

F. Proof by the taxpayer that the taxpayer has, by 5:00 p.m. of the day prior to the date of sale, entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

G. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978."

## Section 3. Section 7-38-67 NMSA 1978 (being Laws 1973, Chapter 258, Section 107, as amended) is amended to read:

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

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

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

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

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

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

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

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

## Section 4. APPLICABILITY.--The provisions of this act apply to sales of real property for delinquent taxes conducted by the taxation and revenue department on or after July 1, 2001.

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HOUSE BILL 138, AS AMENDED

# CHAPTER 255

**CHAPTER 255, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING READING COURSES FOR TEACHER CERTIFICATION.

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

## Section 1. Section 22-2-8.7 NMSA 1978 (being Laws 1986, Chapter 33, Section 8, as amended) is amended to read:

"22-2-8.7. CERTIFICATION REQUIREMENTS.--

A. The state board shall require any person seeking certification in elementary or secondary education to complete 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 Subsection A of this section, the state board shall require that a person seeking standard or alternative elementary certification shall have completed six hours of reading courses, and a person seeking standard or alternative secondary certification shall have completed three hours of reading courses in subject matter content. The state board of education shall establish requirements that provide a reasonable period of time to comply with the provisions of this section.

C. The state board shall require, prior to certification, 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 certified school instructor 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 certification or minimum requirements for alternative certification.

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 certification requirements are more appropriate for vocational teacher preparatory programs."

**Section 2. TEMPORARY PROVISION--APPLICABLE STUDENTS.--The requirements in Subsection B of Section 22-2-8.7 NMSA 1978 shall apply to students first entering a college or university beginning in the fall of 2001.**

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# CHAPTER 256

**CHAPTER 256, LAWS 2001**

AN ACT

RELATING TO GAMING REVENUES; PROVIDING THAT A PERCENTAGE OF INTEREST EARNINGS ON BALANCES OF CERTAIN RACETRACK GAMING PURSE FUNDS MAY BE USED FOR ADMINISTRATIVE EXPENSES; DECLARING AN EMERGENCY.

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

## Section 1. Section 60-2E-47 NMSA 1978 (being Laws 1997, Chapter 190, Section 49, as amended) is amended to read:

"60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; and twenty-five percent of the net take of every gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. An amount not to exceed twenty percent of the interest earned on the balance of any fund consisting of

money for purses distributed by racetrack gaming operator licensees pursuant to this subsection may be expended for the costs of administering the distributions. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes,

for charitable or educational purposes."

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

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HOUSE BILL 456, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2001

# CHAPTER 257

**CHAPTER 257, LAWS 2001**

AN ACT

RELATING TO EDUCATION; AMENDING GRADUATION REQUIREMENTS; PROVIDING FOR MARCHING BAND TO COUNT TOWARD FULFILLMENT OF THE PHYSICAL EDUCATION REQUIREMENT UPON THE APPROVAL OF THE LOCAL SCHOOL BOARD.

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

## Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; American sign language; and other electives approved by the state board.

With the approval of the local school board, participation in a marching band, on an athletic team or in an athletic sport during the school day may count toward fulfillment of the physical education required unit.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. No student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. The state competency examinations on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system he takes and passes the state competency examination, he may receive a high school diploma.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

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HOUSE BILL 554

# CHAPTER 258

**CHAPTER 258, LAWS 2001**

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; EXPANDING THE SCOPE OF EMERGENCY MEDICAL SERVICES FUNDED BY THE DEPARTMENT OF HEALTH; AMENDING SECTIONS OF THE EMERGENCY MEDICAL SERVICES FUND ACT.

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

## Section 1. Section 24-10A-2 NMSA 1978 (being Laws 1978, Chapter 178, Section 2, as amended) is amended to read:

"24-10A-2. PURPOSE OF ACT.--The purpose of the Emergency Medical Services Fund Act is to make money available to municipalities and counties for use in the establishment and enhancement of local emergency medical services, statewide emergency medical services and trauma services in order to reduce injury and loss of life."

## Section 2. Section 24-10A-2.1 NMSA 1978 (being Laws 1994, Chapter 61, Section 2) is amended to read:

"24-10A-2.1. DEFINITIONS.--As used in the Emergency Medical Services Fund Act:

A. "bureau" means the injury prevention and emergency medical services bureau of the public health division of the department;

B. "committee" means the statewide emergency medical services advisory committee appointed pursuant to the provisions of Section 24-10B-7 NMSA 1978;

C. "department" means the department of health;

D. "fund" means the emergency medical services fund;

E. "local recipient" means an ambulance service, medical rescue service, fire department rescue service, air ambulance service or other prehospital care provider:

(1) that routinely responds to an individual's need for immediate medical care in order to prevent loss of life or aggravation of physical or psychological illness or injury;

(2) whose application for funding through the Emergency Medical Services Fund Act is sponsored by a municipality or county; and

(3) that meets department guidelines concerning personnel training, use of bureau-approved run forms, participation in mutual aid agreements and medical control;

F. "municipality" means an incorporated city, town or village; and

G. "secretary" means the secretary of health."

## Section 3. Section 24-10A-3 NMSA 1978 (being Laws 1978, Chapter 178, Section 3, as amended) is amended to read:

"24-10A-3. EMERGENCY MEDICAL SERVICES FUND CREATED--FUNDING.--

A. The "emergency medical services fund" is created in the state treasury. Money in the fund shall not revert at the end of any fiscal year. Money appropriated to the fund or accruing to it through gifts, grants, fees or bequests shall be deposited in the fund. Interest earned on investment of the fund shall be credited to the general fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or his authorized representative.

B. The bureau shall administer the fund and provide for the distribution of the fund pursuant to the Emergency Medical Services Fund Act and rules adopted pursuant to the provisions of that act.

C. In any fiscal year, no less than seventy-five percent of the money in the fund shall be used for the local emergency medical services funding program to support the cost of supplies and equipment and operational costs other than salaries and benefits for emergency medical services personnel. This money shall be distributed to municipalities and counties on behalf of eligible local recipients, using a formula established pursuant to rules adopted by the department. The formula shall determine each municipality's and county's share of the fund based on the relative geographic size and population of each county. The formula shall also base the distribution of money for each municipality and county on the relative number of runs of each local recipient eligible to participate in the distribution.

D. In any fiscal year, no more than:

(1) twenty-two percent of the fund may be used for emergency medical services system improvement projects, including the purchase of emergency medical services vehicles, local and statewide emergency medical services system support projects, the statewide trauma care system program and the emergency medical dispatch agency support program; and

(2) three percent of the fund may be used by the bureau and emergency medical services regional offices for administrative costs, including monitoring and providing technical assistance.

E. In any fiscal year, money in the fund that is not distributed pursuant to the provisions of Subsection D of this section may be distributed pursuant to the provisions of Subsection C of this section."

## Section 4. Section 24-10A-4 NMSA 1978 (being Laws 1978, Chapter 178, Section 4, as amended) is amended to read:

"24-10A-4. FUNDING PROGRAM--PURPOSE--DETERMINATION OF NEEDS.--

A. The "local emergency medical services funding program" is created. The program shall provide for the:

(1) establishment or enhancement of local emergency medical services, including the use of advanced technology equipment;

(2) operational costs other than salaries and benefits of local emergency medical services personnel;

(3) purchase, repair and maintenance of emergency medical services vehicles, equipment and supplies, including the use of advanced technology equipment; and

(4) training and licensing of local emergency medical services personnel.

B. Annually on or before June 1, the bureau shall consider and determine, in accordance with the formula adopted by rule of the department, the amount of distribution to municipalities and counties that have applied for money from the fund. In making its determination, the bureau shall ensure that no municipality or county receives money from the fund for the purpose of accumulation as defined by rule of the department, except as waived by the bureau in writing for good cause shown. The bureau shall also ensure that each local recipient is in compliance with the rules of the department."

## Section 5. Section 24-10A-4.1 NMSA 1978 (being Laws 1994, Chapter 61, Section 10, as amended) is amended to read:

"24-10A-4.1. EMERGENCY MEDICAL SERVICES SYSTEM IMPROVEMENT PROJECTS.--

A. Applications for emergency medical services system improvement projects shall be submitted separately from applications for the local emergency medical services funding program. The bureau shall award emergency medical services system improvement projects after a review of the applications. The awards shall be made based on a priority ranking, demonstrated need for funding and recommendations from the committee. Money awarded shall be used in compliance with applicable rules.

B. Applications for funding to purchase emergency medical services vehicles shall be submitted by municipalities or counties on behalf of local recipients. The municipality or county shall commit to providing matching funds of at least twenty-five percent of the cost of purchasing the vehicle.

C. Applications for funding of local and statewide projects shall demonstrate the need for funding and a plan to use the funding to enhance or better integrate local emergency medical services systems or to improve the health, safety and training of emergency medical services technicians statewide.

D. A statewide trauma care system program shall be developed and determined by the bureau in consultation with the committee. The statewide trauma care system program shall provide for the support, development and expansion of the statewide trauma care system in accordance with rules adopted by the department.

E. The emergency medical dispatch agency support program shall fund allowable costs of dispatch agencies that meet criteria established pursuant to rules by the department."

## Section 6. Section 24-10A-6 NMSA 1978 (being Laws 1978, Chapter 178, Section 6, as amended) is amended to read:

"24-10A-6. DISTRIBUTION OF FUND.--On or before August 31, the local emergency medical services funding program distribution shall be made to each municipality and county as determined by the department. No more than one percent of the amount appropriated to the local emergency medical services funding program shall be distributed from the fund to the benefit of a single local recipient in any fiscal year pursuant to the local emergency medical services funding program, to ensure that appropriate emergency medical service is available statewide."

## Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 614, AS AMENDED

# CHAPTER 259

**CHAPTER 259, LAWS 2001**

AN ACT

RELATING TO MOTOR CARRIERS; PROVIDING FOR REGULATION OF COMMUTER VANPOOLS; AMENDING AND ENACTING SECTIONS OF THE MOTOR CARRIER ACT; DECLARING AN EMERGENCY.

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) 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. "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

Z. "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. A new section of the Motor Carrier Act is enacted to read:

"COMMUTER VANPOOLS--REGISTRATION--COMMISSION JURISDICTION--APPLICABILITY--EXEMPTIONS.--

A. No commuter vanpool shall be operated on any public highway in this state without first obtaining from the commission a certificate of registration.

B. A certificate of registration shall be issued for commuter vanpools as a matter of course, without hearing, upon proper application being made and filed and fees paid. The application shall be in writing, be sworn to and designate the equipment to be used, the area to be served and other information as the commission may require. The application shall be accompanied by a certificate of insurance or some other showing of insurance coverage for public liability and property damage in amounts determined by the commission. The commission shall accept as other showing of insurance coverage a certified statement from the superintendent of insurance that the person has met all requirements to be self-insured, a binder issued by a company authorized to do surety or insurance business or a form determined by the commission showing proof of public insurance or a surety bond. This coverage shall be comparable to that required of other regulated carriers and issued by a company authorized to do business in this state. The application shall also be accompanied by a vehicle inspection certificate. A vehicle used as a commuter vanpool shall be required to have an annual inspection, and the inspection certificate must be filed with the commission at the end of each calendar year.

C. A fee in the amount provided in Section 65-2-125 NMSA 1978 shall accompany the application for registration, which may be for one or more vehicles. This fee shall be in lieu of mileage taxes and the inspection and supervision fees required

under Section 63-7-20 NMSA 1978. However, commuter vanpools shall not be entitled to one-half rates on license plates as common, contract or private carriers.

D. The certificate of registration shall remain in force until canceled by the commission. Cancellation for failure to maintain prescribed insurance coverage or vehicle inspections may be ordered by the commission without hearing. A commuter vanpool certificate of registration is subject to cancellation if the holder fails to operate under the certificate of registration for twelve consecutive months.

E. The commission shall have the power and authority over commuter vanpools as to all matters of public liability and property damage insurance.

F. The operator of a commuter vanpool shall certify that it has a program providing for an initial drug test for anyone seeking to be a commuter vanpool 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."

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

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HOUSE BILL 692, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 4, 2001

# CHAPTER 260

**CHAPTER 260, LAWS 2001**

AN ACT

RELATING TO LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES; EXPANDING THE AVAILABILITY OF PUBLIC CELEBRATION PERMITS FOR SMALL BREWERS AND WINEGROWERS; AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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

## Section 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than one hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) conduct wine tastings and sell, by the glass or by the bottle or sell in unbroken packages for consumption off the premises but not for resale, wine of his own production or wine produced by another New Mexico winegrower on the winegrower's premises;

(9) at no more than three off-premises locations, conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production or wine produced by another New Mexico winegrower after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(10) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act; and

(11) at public celebrations on or off the winegrower's premises, after the winegrower has paid the applicable fees and been issued the appropriate permit, to conduct wine tastings, sell by the glass or the bottle or sell in unbroken packages, for consumption off premises but not for resale, wine produced by or for the winegrower.

C. Except as limited by Subsection D of Section 60-7A-1 NMSA 1978, sales of wine as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle or in unbroken packages for consumption off premises but not for resale, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the regulation and licensing department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars ($25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars ($100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars ($250) per year."

## Section 2. Section 60-6A-26.1 NMSA 1978 (being Laws 1985, Chapter 217, Section 5, as amended) is amended to read:

"60-6A-26.1. SMALL BREWER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

(1) become a manufacturer or producer of beer;

(2) package, label and export beer, whether manufactured, bottled or produced by him or any other person;

(3) sell only beer that is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) deal in warehouse receipts for beer;

(5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee or produced and bottled by or for another New Mexico small brewer on the small brewer's premises;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;

(7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer;

(8) at no more than two other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer or beer produced and bottled by or for another New Mexico small brewer; and

(9) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients.

C. At public celebrations off the small brewer's premises in any local option district permitting the sale of alcoholic beverages, the holder of a small brewer's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the

regulation and licensing department for a "small brewer's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a small brewer's license a public celebration permit for a location at the public celebration that is to be shared with other small brewers and winegrowers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

D. Sales and tastings of beer authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 72, AS AMENDED

# CHAPTER 261

**CHAPTER 261, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING READING COURSES FOR TEACHER CERTIFICATION.

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

## Section 1. Section 22-2-8.7 NMSA 1978 (being Laws 1986, Chapter 33, Section 8, as amended) is amended to read:

"22-2-8.7. CERTIFICATION REQUIREMENTS.--

A. The state board shall require any person seeking certification in elementary or secondary education to complete 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 certification shall have completed six hours of reading courses, and a person seeking standard or alternative secondary certification shall have completed three hours of reading courses in subject matter content.

C. The state board shall require, prior to certification, 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 certified school instructor 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 certification or minimum requirements for alternative certification.

E. The requirements in Subsections A and C of this section shall apply to students first entering a college or university beginning in the fall of 1986.

F. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the state board that other certification requirements are more appropriate for vocational teacher preparatory programs."

**Section 2. TEMPORARY PROVISION--APPLICABLE STUDENTS.--The requirements in Subsection B of Section 22-2-8.7 NMSA 1978 shall apply to students first entering a college or university beginning in the fall of 2001.**

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# CHAPTER 262

**CHAPTER 262, LAWS 2001**

AN ACT

RELATING TO GAMING; AMENDING THE GAMING CONTROL ACT TO REDUCE THE GAMING TAX ON THE NET TAKE OF NONPROFIT GAMING OPERATOR LICENSEES AND CLARIFYING AUDIT POWERS OF THE BOARD.

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

## Section 1. Section 60-2E-7 NMSA 1978 (being Laws 1997, Chapter 190, Section 9) is amended to read:

"60-2E-7. BOARD'S POWERS AND DUTIES.--

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act. It has the duty to fulfill all responsibilities assigned to it pursuant to that act, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.

B. The board shall:

(1) employ the executive director;

(2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act;

(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act;

(4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;

(5) meet at least once each month; and

(6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

(1) impose civil fines not to exceed twenty-five thousand dollars ($25,000) for the first violation and fifty thousand dollars ($50,000) for subsequent violations of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act;

(2) conduct investigations;

(3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of any licensee;

(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;

(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;

(6) sue and be sued subject to the limitations of the Tort Claims Act;

(7) contract for the provision of goods and services necessary to carry out its responsibilities;

(8) conduct audits, relevant to their gaming activities, of applicants, licensees and persons affiliated with licensees;

(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to his gaming activities in the presence of the applicant or licensee or his agent;

(10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;

(11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;

(12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;

(13) inspect, examine, photocopy and audit documents and records, relevant to his gaming activities, of any affiliate of an applicant or licensee who the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable; and

(14) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

D. The board shall monitor all activity authorized in an Indian Gaming Compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact."

## Section 2. Section 60-2E-8 NMSA 1978 (being Laws 1997, Chapter 190, Section 10) is amended to read:

"60-2E-8. BOARD REGULATIONS--DISCRETIONARY REGULATIONS--PROCEDURE--REQUIRED PROVISIONS.--

A. The board may adopt any regulation:

(1) consistent with the provisions of the Gaming Control Act; and

(2) it decides is necessary to implement the provisions of the Gaming Control Act.

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. The public hearing shall be held in Santa Fe. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act.

C. The board shall adopt regulations:

(1) prescribing the method and form of application to be followed by an applicant;

(2) prescribing the information to be furnished by an applicant or licensee concerning his antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;

(3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;

(4) prescribing the manner and method of collection and payment of fees;

(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;

(6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;

(7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;

(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;

(9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;

(10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;

(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;

(12) prescribing financial reporting and internal control requirements for licensees;

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports relevant to his gaming activities from a gaming operator licensee consistent with standards prescribed by the board;

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;

(16) establishing criteria and conditions for the operation of progressive systems;

(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars ($20,000), including background investigation requirements for a person submitting a bid or proposal; and

(18) establishing an applicant fee schedule for processing applications that is based on costs of the application review incurred by the board whether directly or through payment by the board for costs charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars ($100,000)."

## Section 3. Section 60-2E-47 NMSA 1978 (being Laws 1997, Chapter 190, Section 49, as amended) is amended to read:

"60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-five percent of the net take of every other gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes,

for charitable or educational purposes."

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SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 425, AS AMENDED

# CHAPTER 263

**CHAPTER 263, LAWS 2001**

AN ACT

RELATING TO ORIENTAL MEDICINE; INCREASING FEES.

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

## Section 1. Section 61-14A-16 NMSA 1978 (being Laws 1993, Chapter 158, Section 24) is amended to read:

"61-14A-16. FEES.--The board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

A. application for licensing $ 800;

B. application for reciprocal licensing 750;

C. application for temporary licensing 500;

D. examination, not including the cost of any nationally recognized examination 700;

E. annual license renewal 400;

F. late license renewal 200;

G. expired license renewal 400;

H. temporary license renewal 100;

I. application for approval or renewal of approval of an educational program 600;

J. late renewal of approval of an educational program 200;

K. annual continuing education provider registration 200;

L. application for extended or expanded prescriptive authority 500;

M. application for externship supervisor registration 500;

N. application for extern certification 500;

and

O. any and all fees to cover reasonable and necessary administrative expenses."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 536, AS AMENDED

# CHAPTER 264

**CHAPTER 264, LAWS 2001**

AN ACT

RELATING TO MORTGAGES; CHANGING PROVISIONS OF THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT TO BRING MOST MORTGAGE PRACTITIONERS UNDER THE ACT'S REGISTRATION AND LICENSING REQUIREMENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan Company and Loan Broker Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "division" means the financial institutions division of the regulation and licensing department;

C. "director" means the director of the financial institutions division of the regulation and licensing department;

D. "dwelling" means a residential structure, including a home, individual condominium unit, manufactured home or modular home, that contains one to four units and is permanently attached to real property;

E. "loan broker" means any person who acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan, or both;

F. "mortgage loan" means a loan secured by a dwelling permanently affixed to real property; and

G. "mortgage loan company" means a person who, directly or indirectly:

(1) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan;

(2) holds himself out as being able to serve as an agent for a person who makes mortgage loans; or

(3) holds himself out as being able to make mortgage loans."

## Section 2. Section 58-21-3 NMSA 1978 (being Laws 1983, Chapter 86, Section 3) is amended to read:

"58-21-3. REGISTRATION CERTIFICATE REQUIRED.--It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company or loan broker without first filing an application with the director

and obtaining a registration certificate under the Mortgage Loan Company and Loan Broker Act."

## Section 3. Section 58-21-4 NMSA 1978 (being Laws 1983, Chapter 86, Section 4, as amended) is amended to read:

"58-21-4. APPLICATION FOR REGISTRATION OR RENEWAL.--Each application for registration or renewal as a mortgage loan company or loan broker shall be filed in writing with the director, shall be verified and shall contain the following:

A. the name of the applicant and of each of the applicant's affiliates, engaged in the business of a loan broker or a mortgage loan company, and the name under which the applicant will conduct business in New Mexico, together with the articles of incorporation or articles of partnership;

B. the location of the applicant's principal office and of each branch office in New Mexico;

C. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director or manager, specifying the capacity and title of each;

D. a financial statement of the applicant verified by a principal of the applicant;

E. the length of time the applicant has been engaged in business in other jurisdictions;

F. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress against the applicant or a director, officer, employee or affiliate of the applicant;

G. the registration fee; and

H. such other information and documentation as the director may require."

## Section 4. Section 58-21-5 NMSA 1978 (being Laws 1983, Chapter 86, Section 5, as amended) is amended to read:

"58-21-5. REGISTRATION FEES--DURATION OF

REGISTRATION.--

A. Applicants shall, at the time of application, pay to the division four hundred dollars ($400) for initial registration and three hundred dollars ($300) for each

renewal registration. Additionally, the director shall charge and collect from an applicant a fee of ten dollars ($10.00) per day for late filings of a renewal registration or three hundred dollars ($300), whichever is less.

B. A registration shall continue for a period of twelve months from the date of registration. Each registrant shall submit a renewal application at least thirty days before the expiration of his existing registration.

C. A registrant shall pay a replacement license fee of fifty dollars ($50.00)."

## Section 5. Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86, Section 6, as amended) 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, consumer finance companies, 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 6. Section 58-21-8 NMSA 1978 (being Laws 1983, Chapter 86, Section 8, as amended) is amended to read:

"58-21-8. DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION.--The director may deny, suspend or revoke any registration when the applicant or registrant, or a director, officer, employee or affiliate of the applicant or registrant:

A. lacks a good business reputation;

B. has violated a provision of the Mortgage Loan Company and Loan Broker Act;

C. charges, collects or receives fees for procuring, negotiating or securing a loan in excess of the amounts allowed by the Mortgage Loan Company and Loan Broker Act or by rules promulgated pursuant to that act;

D. has committed fraud in connection with a transaction subject to the Mortgage Loan Company and Loan Broker Act;

E. has made a misrepresentation or false statement to or concealed an essential or material fact from a person in the course of the loan broker or mortgage loan company business;

F. has knowingly made or caused to be made a false representation of material fact or has suppressed or withheld from the director information that the applicant or registrant possesses and which if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Mortgage Loan Company and Loan Broker Act;

G. has violated any provisions of any New Mexico statute relating to escrow agents or escrow companies;

H. has refused to permit an examination by the director of his books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company and Loan Broker Act;

I. has been convicted of a felony or any misdemeanor involving moral turpitude; subject, however, to the provisions of the Criminal Offender Employment Act; or

J. appears to be conducting business in a manner that is injurious to persons."

## Section 7. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9, as amended) is amended to read:

"58-21-9. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan companies and loan brokers doing business in New Mexico. In addition to the other duties imposed on him by law, the director shall:

(1) make reasonable rules necessary for the implementation of the Mortgage Loan Company and Loan Broker Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company and Loan Broker Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company and Loan Broker Act.

B. The director may conduct an investigation upon complaint, when it appears that a mortgage loan company or loan broker is conducting business in a manner injurious to persons, or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978."

## Section 8. Section 58-21-11 NMSA 1978 (being Laws 1983, Chapter 86, Section 11) is amended to read:

"58-21-11. KEEPING OF RECORDS.--Every mortgage loan company and loan broker shall make and keep those accounts, correspondence, memoranda, papers, books, data and other records as the director by rule prescribes. All records so required shall be preserved for six years."

## Section 9. Section 58-21-12 NMSA 1978 (being Laws 1983, Chapter 86, Section 12, as amended) is amended to read:

"58-21-12. EXAMINATION OF RECORDS.--All the records required to be maintained by the Mortgage Loan Company and Loan Broker Act are subject to examinations or investigations by representatives of the director within or without New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. The mortgage loan company or loan broker so examined shall pay a fee for each such examination at the rate of three hundred dollars ($300) per day, or fraction thereof, for each authorized representative engaged in the examination. If the examination is conducted outside the state, the actual cost of travel for the examiners

shall also be reimbursed to the state by the mortgage loan company or loan broker so examined."

## Section 10. Section 58-21-15 NMSA 1978 (being Laws 1983, Chapter 86, Section 15) is amended to read:

"58-21-15. INVESTIGATIONS BY DIRECTOR.--

A. The director may make any public or private investigation, within or outside of this state, as he finds necessary to determine whether a person has violated or is about to violate the Mortgage Loan Company and Loan Broker Act or any rule or order of the director under that act or to aid in enforcement of that act or in the rules under that act.

B. The director may publish information concerning a violation of the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit."

## Section 11. Section 58-21-18 NMSA 1978 (being Laws 1983, Chapter 86, Section 18, as amended) is amended to read:

"58-21-18. PERMISSIBLE CHARGES.--In connection with any loan originated, brokered, negotiated or made by a registrant pursuant to the Mortgage Loan Company and Loan Broker Act, a broker may not collect, charge or receive broker fees in excess of six percent of the principal amount of the loan. A registrant may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by state or federal laws."

## Section 12. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86, Section 19, as amended) 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 applicable federal consumer lending laws."

## Section 13. Section 58-21-22 NMSA 1978 (being Laws 1983, Chapter 86, Section 22) is amended to read:

"58-21-22. PENALTIES.--A person who violates Section 58-21-3, 58-21-18, 58-21-19 or 58-21-21 NMSA 1978 or who violates Section 58-21-20 NMSA 1978, knowing the statement to be false or misleading in any material respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-

15 NMSA 1978. Civil and criminal penalties are in addition to any remedies available at common law."

## Section 14. Section 58-21-23 NMSA 1978 (being Laws 1983, Chapter 86, Section 23) is amended to read:

"58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A document is filed when it is received by the director. The director may permit the destruction of any document filed under the Mortgage Loan Company and Loan Broker Act with the division or the director after six years from the date of filing documents."

## Section 15. A new Section 58-21-28 NMSA 1978 is enacted to read:

"58-21-28. ENFORCEMENT.--

A. If the director reasonably believes, whether or not based upon an investigation conducted under Section

58-21-15 NMSA 1978, that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act or any rule promulgated pursuant to that act, the director may, subject to the right of that person to obtain a subsequent hearing pursuant to Subsection B of Section 58-21-14 NMSA 1978, issue a cease and desist order without a prior hearing against the person engaged in the prohibited activities directing him to desist and refrain from further illegal activity.

B. When it appears to the director, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has violated the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act, the director, in addition to any specific power granted under that act, may, after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

(1) issue a cease and desist order against the person;

(2) censure the person if that person is a registered mortgage loan company or loan broker;

(3) bar or suspend that person from registration in this state as a mortgage loan company or loan broker;

(4) issue an order against an applicant, registered person or other person who violates that act, imposing a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation; or

(5) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable."

## Section 16. A new Section 58-21-29 NMSA 1978 is enacted to read:

"58-21-29. POWER OF COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the Mortgage Loan Company and Loan Broker Act or any rule or order of the director under that act, the district court of the first judicial district for Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-21-28 NMSA 1978 in connection with the transactions constituting violations of the Mortgage Loan Company and Loan Broker Act.

C. The court shall not require the director to post bond in an action under this section."

## Section 17. REPEAL.--Sections 58-21-24 and 58-21-27 NMSA 1978 (being Laws 1983, Chapter 86, Section 24 and Laws 1987, Chapter 343, Section 1) are repealed.

## Section 18. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 2 and 5 of this act is January 31, 2002.

B. The effective date of the provisions of Sections 1, 3, 4 and 6 through 18 of this act is July 1, 2001.

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HOUSE BILL 308, AS AMENDED

# CHAPTER 265

**CHAPTER 265, LAWS 2001**

AN ACT

RELATING TO RURAL INFRASTRUCTURE; AMENDING THE RURAL INFRASTRUCTURE ACT; TRANSFERRING DUTIES OF THE ENVIRONMENTAL IMPROVEMENT BOARD TO THE SECRETARY OF ENVIRONMENT; EXPANDING THE PURPOSE OF THE ACT TO INCLUDE FINANCING OF WASTEWATER FACILITIES; PROVIDING FOR FLEXIBLE INTEREST RATES.

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

## Section 1. Section 75-1-2 NMSA 1978 (being Laws 1973, Chapter 333, Section 2, as amended) is amended to read:

"75-1-2. DEFINITIONS.--As used in the Rural Infrastructure Act:

A. "department" means the department of environment;

B. "fund" means the rural infrastructure revolving loan fund;

C. "local authority" means any incorporated city, town or village, county, mutual domestic association, public water cooperative association or sanitation district whose water supply facility serves a population of less than ten thousand;

D. "operate and maintain" means all necessary activities, including but not limited to replacement of equipment or appurtenances to assure the dependable and economical function of a water supply facility in accordance with its intended purpose;

E. "secretary" means the secretary of environment;

F. "wastewater facility" includes but is not limited to collection lines, pumping equipment, treatment works and disposal piping or process units; and

G. "water supply facility" includes but is not limited to the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works and distribution systems."

## Section 2. Section 75-1-2.1 NMSA 1978 (being Laws 1983, Chapter 173, Section 3, as amended) is amended to read:

"75-1-2.1. PURPOSE OF ACT.--The purpose of the Rural Infrastructure Act is to provide financial assistance to local authorities for the construction or modification of water supply and wastewater facilities to correct demonstrably hazardous or inadequate conditions."

## Section 3. Section 75-1-3 NMSA 1978 (being Laws 1973, Chapter 333, Section 3, as amended) is amended to read:

"75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

A. A special fund is created to be known as the "rural infrastructure revolving loan fund". Money appropriated to the fund or to the department to carry out the provisions of the Rural Infrastructure Act may be used to make loans and grants to local authorities, individually or jointly, for water supply or wastewater facilities. Appropriations made to the fund but not expended at the end of the fiscal year for which appropriated shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the balance in the fund shall be credited to the fund. In addition, when the proceeds from the issuance of severance tax bonds appropriated to the fund are deposited in the state treasury, interest earned on that money during the period from deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

B. Ten percent of any appropriation to the fund or to the department to carry out the provisions of the Rural Infrastructure Act shall be set aside for emergency grants and loans pursuant to Section 75-1-5 NMSA 1978.

C. All water supply and wastewater facilities shall be designed in compliance with the engineering requirements established by the secretary after consulting with and considering the recommendations of the professional engineering societies operating in New Mexico. The secretary shall also establish, by regulations, guidelines for the ranking of projects for top priority based on public health needs.

D. The department shall administer the fund and shall make grant and loan disbursements in accordance with the Rural Infrastructure Act. The secretary shall adopt regulations to govern the application procedure and requirements for disbursing grants and loans under the Rural Infrastructure Act, including requirements consistent with the purpose of the act for determining the eligibility and priority of local authorities for such grants and loans.

E. Receipts from the repayment of loans, including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978, shall be deposited in the fund by the department, including receipts from the repayment of loans made pursuant to appropriations to carry out the purposes of the Water Supply Construction Act made prior to the effective date of the Rural Infrastructure Act.

F. Loans and grants made pursuant to the provisions of the Rural Infrastructure Act shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act."

## Section 4. Section 75-1-4 NMSA 1978 (being Laws 1973, Chapter 333, Section 4, as amended) is amended to read:

"75-1-4. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to local authorities that:

(1) agree to operate and maintain the water supply facilities so that the facilities 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 a written assurance, signed by an attorney, that the local authority has proper title, easements and rights of way to the property upon or through which the water supply facility proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

(5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose; and

(6) agree to properly maintain financial records and to conduct an audit of the project's financial records.

B. Except as otherwise provided in the Rural Infrastructure Act, a loan shall be for a period of time not to exceed twenty years. Loans may be interest free or bear an annual interest rate set by the secretary that is at or below market interest rates. The repayment of loans shall be in annual installments beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

C. No loan recipient eligible to receive a grant under the Rural Infrastructure Act shall receive grants in any one year totaling more than two hundred thousand dollars ($200,000).

D. The maximum assistance, including both loans and grants, which a local authority may receive under the Rural Infrastructure Act in any one year is five hundred thousand dollars ($500,000).

E. Plans and specifications for a water supply or wastewater facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority. Interim loan disbursements to pay for engineering and other professional services may be made by the department prior to the approval of the plans and specifications.

F. Privately owned water supply or wastewater facilities are not eligible for assistance under the Rural Infrastructure Act.

G. Grants and loans shall be made only for eligible items. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, archaeological surveys and contracted construction. The costs of water rights, land, system acquisition, easements and rights of way, refinancing of program loans, legal costs and fiscal agents' fees are eligible items only for loan funds. Local authority administrative costs shall not be included as eligible items.

H. In the event the local authority fails to make the prescribed loan repayment, the department is authorized to set water or wastewater user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of this loan and proper operation and maintenance."

## Section 5. Section 75-1-5 NMSA 1978 (being Laws 1987, Chapter 175, Section 4, as amended) is amended to read:

"75-1-5. EMERGENCY LOANS AND GRANTS.--Ten percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out

the provisions of the Rural Infrastructure Act shall be reserved for emergencies and shall be allocated by the department only upon approval of the state board of finance. This amount shall not be deposited in the fund and shall be allocated only for emergency loans and grants. Emergency loans and grants shall be made in accordance with the applicable provisions for loans pursuant to the Rural Infrastructure Act; provided that a grant shall not exceed two hundred thousand dollars ($200,000). At the end of the third quarter of each fiscal year, the unexpended balance of the reserved amount may be transferred by the department to the fund for use in accordance with the Rural Infrastructure Act."

## Section 6. Section 75-1-6 NMSA 1978 (being Laws 1988, Chapter 28, Section 7, as amended) is amended to read:

"75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS AND ZERO PERCENT LOANS.--

A. No more than twenty-five percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act shall be reserved for average residential user cost reduction grants or zero percent loans to reduce average residential user cost to a reasonable level for eligible financially needy loan recipients whose water supply or wastewater facilities serve less than three thousand persons.

B. Average residential user cost reduction grants and zero percent loans shall be allocated by the department in accordance with the provisions for grants and loans pursuant to the Rural Infrastructure Act, provided that an average residential user cost reduction grant or zero percent loan shall not exceed two hundred thousand dollars ($200,000). Such grants and loans shall reduce only the principal and interest portion of the average residential user cost to a reasonable cost as determined by the department.

C. A zero percent loan or average residential user cost reduction grant shall be approved by the department when, after construction bids have been received, the following conditions have been met by the local authority whose average residential user costs are in need of reduction:

(1) the construction project is designed using the most cost-effective and dependable option;

(2) the system is designed with adequate built-in expansion capacity;

(3) other sources of grant funds have been sought and are not available in a timely manner;

(4) the project cannot feasibly be reduced in scope or phased so as to bring it within available loan funds and within reasonable user cost; and

(5) the local authority's median household income is less than ninety percent of the statewide non-metropolitan median household income based on the most current federal decennial census."

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HOUSE BILL 368

# CHAPTER 266

**CHAPTER 266, LAWS 2001**

AN ACT

RELATING TO ORIENTAL MEDICINE; CLARIFYING THE DEFINITION OF PRIMARY CARE PROVIDER; INCREASING FEES.

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

## Section 1. Section 61-14A-3 NMSA 1978 (being Laws 1993, Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles inserted into and removed from the body and the use of other devices, modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition by controlling and regulating the flow and balance of energy and function to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

D. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

E. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe for the prevention, cure or correction of any disease,

illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and function to restore and maintain health;

F. "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;

G. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques used in oriental medicine that include diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling;

(2) the prescription or administration of any herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, gerovital, amino acids and dietary and nutritional supplements;

(3) the prescription or administration of devices, restricted devices and prescription devices, as those devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board determines by rule that the devices are necessary in the practice of oriental medicine and if the prescribing doctor of oriental medicine has fulfilled requirements for prescriptive authority in accordance with rules promulgated by the board for the devices enumerated in this paragraph;

(4) the prescription or administration of cosmetics, biological products, including therapeutic serum, and over-the-counter drugs, other than those enumerated in Paragraph (2) of this subsection, as those are defined in the New Mexico Drug, Device and Cosmetic Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph; and

(5) the prescription or administration of the following dangerous drugs or controlled substances as they are defined in the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for extended or expanded prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph:

(a) sterile water;

(b) sterile saline;

(c) sarapin or its generic;

(d) caffeine;

(e) procaine;

(f) oxygen;

(g) epinephrine;

(h) vapocoolants;

(i) bioidentical hormones; and

(j) any of the drugs or substances enumerated in Paragraphs (2) and (4) of this subsection if at any time these substances or drugs are classified as dangerous drugs or controlled substances; and

H. "tutor" means a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine."

## Section 2. Section 61-14A-16 NMSA 1978 (being Laws 1993, Chapter 158, Section 24) is amended to read:

"61-14A-16. FEES.--The board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

A. application for licensing $800;

B. application for reciprocal licensing 750;

C. application for temporary licensing 500;

D. examination, not including the cost of any nationally recognized examination 700;

E. annual license renewal 400;

F. late license renewal 200;

G. expired license renewal 400;

H. temporary license renewal 100;

I. application for approval or renewal of approval of an educational program 600;

J. late renewal of approval of an educational program 200;

K. annual continuing education provider registration 200;

L. application for extended or expanded prescriptive authority 500;

M. application for externship supervisor registration 500;

N. application for extern certification 500; and

O. any and all fees to cover reasonable and necessary administrative expenses."

**Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 394, AS AMENDED

# CHAPTER 267

**CHAPTER 267, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING FOR A MUNICIPAL GOVERNMENT MEMBER ON THE WATER QUALITY CONTROL COMMISSION.

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

**Section 1. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended) is amended to read:**

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

(1) the secretary of environment or a member of his staff designated by him;

(2) the director of the department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the chairman of the oil conservation commission or a member of his staff designated by him;

(5) the director of the state 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 mines 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.

B. No member of the commission shall receive, or shall have received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. 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. No member of the Commission shall 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 (10) percent of his gross personal income in either of the proceeding 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."

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HOUSE BILL 535, AS AMENDED

# CHAPTER 268

**CHAPTER 268, LAWS 2001**

AN ACT

RELATING TO MILITARY AFFAIRS; PROVIDING A PAY INCREASE FOR CERTAIN ENLISTED MEMBERS OF THE NATIONAL GUARD WHO SERVE ON STATE-ORDERED DUTY; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 20-4-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 20) is amended to read:

"20-4-3. PAY AND ALLOWANCES.--

A. Members of the national guard, when on state-ordered duty for any period, shall receive the same basic pay and allowances as are prescribed by federal laws and regulations for members of the national guard on active federal service of like grade and length of service. Notwithstanding the provisions of this subsection, enlisted members of the national guard in the pay grades of E1 through E5, when on state-ordered duty for any period, shall receive not less than the minimum daily rate of pay received by a pay grade of E6 on active military service in the armed forces of the United States.

B. Members of the national guard who are on full-time active status for the state as adjutant general or as members of his staff may enter upon periods of active

duty for training in the armed forces of the United States without loss of state pay, seniority or other employment benefits, when such active duty for training has been approved by the governor as commander-in-chief."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 630

# CHAPTER 269

**CHAPTER 269, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING ADDITIONAL ADMINISTRATIVE PROCEDURES FOR THE NATIONAL GUARD SCHOLARSHIPPROGRAM.

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

## Section 1. Section 21-1-2.1 NMSA 1978 (being Laws 1996, Chapter 64, Section 1) is amended to read:

"21-1-2.1. SCHOLARSHIPPROGRAM ESTABLISHED.--

A. The department of military affairs shall establish a scholarship program for students who are in the New Mexico national guard. The adjutant general of the department of military affairs shall provide for the administration of the scholarship program and shall establish criteria for scholarship eligibility and award in accordance with rules adopted and promulgated by the department of military affairs. Scholarships awarded may be used at any New Mexico public post-secondary educational institution. Scholarships shall be awarded in an amount and for a duration to be determined by the department.

B. The board of regents of each public post-secondary educational institution shall designate a representative of the institution to coordinate the scholarship program."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 631, AS AMENDED

# CHAPTER 270

**CHAPTER 270, LAWS 2001**

AN ACT

RELATING TO EDUCATION; AMENDING PROVISIONS OF THE PROCUREMENT CODE TO PROVIDE THAT AGREEMENTS ENTERED INTO BY THE EDUCATION TRUST BOARD FOR SERVICES RELATING TO THE IMPLEMENTATION, OPERATION AND ADMINISTRATION OF THE EDUCATION TRUST ACT ARE EXEMPT FROM THE FOUR-YEAR LIMITATION APPLICABLE TO PROFESSIONAL SERVICE AGREEMENTS; AMENDING PROVISIONS OF THE EDUCATION TRUST ACT TO PROVIDE THE EDUCATION TRUST BOARD WITH THE AUTHORITY TO CREATE AND ADMINISTER WITHIN THE EDUCATION TRUST FUND SEPARATE TRUST FUNDS OR ACCOUNTS FOR COLLEGE INVESTMENT AGREEMENTS AND PREPAID TUITION CONTRACTS AND TO PROVIDE THAT THE EDUCATION TRUST BOARD SHALL, BY RULE, SPECIFY THE DURATION OF COLLEGE INVESTMENT AGREEMENTS; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

(3) a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding; and

(4) services relating to the implementation, operation and administration of the Education Trust Act."

## Section 2. Section 21-21K-3 NMSA 1978 (being Laws 1997, Chapter 259, Section 3, as amended) is amended to read:

"21-21K-3. EDUCATION TRUST FUND--CREATION.--

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests and donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. The board shall provide that all money in the fund shall be invested either by the state investment officer according to rules promulgated by the council, subject to the approval of the board, or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment advisor. The board shall review investments made pursuant to this subsection at least quarterly.

B. Expenditures from the fund shall be for payments to institutions of higher education on behalf of beneficiaries or for refunds, in accordance with the provisions of the Education Trust Act, and for costs of administering that act.

C. In no event shall any liability of, or contractual obligation incurred by, the program established pursuant to the provisions of the Education Trust Act obligate or encumber any of the state's land grant permanent funds, the severance tax permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to

fulfill the terms of any college investment agreement or prepaid tuition contract out of any source other than the education trust fund.

D. The board may create within the fund separate trust funds or accounts for college investment agreements and prepaid tuition contracts, and may deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the related separate trust funds or accounts. The board may appoint one or more custodians of the separate trust funds or accounts that shall be a state or national bank authorized to do business in the United States. No member of the board, while acting within the scope of his authority or while acting as a trustee of any trust fund or account of the board, shall be subject to any personal liability for any action taken or omitted within that scope of authority."

## Section 3. Section 21-21K-5 NMSA 1978 (being Laws 1997, Chapter 259, Section 5, as amended) is amended to read:

"21-21K-5. COLLEGE INVESTMENT AGREEMENT.--

A. An investor may enter into a college investment agreement with the board under which the investor agrees to make investments into the fund from time to time for the purpose of defraying the costs of attendance billed by institutions of higher education. An investor may enter into a college investment agreement on behalf of any beneficiary. The board shall adopt a form of the college investment agreement to be used by the board and investors.

B. The board shall provide for the direct payment of principal, investment earnings and capital appreciation accrued pursuant to a college investment agreement to the institution of higher education that the beneficiary actually attends.

C. A college investment agreement may be terminated by the investor at any time. The investor may modify the college investment agreement to designate a new beneficiary instead of the original beneficiary if the new beneficiary meets the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

(1) dies;

(2) is not admitted to an institution of higher education following proper application;

(3) elects not to attend an institution of higher education or, if attending, elects to discontinue higher education; or

(4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

D. The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated pursuant to the provisions of this section. The balance of the accrued investment earnings and capital appreciation less the amount refunded and administrative costs shall be credited to the fund.

E. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

F. The board shall specify, by rule, appropriate provisions for the term and termination of college investment agreements.

G. Gifts and bequests to the fund may be made in the name of a specific beneficiary or in the name of the fund in general. Gifts and bequests given for the benefit of a specific beneficiary shall be credited to that beneficiary, and gifts and bequests given to the fund in general shall be credited equally to each beneficiary of a college investment agreement.

H. Principal paid into the fund, together with accrued investment earnings and capital appreciation, shall be excluded from any calculation of a beneficiary's state student financial aid eligibility.

I. The board shall annually notify each investor of the status of the fund."

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HOUSE BILL 762

# CHAPTER 271

**CHAPTER 271, LAWS 2001**

AN ACT

RELATING TO MILITARY AFFAIRS; PROVIDING A PAY INCREASE FOR CERTAIN ENLISTED MEMBERS OF THE NATIONAL GUARD WHO SERVE ON STATE-ORDERED DUTY; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 20-4-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 20) is amended to read:

"20-4-3. PAY AND ALLOWANCES.--

A. Members of the national guard, when on state-ordered duty for any period, shall receive the same basic pay and allowances as are prescribed by federal laws and regulations for members of the national guard on active federal service of like grade and length of service. Notwithstanding the provisions of this subsection, enlisted members of the national guard in the pay grades of E1 through E5, when on state-ordered duty for any period, shall receive not less than the minimum daily rate of pay received by a pay grade of E6 on active military service in the armed forces of the United States.

B. Members of the national guard who are on full-time active status for the state as adjutant general or as members of his staff may enter upon periods of active duty for training in the armed forces of the United States without loss of state pay, seniority or other employment benefits, when such active duty for training has been approved by the governor as commander-in-chief."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 50

# CHAPTER 272

**CHAPTER 272, LAWS 2001**

AN ACT

RELATING TO HEALTH; CHANGING CERTAIN DEFINITIONS IN THE INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT.

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

## Section 1. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended by Laws 1999, Chapter 37, Section 1 and also by Laws 1999, Chapter 270, Section 4) 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 or admitted to a hospital for care or treated by a health care provider or all three;

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:

(l) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

F. "fund" means a county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements 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 services in a hospital or outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient;

O. "health care services" means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

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."

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SENATE BILL 82

# CHAPTER 273

**CHAPTER 273, LAWS 2001**

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; EXPANDING THE SCOPE OF EMERGENCY MEDICAL SERVICES FUNDED BY THE DEPARTMENT OF HEALTH; AMENDING SECTIONS OF THE EMERGENCY MEDICAL SERVICES FUND ACT.

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

## Section 1. Section 24-10A-2 NMSA 1978 (being Laws 1978, Chapter 178, Section 2, as amended) is amended to read:

"24-10A-2. PURPOSE OF ACT.--The purpose of the Emergency Medical Services Fund Act is to make money available to municipalities and counties for use in the establishment and enhancement of local emergency medical services, statewide emergency medical services and trauma services in order to reduce injury and loss of life."

## Section 2. Section 24-10A-2.1 NMSA 1978 (being Laws 1994, Chapter 61, Section 2) is amended to read:

"24-10A-2.1. DEFINITIONS.--As used in the Emergency Medical Services Fund Act:

A. "bureau" means the injury prevention and emergency medical services bureau of the public health division of the department;

B. "committee" means the statewide emergency medical services advisory committee appointed pursuant to the provisions of Section 24-10B-7 NMSA 1978;

C. "department" means the department of health;

D. "fund" means the emergency medical services fund;

E. "local recipient" means an ambulance service, medical rescue service, fire department rescue service, air ambulance service or other prehospital care provider:

(1) that routinely responds to an individual's need for immediate medical care in order to prevent loss of life or aggravation of physical or psychological illness or injury;

(2) whose application for funding through the Emergency Medical Services Fund Act is sponsored by a municipality or county; and

(3) that meets department guidelines concerning personnel training, use of bureau-approved run forms, participation in mutual aid agreements and medical control;

F. "municipality" means an incorporated city, town or village; and

G. "secretary" means the secretary of health."

## Section 3. Section 24-10A-3 NMSA 1978 (being Laws 1978, Chapter 178, Section 3, as amended) is amended to read:

"24-10A-3. EMERGENCY MEDICAL SERVICES FUND CREATED--FUNDING.--

A. The "emergency medical services fund" is created in the state treasury. Money in the fund shall not revert at the end of any fiscal year. Money appropriated to the fund or accruing to it through gifts, grants, fees or bequests shall be deposited in the fund. Interest earned on investment of the fund shall be credited to the general fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of

finance and administration pursuant to vouchers signed by the secretary or his authorized representative.

B. The bureau shall administer the fund and provide for the distribution of the fund pursuant to the Emergency Medical Services Fund Act and rules adopted pursuant to the provisions of that act.

C. In any fiscal year, no less than seventy-five percent of the money in the fund shall be used for the local emergency medical services funding program to support the cost of supplies and equipment and operational costs other than salaries and benefits for emergency medical services personnel. This money shall be distributed to municipalities and counties on behalf of eligible local recipients, using a formula established pursuant to rules adopted by the department. The formula shall determine each municipality's and county's share of the fund based on the relative geographic size and population of each county. The formula shall also base the distribution of money for each municipality and county on the relative number of runs of each local recipient eligible to participate in the distribution.

D. In any fiscal year, no more than:

(1) twenty-two percent of the fund may be used for emergency medical services system improvement projects, including the purchase of emergency medical services vehicles, local and statewide emergency medical services system support projects, the statewide trauma care system program and the emergency medical dispatch agency support program; and

(2) three percent of the fund may be used by the bureau and emergency medical services regional offices for administrative costs, including monitoring and providing technical assistance.

E. In any fiscal year, money in the fund that is not distributed pursuant to the provisions of Subsection D of this section may be distributed pursuant to the provisions of Subsection C of this section."

## Section 4. Section 24-10A-4 NMSA 1978 (being Laws 1978, Chapter 178, Section 4, as amended) is amended to read:

"24-10A-4. FUNDING PROGRAM--PURPOSE--DETERMINATION OF NEEDS.--

A. The "local emergency medical services funding program" is created. The program shall provide for the:

(1) establishment or enhancement of local emergency medical services, including the use of advanced technology equipment;

(2) operational costs other than salaries and benefits of local emergency medical services personnel;

(3) purchase, repair and maintenance of emergency medical services vehicles, equipment and supplies, including the use of advanced technology equipment; and

(4) training and licensing of local emergency medical services personnel.

B. Annually on or before June 1, the bureau shall consider and determine, in accordance with the formula adopted by rule of the department, the amount of distribution to municipalities and counties that have applied for money from the fund. In making its determination, the bureau shall ensure that no municipality or county receives money from the fund for the purpose of accumulation as defined by rule of the department, except as waived by the bureau in writing for good cause shown. The bureau shall also ensure that each local recipient is in compliance with the rules of the department."

## Section 5. Section 24-10A-4.1 NMSA 1978 (being Laws 1994, Chapter 61, Section 10, as amended) is amended to read:

"24-10A-4.1. EMERGENCY MEDICAL SERVICES SYSTEM IMPROVEMENT PROJECTS.--

A. Applications for emergency medical services system improvement projects shall be submitted separately from applications for the local emergency medical services funding program. The bureau shall award emergency medical services system improvement projects after a review of the applications. The awards shall be made based on a priority ranking, demonstrated need for funding and recommendations from the committee. Money awarded shall be used in compliance with applicable rules.

B. Applications for funding to purchase emergency medical services vehicles shall be submitted by municipalities or counties on behalf of local recipients. The municipality or county shall commit to providing matching funds of at least twenty-five percent of the cost of purchasing the vehicle.

C. Applications for funding of local and statewide projects shall demonstrate the need for funding and a plan to use the funding to enhance or better integrate local emergency medical services systems or to improve the health, safety and training of emergency medical services technicians statewide.

D. A statewide trauma care system program shall be developed and determined by the bureau in consultation with the committee. The statewide trauma care system program shall provide for the support, development and expansion of the statewide trauma care system in accordance with rules adopted by the department.

E. The emergency medical dispatch agency support program shall fund allowable costs of dispatch agencies that meet criteria established pursuant to rules by the department."

## Section 6. Section 24-10A-6 NMSA 1978 (being Laws 1978, Chapter 178, Section 6, as amended) is amended to read:

"24-10A-6. DISTRIBUTION OF FUND.--On or before August 31, the local emergency medical services funding program distribution shall be made to each municipality and county as determined by the department. No more than one percent of the amount appropriated to the local emergency medical services funding program shall be distributed from the fund to the benefit of a single local recipient in any fiscal year pursuant to the local emergency medical services funding program, to ensure that appropriate emergency medical service is available statewide."

## Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 302, AS AMENDED

# CHAPTER 274

**CHAPTER 274, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING ADDITIONAL ADMINISTRATIVE PROCEDURES FOR THE NATIONAL GUARD SCHOLARSHIPPROGRAM.

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

## Section 1. Section 21-1-2.1 NMSA 1978 (being Laws 1996, Chapter 64, Section 1) is amended to read:

"21-1-2.1. SCHOLARSHIPPROGRAM ESTABLISHED.--

A. The department of military affairs shall establish a scholarship program for students who are in the New Mexico national guard. The adjutant general of the department of military affairs shall provide for the administration of the scholarship program and shall establish criteria for scholarship eligibility and award in accordance with rules adopted and promulgated by the department of military affairs. Scholarships awarded may be used at any New Mexico public post-secondary educational institution.

Scholarships shall be awarded in an amount and for a duration to be determined by the department.

B. The board of regents of each public post-secondary educational institution shall designate a representative of the institution to coordinate the scholarship program."

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SENATE BILL 328, AS AMENDED

# CHAPTER 275

**CHAPTER 275, LAWS 2001**

AN ACT

RELATING TO MUSEUMS; CHANGING THE NAME OF THE SPACE CENTER DIVISION TO THE NEW MEXICO MUSEUM OF SPACE HISTORY DIVISION.

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

## Section 1. Section 9-6-9 NMSA 1978 (being Laws 1980, Chapter 151, Section 54, as amended) is amended to read:

"9-6-9. CREATION OF OFFICE.--The "office of cultural affairs" is created. The office shall consist of such divisions as are created by law or executive order, including but not limited to:

A. the administrative services division;

B. the arts division;

C. the library division;

D. the museum division;

E. the New Mexico museum of space history division;

F. the New Mexico farm and ranch heritage museum division;

G. the historic preservation division;

H. the natural history and science museum division; and

I. the Hispanic cultural division."

## Section 2. Section 18-7-1 NMSA 1978 (being Laws 1978, Chapter 72, Section 1, as amended) is amended to read:

"18-7-1. NEW MEXICO MUSEUM OF SPACE HISTORY DIVISION--CREATION.--There is created within the office of cultural affairs the "New Mexico museum of space history division"."

## Section 3. Section 18-7-2 NMSA 1978 (being Laws 1978, Chapter 72, Section 2, as amended) is amended to read:

"18-7-2. NEW MEXICO MUSEUM OF SPACE HISTORY COMMISSION.--There is created the "New Mexico museum of space history commission" consisting of eleven members appointed by the governor. Four members of the commission shall be appointed at large and one member shall be appointed from each of the planning and development districts. Three members shall be appointed to the commission for a term ending December 31, 1974, four members shall be appointed to the commission for a term ending December 31, 1975 and four members shall be appointed to the commission for a term ending December 31, 1976. Thereafter, members of the commission shall be appointed for terms of three years or less in such manner that the staggered expiration date is maintained. Necessary officers shall be elected by the commission. The commission members shall be reimbursed for their necessary and actual mileage and per diem expenses as provided in the Per Diem and Mileage Act."

## Section 4. Section 18-7-3 NMSA 1978 (being Laws 1978, Chapter 72, Section 3, as amended) is amended to read:

"18-7-3. COMMISSION--DIRECTOR--POWERS--DUTIES.--The

New Mexico museum of space history commission of the office of cultural affairs shall construct, maintain and operate the New Mexico museum of space history for the benefit of the people of New Mexico, the nation and the world as an educational project interpreting man's conquest of space. The commission shall establish policy for the general operation of the New Mexico museum of space history division. The director of that division, under the supervision of the commission, shall:

A. collect and preserve objects relating to the history of rocketry, space flight, astronomy and related fields;

B. conduct research programs necessary to document the historical, scientific and technological advances of rocketry, space flight, astronomy and related fields;

C. disseminate the results of division research efforts through exhibits, public programs, publications and other methods deemed appropriate by the commission;

D. establish educational programs relating to space;

E. purchase supplies and necessary equipment and tools;

F. accept for the New Mexico museum of space history any federal matching funds or grants available for this project and related programs;

G. accept donations and bequests from individuals and entities for the New Mexico museum of space history and related programs;

H. acquire real and personal property in the name of the state for the New Mexico museum of space history;

I. employ and discharge personnel necessary for the operation of the New Mexico museum of space history;

J. prepare budgets for operation and capital improvements;

K. assume other duties and responsibilities as deemed necessary by the New Mexico museum of space history commission;

L. assume responsibility for new and related facilities as required; and

M. subject to the provisions of Section 18-7-3.1 NMSA 1978, impose admission fees to the museum facilities and programs."

## Section 5. Section 18-7-4 NMSA 1978 (being Laws 1978, Chapter 72, Section 4, as amended) is amended to read:

"18-7-4. DIRECTOR--EMPLOYMENT.--The director of the

New Mexico museum of space history division shall be hired by the New Mexico museum of space history commission, subject to approval by the state cultural affairs officer and with the consent of the secretary of finance and administration. The director of the division may be discharged from employment by the commission for failure to perform his duties or follow the policies set forth by the commission."

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# CHAPTER 276

**CHAPTER 276, LAWS 2001**

AN ACT

RELATING TO EDUCATION; EXPANDING THE GRADUATION REQUIREMENTS TO INCLUDE PASSING A STATE COMPETENCY EXAMINATION IN WRITING.

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

## Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science;

computer science; health education; American sign language; and other electives approved by the state board.

With the approval of the local school board, participation on an athletic team or in an athletic sport during the school day may count toward fulfillment of the physical education required unit.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. No student shall 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. Beginning with the 1996-97 school year, the state graduation examinations on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state 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."

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SENATE BILL 665

# CHAPTER 277

**CHAPTER 277, LAWS 2001**

AN ACT

RELATING TO COURTS; INCREASING CERTAIN COURT FEES FOR THE PURPOSE OF PROVIDING CIVIL LEGAL SERVICES TO LOW-INCOME PERSONS; CREATING THE CIVIL LEGAL SERVICES COMMISSION; MAKING AN APPROPRIATION.

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

## Section 1. Section 34-6-40 NMSA 1978 (being Laws 1968, Chapter 69, Section 42, as amended) is amended to read:

"34-6-40. FINANCE--FEES.--

A. District court clerks shall collect in civil matters docketing any cause, whether original or reopened or by appeal or transfer from any inferior court, a fee of one hundred seven dollars ($107), ten dollars ($10.00) of which shall be deposited in the court automation fund and

twenty-five dollars ($25.00) of which shall be deposited in the civil legal services fund.

B. No fees or costs shall be taxed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act.

C. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund."

## Section 2. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF

"CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall 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 in any county without a metropolitan court, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment

$10.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon

conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 3.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of

imprisonment 1.00;

(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. CIVIL LEGAL SERVICES--COMMISSION--FUND--DISBURSEMENT.--

A. The "civil legal services commission" is created. The commission shall be composed of five members, all of whom have experience with the civil legal matters affecting low-income persons. The members shall be appointed as follows:

(1) two members appointed by the governor;

(2) two members, both of whom shall be attorneys, appointed by the supreme court; and

(3) one member, who shall be an attorney, appointed by the state bar of New Mexico.

B. The initial appointee of the state bar shall serve for three years. One of the initial members appointed by the governor and one of the initial members appointed by the supreme court shall serve for one year and the other initial members appointed by the governor and by the supreme court shall serve for two years. Thereafter, the terms of all members shall be for three years.

C. Staff and meeting space for the commission shall be provided by the local government division of the department of finance and administration. The commission shall elect a chair and such other officers as it deems appropriate and shall meet at the call of the chair. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation.

D. The commission shall:

(1) pursuant to the Procurement Code, solicit proposals for disbursements from the civil legal services fund;

(2) enter into contracts for the expenditure of the civil legal services fund, less administrative costs as provided in Subsection E of this section, for the purpose of improving civil legal services for low-income persons. The contracts shall be entered into with nonprofit organizations:

(a) whose mission is to provide a range of free legal services to New Mexicans living in poverty and who demonstrate the capacity to cooperate with state and local bar associations, pro bono programs and private attorneys to increase the availability of free legal services to impoverished New Mexicans; or

(b) whose programs increase and coordinate statewide access to and provisions of civil legal services for persons living in poverty through the use of technology; provided that no more than fifty percent of the annual expenditures from the civil legal services fund shall be used for purposes of this subparagraph; and

(3) adopt such rules as are necessary to carry out the provisions of this section.

E. The local government division of the department of finance and administration, pursuant to rules of the commission, shall administer the contracts and programs provided for in this section; provided that no more than five percent of the annual expenditures from the civil legal services fund shall be for administrative costs. The division shall require an annual accounting from each organization receiving funds pursuant to this section.

F. Money disbursed pursuant to this section shall not be used by a recipient to:

(1) support lobbying, as defined in the Lobbyist Regulation Act; or

(2) bring suit against the state.

G. The "civil legal services fund" is created in the state treasury. All earnings of the fund shall be credited to the fund, and any unexpended or unencumbered balance in the fund shall not revert to another fund at the end of a fiscal year. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the local government division of the department of finance and administration. Money in the fund is appropriated to the local government division and the civil legal services commission for the purposes of carrying out the provisions of this section.

H. As used in this section, "civil legal services" means a full range of free legal services provided by attorneys or attorney-supervised staff in noncriminal matters to low-income persons living in New Mexico.

## Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 757, AS AMENDED

# CHAPTER 278

**CHAPTER 278, LAWS 2001**

AN ACT

RELATING TO MUSEUMS; CHANGING THE NAME OF THE SPACE CENTER DIVISION TO THE NEW MEXICO MUSEUM OF SPACE HISTORY DIVISION.

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

## Section 1. Section 9-6-9 NMSA 1978 (being Laws 1980, Chapter 151, Section 54, as amended) is amended to read:

"9-6-9. CREATION OF OFFICE.--The "office of cultural affairs" is created. The office shall consist of such divisions as are created by law or executive order, including but not limited to:

A. the administrative services division;

B. the arts division;

C. the library division;

D. the museum division;

E. the New Mexico museum of space history division;

F. the New Mexico farm and ranch heritage museum division;

G. the historic preservation division;

H. the natural history and science museum division; and

I. the Hispanic cultural division."

## Section 2. Section 18-7-1 NMSA 1978 (being Laws 1978, Chapter 72, Section 1, as amended) is amended to read:

"18-7-1. NEW MEXICO MUSEUM OF SPACE HISTORY DIVISION--CREATION.--There is created within the office of cultural affairs the "New Mexico museum of space history division"."

## Section 3. Section 18-7-2 NMSA 1978 (being Laws 1978, Chapter 72, Section 2, as amended) is amended to read:

"18-7-2. NEW MEXICO MUSEUM OF SPACE HISTORY COMMISSION.--There is created the "New Mexico museum of space history commission" consisting of eleven members appointed by the governor. Four members of the commission shall be appointed at large and one member shall be appointed from each of the planning and development districts. Three members shall be appointed to the commission for a term ending December 31, 1974, four members shall be appointed to the commission for a term ending December 31, 1975 and four members shall be appointed to the commission for a term ending December 31, 1976. Thereafter, members of the commission shall be appointed for terms of three years or less in such manner that the staggered expiration date is maintained. Necessary officers shall be elected by the commission. The commission members shall be reimbursed for their necessary and actual mileage and per diem expenses as provided in the Per Diem and Mileage Act."

## Section 4. Section 18-7-3 NMSA 1978 (being Laws 1978, Chapter 72, Section 3, as amended) is amended to read:

"18-7-3. COMMISSION--DIRECTOR--POWERS--DUTIES.--The New Mexico museum of space history commission of the office of cultural affairs shall construct, maintain and operate the New Mexico museum of space history for the benefit of the people of New Mexico, the nation and the world as an educational project interpreting man's conquest of space. The commission shall establish policy for the general operation of the New Mexico museum of space history division. The director of that division, under the supervision of the commission, shall:

A. collect and preserve objects relating to the history of rocketry, space flight, astronomy and related fields;

B. conduct research programs necessary to document the historical, scientific and technological advances of rocketry, space flight, astronomy and related fields;

C. disseminate the results of division research efforts through exhibits, public programs, publications and other methods deemed appropriate by the commission;

D. establish educational programs relating to space;

E. purchase supplies and necessary equipment and tools;

F. accept for the New Mexico museum of space history any federal matching funds or grants available for this project and related programs;

G. accept donations and bequests from individuals and entities for the New Mexico museum of space history and related programs;

H. acquire real and personal property in the name of the state for the New Mexico museum of space history;

I. employ and discharge personnel necessary for the operation of the New Mexico museum of space history;

J. prepare budgets for operation and capital improvements;

K. assume other duties and responsibilities as deemed necessary by the New Mexico museum of space history commission;

L. assume responsibility for new and related facilities as required; and

M. subject to the provisions of Section 18-7-3.1 NMSA 1978, impose admission fees to the museum facilities and programs."

## Section 5. Section 18-7-4 NMSA 1978 (being Laws 1978, Chapter 72, Section 4, as amended) is amended to read:

"18-7-4. DIRECTOR--EMPLOYMENT.--The director of the New Mexico museum of space history division shall be hired by the New Mexico museum of space history commission, subject to approval by the state cultural affairs officer and with the consent of the secretary of finance and administration. The director of the division may be discharged from employment by the commission for failure to perform his duties or follow the policies set forth by the commission."

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HOUSE BILL 763

# CHAPTER 279

**CHAPTER 279, LAWS 2001**

AN ACT

RELATING TO COURTS; INCREASING CERTAIN COURT FEES FOR THE PURPOSE OF PROVIDING CIVIL LEGAL SERVICES TO LOW-INCOME PERSONS; CREATING THE CIVIL LEGAL SERVICES COMMISSION; MAKING AN APPROPRIATION.

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

## Section 1. Section 34-6-40 NMSA 1978 (being Laws 1968, Chapter 69, Section 42, as amended) is amended to read:

"34-6-40. FINANCE--FEES.--

A. District court clerks shall collect in civil matters docketing any cause, whether original or reopened or by appeal or transfer from any inferior court, a fee of one hundred seven dollars ($107), ten dollars ($10.00) of which shall be deposited in the court automation fund and twenty-five dollars ($25.00) of which shall be deposited in the civil legal services fund.

B. No fees or costs shall be taxed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act.

C. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund."

**Section 2. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:**

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall 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 in any county without a metropolitan court, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment

$10.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon

conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 3.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of

imprisonment 1.00;

(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. CIVIL LEGAL SERVICES--COMMISSION--FUND--DISBURSEMENT.--

A. The "civil legal services commission" is created. The commission shall be composed of five members, all of whom have experience with the civil legal matters affecting low-income persons. The members shall be appointed as follows:

(1) two members appointed by the governor;

(2) two members, both of whom shall be attorneys, appointed by the supreme court; and

(3) one member, who shall be an attorney, appointed by the state bar of New Mexico.

B. The initial appointee of the state bar shall serve for three years. One of the initial members appointed by the governor and one of the initial members appointed by the supreme court shall serve for one year and the other initial members appointed by the governor and by the supreme court shall serve for two years. Thereafter, the terms of all members shall be for three years.

C. Staff and meeting space for the commission shall be provided by the local government division of the department of finance and administration. The commission shall elect a chair and such other officers as it deems appropriate and shall meet at the call of the chair. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation.

D. The commission shall:

(1) pursuant to the Procurement Code, solicit proposals for disbursements from the civil legal services fund;

(2) enter into contracts for the expenditure of the civil legal services fund, less administrative costs as provided in Subsection E of this section, for the purpose of improving civil legal services for low-income persons. The contracts shall be entered into with nonprofit organizations:

(a) whose mission is to provide a range of free legal services to New Mexicans living in poverty and who demonstrate the capacity to cooperate with state and local bar associations, pro bono programs and private attorneys to increase the availability of free legal services to impoverished New Mexicans; or

(b) whose programs increase and coordinate statewide access to and provisions of civil legal services for persons living in poverty through the use of technology; provided that no more than fifty percent of the annual expenditures from the civil legal services fund shall be used for purposes of this subparagraph; and

(3) adopt such rules as are necessary to carry out the provisions of this section.

E. The local government division of the department of finance and administration, pursuant to rules of the commission, shall administer the contracts and programs provided for in this section; provided that no more than five percent of the annual expenditures from the civil legal services fund shall be for administrative costs. The division shall require an annual accounting from each organization receiving funds pursuant to this section.

F. Money disbursed pursuant to this section shall not be used by a recipient to:

(1) support lobbying, as defined in the Lobbyist Regulation Act; or

(2) bring suit against the state.

G. The "civil legal services fund" is created in the state treasury. All earnings of the fund shall be credited to the fund, and any unexpended or unencumbered balance in the fund shall not revert to another fund at the end of a fiscal year. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the local government division of the department of finance and administration. Money in the fund is appropriated to the local government division and the civil legal services commission for the purposes of carrying out the provisions of this section.

H. As used in this section, "civil legal services" means a full range of free legal services provided by attorneys or attorney-supervised staff in noncriminal matters to low-income persons living in New Mexico.

**Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 767, AS AMENDED

# CHAPTER 280

**CHAPTER 280, LAWS 2001**

AN ACT

RELATING TO HEALTH CARE; AMENDING THE INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT TO EXPAND THE DEFINITION OF "SOLE COMMUNITY PROVIDER HOSPITAL"; RECONCILING CONFLICTING AMENDMENTS.

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

**Section 1. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended by Laws 1999, Chapter 37, Section 1 and also by Laws 1999, Chapter 270, Section 4) 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 or admitted to a hospital for care or treated by a health care provider or all three;

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:

(l) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

F. "fund" means a county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means:

(1) a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act; 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 services in a hospital or

outpatient setting that are necessary for conditions that endanger the life of or threaten permanent disability to an indigent patient;

O. "health care services" means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board;

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

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HOUSE BILL 816

# CHAPTER 281

**CHAPTER 281, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WATER QUALITY ACT; PROVIDING FOR WATER QUALITY STANDARDS TO BE BASED ON CREDIBLE SCIENTIFIC DATA.

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

## Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) 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; and

L. 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."

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SENATE BILL 99, AS AMENDED

# CHAPTER 282

**CHAPTER 282, LAWS 2001**

AN ACT

RELATING TO MANDATORY FINANCIAL RESPONSIBILITY; 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 66-6-6.1 NMSA 1978, is enacted to read:

"66-6-6.1. ADDITIONAL REGISTRATION FEE.--For registration of vehicles subject to the registration fees imposed by Sections 66-6-2 and 66-6-4 NMSA 1978, there is imposed an additional fee of two dollars ($2.00) for each twelve-month period for which a vehicle with a gross vehicle weight under twenty-six thousand pounds is registered."

## Section 2. 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 fee collected pursuant to Section 66-3-417 NMSA 1978;

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

(c) 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; and

(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 67-16-14 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 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 438

# CHAPTER 283

**CHAPTER 283, LAWS 2001**

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING FOR RETURN TO EMPLOYMENT; CONTINUING RETIREMENT BENEFITS; AMENDING THE EDUCATIONAL RETIREMENT ACT.

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;

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. A new section of the Educational Retirement Act is enacted to read:

"RETURN TO EMPLOYMENT--BENEFITS CONTINUED--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. 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 re-employment 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 returns to employment during retirement pursuant to Subsection A 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 re-employment with a local administrative unit.

C. A retired member who returns to employment

shall not make contributions to the fund as specified in the

Educational Retirement Act; however, the 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."

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SENATE BILL 716, AS AMENDED

# CHAPTER 284

**CHAPTER 284, LAWS 2001**

AN ACT

RELATING TO TAXATION; INCLUDING CERTAIN ELECTRICITY GENERATION IN THE DEFINITION OF MANUFACTURING FOR PURPOSES OF THE INVESTMENT CREDIT ACT AND FOR APPORTIONMENT OF BUSINESS INCOME FOR INCOME TAX PURPOSES; PROVIDING FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS FOR ELECTRICITY GENERATION FACILITY PROJECTS IN CERTAIN COUNTIES; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 4-59-2 NMSA 1978 (being Laws 1975, Chapter 286, Section 2, as amended) 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 those counties organized or incorporated in New Mexico;

C. "health care services" 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;

D. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

E. "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 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) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include facilities 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) electricity generation facilities in any class B county with: 1) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars ($550,000,000); 2) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars ($210,000,000) but less than four hundred million dollars ($400,000,000); 3) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars ($180,000,000) but less than two hundred forty million dollars ($240,000,000); 4) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars ($300,000,000) but less than four hundred million dollars ($400,000,000); 5) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars ($100,000,000); or 6) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars ($700,000,000);

(3) any business in which all or part of the activities of such business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

(4) any nonprofit corporation engaged in health care services;

(5) any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research facility; and

(6) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and

F. "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 2. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as amended by Laws 1997, Chapter 216, Section 5 and also by Laws 1997, Chapter 226, Section 5) 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, the 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 3. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2011, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation other than electricity generation at facilities in any class B county with:

(a) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars ($550,000,000);

(b) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars ($210,000,000) but less than four hundred million dollars ($400,000,000);

(c) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars ($180,000,000) but less than two hundred forty million dollars ($240,000,000);

(d) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars ($300,000,000) but less than four hundred million dollars ($400,000,000);

(e) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars ($100,000,000); or

(f) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars ($700,000,000); or

(4) processing natural resources, including hydrocarbons."

## Section 4. Section 7-9A-3 NMSA 1978 (being Laws 1979, Chapter 347, Section 3, as amended by Laws 1991, Chapter 159, Section 2 and also by Laws 1991, Chapter 162, Section 2) is amended to read:

"7-9A-3. DEFINITIONS.--As used in the Investment Credit 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. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation other than electricity generation at facilities in any class B county with:

(a) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars ($550,000,000);

(b) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars ($210,000,000) but less than four hundred million dollars ($400,000,000);

(c) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars ($180,000,000) but less than two hundred forty million dollars ($240,000,000);

(d) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars ($300,000,000) but less than four hundred million dollars ($400,000,000);

(e) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars ($100,000,000); or

(f) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars ($700,000,000); or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over 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."

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SENATE BILL 739, AS AMENDED

# CHAPTER 285

**CHAPTER 285, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING FOR ALL SCHOOL DISTRICTS TO IMPLEMENT FLEXIBLE SCHOOL CALENDARS; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 22-8-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 63, as amended) is amended to read:

"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

A. No budget for a school district shall be approved by the department of education that does not provide for:

(1) a school year consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified school instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval."

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HOUSE BILL 35

# CHAPTER 286

**CHAPTER 286, LAWS 2001**

AN ACT

RELATING TO PUBLIC EDUCATION; PROVIDING FOR THE STATE BOARD OF EDUCATION TO ASSESS TEACHER PREPARATION PROGRAMS.

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

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

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

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

B. determine policy for the operation of all public schools and vocational education programs in the state, 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 a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator according to law for incompetency, immorality or 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. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate rules governing all such adult educational programs;

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

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

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

Q. require prior approval for 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;

R. 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 a 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 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;

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

T. 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;

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

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of 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;

W. 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 or reorganization without the approval of the local school board. 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;

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

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

Z. 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;

AA. develop a systemic framework for professional development that provides training to ensure quality teachers and principals and that improves and enhances student achievement. The state board shall work with public school educators, 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 of education in approving local school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts, including teaching strategies, curriculum materials, distance learning networks and web sites to ensure that the state board's rules pertaining to content standards and benchmarks are used by New Mexico teachers;

BB. withhold program approval from a college of education or teacher preparation program that fails to offer a teaching of reading course that is based on the most current research, is aligned to the state board's reading standards and includes the necessary strategies and assessment measures to ensure that all beginning teachers are proficient in the teaching of reading; and

CC. withhold program approval from a college of education or teacher preparation program that fails to seek input in designing teaching of reading courses from experts in the field."

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HOUSE BILL 39

# CHAPTER 287

**CHAPTER 287, LAWS 2001**

AN ACT

RELATING TO EDUCATION; REQUIRING A STATEWIDE ONE- TO THREE-YEAR MENTORSHIPPROGRAM FOR CERTAIN BEGINNING 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:

"STATEWIDE MENTORSHIPPROGRAM FOR CERTAIN BEGINNING TEACHERS--PURPOSE--BOARD DUTIES--DEPARTMENT DUTIES.--

A. The purpose of the statewide teacher mentorship program is to provide an effective transition into the teaching field, ensure success in teaching, improve the achievement of students and retain capable teachers in the classroom.

B. The state board shall develop a framework for a statewide one- to three-year mentorship program for beginning teachers with standard level one, alternative or substandard certificates. The state board shall work with public school educators, 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 support provider or mentor;

(2) structured training and compensation for support providers or mentors;

(3) ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teacher performance during the first three years of teaching, including an annual assessment of suitability for license renewal, and for the final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards, school district administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

D. The department of education shall:

(1) establish criteria for participation in a teacher mentorship program based on the current licensing structure;

(2) require submission and approval of each school district's teacher mentorship program;

(3) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place; and

(4) encourage school districts to collaborate with teacher preparation programs at institutions of higher education, career educators, educational organizations and other state and community leaders in the mentorship of beginning teachers."

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HOUSE BILL 47, AS AMENDED

# CHAPTER 288

**CHAPTER 288, LAWS 2001**

AN ACT

RELATING TO EDUCATION; ENACTING THE TEACHER LOAN FOR SERVICE ACT; PRESCRIBING POWERS AND DUTIES; PROVIDING FOR CONTRACTS AND THEIR ENFORCEMENT; CREATING A FUND.

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

## Section 1. SHORT TITLE.--This act may be cited as the "Teacher Loan for Service Act".

## Section 2. PURPOSE.--The purpose of the Teacher Loan for Service Act is to proactively address New Mexico's looming teacher shortage by providing students with the financial means to complete or enhance their post-secondary teacher preparation education.

## Section 3. DEFINITIONS.--As used in the Teacher Loan for Service Act:

A. "commission" means the commission on higher education;

B. "loan" means a payment of money under contract between the commission and a student that defrays the costs incidental to a teacher preparation program offered in a regionally accredited post-secondary educational institution in New Mexico and that requires repayment in services;

C. "student" means a United States citizen who is enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico; and

D. "teacher preparation program" means one that has been formally approved as meeting the requirements of the New Mexico state board of education and leads to initial licensure or to additional licensure endorsements.

## Section 4. TEACHER STUDENT LOANS AUTHORIZED--QUALIFICATIONS.--

A. The commission may grant a loan to a student deemed qualified by the commission upon such terms and conditions as may be imposed by rule of the commission.

B. The commission shall only receive, pass upon and allow or disallow an application for a loan made by a student who declares his intent to serve as a public school teacher in a designated teacher shortage area of New Mexico. Teacher shortage areas may be either geographic or discipline specific.

C. The commission shall make a full and careful investigation of the ability and qualifications of each applicant to become a recipient of a loan. The commission shall give preference to qualified applicants who demonstrate financial need.

D. The commission and the state department of public education shall arrange for loan recipients to receive assistance in locating employment with public schools in New Mexico.

## Section 5. DELEGATION OF DUTIES TO OTHER STATE AGENCIES.--The commission may arrange with other agencies for the performance of services required by the provisions of Section 4 of the Teacher Loan for Service Act.

## Section 6. TEACHER LOANS--CONTRACT TERMS--REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan in such amounts and for such periods as the commission determines. The loan shall not exceed the necessary expenses incurred while attending a teacher preparation program.

B. A loan shall bear interest at the rate of:

(1) eighteen percent per year if the loan recipient completes his teacher preparation program and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; or

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the loan recipient and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a teacher preparation program and shall be conditioned on the repayment of the loan to the state, together with interest, over a period established by the commission after the completion of the teacher preparation program and any postgraduate study or internship required to complete the loan recipient's education. The contract shall further provide that immediately upon completion or termination of the loan recipient's education, all interest then accrued shall be capitalized.

D. A loan made to a recipient who fails to complete his teacher preparation program shall become due, together with interest, immediately upon termination of his teacher preparation program. The commission, in consultation with the loan recipient, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that the loan recipient practices his profession as a licensed teacher in New Mexico. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. A loan recipient shall serve a complete contract year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his teacher preparation program and does not serve in a New Mexico public school, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances that prevent the loan recipient from serving. If the commission does not find acceptable extenuating circumstances for the loan recipient's failure to carry out his declared intent to serve, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this section.

H. The commission shall adopt and promulgate rules to implement the provisions of this section. The rules may provide for the repayment of loans in annual or other periodic installments.

**Section 7. CONTRACTS--LEGAL ASSISTANCE--ENFORCEMENT.--The general form of the contract shall be prepared and approved by the attorney general and signed by the loan recipient and a designee of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from a loan recipient on a contract.**

**Section 8. FUND CREATED--METHOD OF PAYMENT.--The "teacher loan for service fund" is created in the state treasury. Money appropriated for loans pursuant to the Teacher Loan for Service Act; earnings from investment of the fund; gifts, grants and donations to the fund; and all payments of principal and interest on loans made pursuant to that act shall be deposited in the fund. Money in the fund shall not revert at the end of a fiscal year. The**

**fund shall be administered by the commission. All payments of money for loans shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the commission's designated representative.**

**Section 9. CANCELLATION.--The commission may cancel a contract between it and a loan recipient for any reasonable cause deemed sufficient by the commission.**

**Section 10. REPORTS.--The commission shall report annually by January 1 to the governor and the legislature on its activities pursuant to the Teacher Loan for Service Act, including the loans granted, the names and addresses of loan recipients, the teacher preparation programs loan recipients are attending and the names and locations of practice of loan recipients who have completed their teacher preparation education and are teaching.**

**Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 68, AS AMENDED

# CHAPTER 289

**CHAPTER 289, LAWS 2001**

AN ACT

RELATING TO EDUCATION; PROVIDING FOR IMPROVEMENT IN PUBLIC SCHOOL STUDENTS' READING PROFICIENCIES.

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

## Section 1. Section 22-2-6.11 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 14, Section 1) is amended to read:

"22-2-6.11. READING INITIATIVE--DESIGN.--

A. The department of education 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, research-based reading programs 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 classroom certified instructional staff in the instruction of reading programs;

(3) extra time in the student's day or year for implementation of reading programs;

(4) rewards provided to certified school instructors in schools that improve student reading proficiency; and

(5) criteria for schools to establish an individualized reading plan for students who fail to meet grade level reading proficiency standards.

B. The department of education 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 of education shall involve school district personnel, especially certified elementary reading specialists, parents and other interested persons in the design of the reading initiative."

## Section 2. Section 22-2-6.12 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 14, Section 2) is amended to read:

"22-2-6.12. 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 of education, and money in the fund is appropriated to the department to distribute awards to local schools that implement innovative, research-based reading programs. The department of education shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, research-based reading programs. Schools receiving funds shall show evidence that they are using quality, research-based reading programs 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."

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HOUSE BILL 74, AS AMENDED

# CHAPTER 290

**CHAPTER 290, LAWS 2001**

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; 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 "Uniform Disclaimer of Property Interests Act".

## Section 2. DEFINITIONS.--As used in the Uniform Disclaimer of Property Interests Act:

(1) "disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(2) "disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made;

(3) "disclaimer" means the refusal to accept an interest in or power over property;

(4) "fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person;

(5) "jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property;

(6) "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;

(7) "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, an

Indian band or an Alaskan native village recognized by federal law or formally acknowledged by a state; and

(8) "trust" means:

(A) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) a trust created pursuant to a statute, judgment or decree which requires the trust to be administered in the manner of an express trust.

## Section 3. SCOPE.--The Uniform Disclaimer of Property Interests Act applies to disclaimers of any interest in or power over property, whenever created.

## Section 4. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT SUPPLEMENTED BY OTHER LAW.--

(a) Unless displaced by a provision of the Uniform Disclaimer of Property Interests Act, the principles of law and equity supplement that act.

(b) The Uniform Disclaimer of Property Interests Act does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than that act.

## Section 5. POWER TO DISCLAIM--GENERAL REQUIREMENTS--WHEN IRREVOCABLE.--

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in

Section 12 of the Uniform Disclaimer of Property Interests Act. As used in this subsection, "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.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Section 12 of the Uniform Disclaimer of Property Interests Act or when it becomes effective as provided in Sections 6 through 11 of that act, whichever occurs later.

(f) A disclaimer made under the Uniform Disclaimer of Property Interests Act is not a transfer, assignment or release.

## Section 6. DISCLAIMER OF INTEREST IN PROPERTY.--

(a) As used in this section:

(1) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment; and

(2) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) Except for a disclaimer governed by Section 7 or 8 of the Uniform Disclaimer of Property Interests Act, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in Paragraph (2), the following rules apply:

(A) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

## Section 7. DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.--

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under Subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

## Section 8. DISCLAIMER OF INTEREST BY TRUSTEE.--If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

## Section 9. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.--If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

## Section 10. DISCLAIMER BY APPOINTEE, OBJECT OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.--

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

## Section 11. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.--

(a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

## Section 12. DELIVERY OR FILING.--

(a) As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to Subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in Subsection (c), (d) or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

## Section 13. WHEN DISCLAIMER BARRED OR LIMITED.--

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

(3) a judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than the Uniform Disclaimer of Property Interests Act.

(f) A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under the Uniform Disclaimer of Property Interests Act had the disclaimer not been barred.

**Section 14. TAX QUALIFIED DISCLAIMER.--Notwithstanding any other provision of the Uniform Disclaimer of Property Interests Act, if as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under the Uniform Disclaimer of Property Interests Act.**

**Section 15. RECORDING OF DISCLAIMER.--If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.**

**Section 16. APPLICATION TO EXISTING RELATIONSHIPS.--Except as otherwise provided in Section 13 of the Uniform Disclaimer of Property Interests Act, an interest in or power over property existing on the effective date of that act as to which the time for delivering or filing a disclaimer under law superseded by that act has not expired may be disclaimed after the effective date of that act.**

**Section 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Disclaimer of Property Interests Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

**Section 18. REPEAL.--Section 45-2-801 NMSA 1978 (being Laws 1993, Chapter 174, Section 60, as amended) is repealed.**

**Section 19. SEVERABILITY CLAUSE.--If any provision of the Uniform Disclaimer of Property Interests Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.**

**Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 112

# CHAPTER 291

**CHAPTER 291, LAWS 2001**

AN ACT

RELATING TO PUBLIC PROCUREMENT; EXEMPTING CERTAIN CONTRACTS FOR THE LEASE OR OPERATION OF HOSPITALS FROM THE PROCUREMENT CODE; PROVIDING FOR TERMINATION OF LEASES OF THOSE HOSPITALS.

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

## Section 1. Section 3-44-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-45-1, as amended) is amended to read:

"3-44-1. HOSPITALS--AUTHORITY.--A municipality may:

A. control and regulate hospitals;

B. construct hospitals and medical dispensaries;

C. contribute to the support of any county hospital located within the municipality;

D. own, maintain and operate hospitals;

E. charge for hospital services rendered;

F. lease the hospital, sanitarium or other institution upon such terms and conditions as the governing body may determine to any person, corporation or

association for the operation and maintenance of the hospital, provided that the lease may be terminated by the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease;

G. contract with the human services department or the board of county commissioners for the care of sick or indigent persons;

H. accept grants for constructing, equipping and maintaining the hospital; and

I. perform any act or adopt any regulation necessary or expedient to carry out the provisions of this section."

## Section 2. Section 3-44-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-45-3) is amended to read:

"3-44-3. JOINT COUNTY-MUNICIPAL HOSPITALS.--If a county-municipal hospital is authorized, the board of county commissioners and the governing body of the municipality may jointly:

A. lease the hospital upon such terms and conditions as they may determine to a person, firm, corporation, association or the county or municipality for the operation and maintenance of the hospital, provided that the lease may be terminated by the board of county commissioners and the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease;

B. enter into an agreement with the state human services department for the care of sick or indigent persons;

C. accept gifts, endowments or grants-in-aid for the purpose of constructing, equipping and maintaining the hospital or endowing rooms or wards for sick, needy or indigent persons; or

D. perform any act or adopt any regulation necessary or expedient to carry out the purposes of Sections 3-44-2 through 3-44-4 NMSA 1978."

## Section 3. Section 3-44-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-45-5, as amended) is amended to read:

"3-44-5. HOSPITALS--SPECIAL CHARTER TOWNS--AUTHORITY.--

A. Any town incorporated, organized and operating under a special act of the legislature may, by resolution or ordinance:

(1) own, maintain and operate hospitals, sanitariums and other institutions for the care of sick or indigent persons;

(2) issue negotiable bonds for the construction of a hospital, sanitarium or other institution; or

(3) upon such conditions and terms as the governing body of the town may determine:

(a) delegate the operation and maintenance of the hospital, sanitarium or other institution to any person, corporation or association as it selects; or

(b) lease the hospital, sanitarium or other hospital to any person, corporation or association for the care of sick or indigent persons, provided that the lease may be terminated by the governing body of the town without cause upon one hundred eighty days' notice after the first three years of the lease.

B. The provisions of Sections 3-54-1 through 3-54-3 NMSA 1978 relating to the leasing of municipal property are not applicable to this section."

## Section 4. A new section of Chapter 3, Article 44 NMSA 1978 is enacted to read:

"HOSPITALS--EXPENDITURE OF PUBLIC FUNDS.--The use of public funds for the operation and maintenance of a hospital pursuant to a lease authorized by Chapter 3, Article 44 NMSA 1978 is deemed to be funding to the hospital as a public institution, and the hospital facility and lessee thereof are subject to the laws of this state regarding the expenditure of public money."

## Section 5. 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. exercise all powers necessary and requisite for the accomplishment of the purposes for which the special hospital district is created;

J. 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;

K. charge for hospital services rendered;

L. 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;

M. 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

N. expend public money to recruit health care personnel to serve the sick of the special hospital district."

## Section 6. Section 4-48B-4 NMSA 1978 (being Laws 1981, Chapter 83, Section 4) is amended to read:

"4-48B-4. ANNUAL REPORT.--Each contracting hospital shall prepare an annual accounting and report to the county or counties, or county or counties and another political subdivision with which the contracting hospital contracts, accounting for the expenditure of mill levy funds for the past year, an annual plan explaining the planned use of such funds for the succeeding year and other reports as the county or counties, or county or counties and another political subdivision, from time to time shall reasonably require."

## Section 7. Section 4-48B-5 NMSA 1978 (being Laws 1947, Chapter 148, Section 1, as amended) is amended to read:

"4-48B-5. POWER OF COUNTIES.--All counties shall have the following powers:

A. to purchase, own, maintain and operate hospitals;

B. to purchase the land necessary to construct hospitals;

C. to control and regulate county hospitals;

D. to construct county hospitals;

E. to issue general obligation bonds and revenue bonds in the manner provided in the Hospital Funding Act for the construction, purchase, renovation, remodeling, equipping or re-equipping of a county hospital or a jointly owned county-municipal hospital and purchasing the land necessary therefor or for any combination of the foregoing purposes;

F. to charge for hospital services rendered and to reduce any charge made for care of a patient in whole or part when the charges are determined to be disputed in good faith or uncollectible;

G. to lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon terms and conditions as the county commissioners may determine;

H. to contract with the state, another county or counties, the federal government or its agencies, another political subdivision or a public or private corporation, organization or association for the care of the sick of the county;

I. to receive all funds appropriated from whatever source or paid by or on behalf of any patient of the hospital;

J. notwithstanding any other provision of law, to enter into leases, management or operating contracts, health care facilities contracts and other agreements authorized by the Hospital Funding Act for periods in excess of one year; provided that:

(1) the contract, lease or agreement may be terminated by the county without cause upon one hundred eighty days' notice after the first three years of the contract; and

(2) Paragraph (1) of this subsection shall not apply during the portion of a lease term in which a lessee is obligated under the lease to make debt service payments on revenue bonds that finance all or part of the hospital or equipment for the hospital;

K. to authorize the hospital governing board of a county hospital to exercise all powers that the county is granted by the Hospital Funding Act except the powers to issue bonds, call a mill levy election and levy the annual assessments for the mill levy authorized by the Hospital Funding Act;

L. to enter into a health care facilities contract with one or more hospitals that agree to provide facilities to the sick of the county;

M. to call a mill levy election as authorized by the Hospital Funding Act and to collect and distribute the proceeds of the mill levy pursuant to that act;

N. to distribute the proceeds of the mill levy authorized by the Hospital Funding Act to one or more county hospitals and one or more contracting hospitals or any combination thereof that provide facilities for the sick of the county, whether located within or without the county wherein the mill levy is collected;

O. to accept grants for constructing, equipping, operating and maintaining a county hospital;

P. to enter into an agreement with a municipality for constructing, equipping, operating and maintaining a jointly owned county-municipal hospital;

Q. to enter into an agreement with another county or counties, another county or counties and another political subdivision, an agency of the federal government or any other person, corporation, organization or association that provides that the parties to the agreement shall join together or form a legal entity for the purpose of making some or all purchases necessary for the operation of public hospitals or public and private hospitals subject to provisions of or exemptions from the Procurement Code;

R. to enter into an agreement with another county or counties, another political subdivision, an agency of the federal government or any other person,

corporation, organization or association that provides that parties to the agreement shall join together or form a legal entity for the purpose of creating a network of health care providers or jointly operating a common health care service, subject to provisions of or exemptions from the Procurement Code;

S. to expend public money to recruit health care personnel to serve the sick of the county; and

T. to perform any other act or adopt any regulation necessary or expedient to carry out the provisions of the Hospital Funding Act."

## Section 8. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission,

which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts; and

S. contracts entered into by a local public body with a person, firm, organization, corporation, association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, for the lease or operation of a county hospital pursuant to the Hospital Funding Act or for the operation and maintenance of a hospital pursuant to the Special Hospital District Act."

**Section 9. Section 13-6-2 NMSA 1978 (being Laws 1979, Chapter 195, Section 3, as amended by Laws 1989, Chapter 211, Section 7 and also by Laws 1989, Chapter 380, Section 3) 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. Any state agency, local public body, school district or state educational institution is empowered to sell or otherwise dispose of real or personal property belonging to the state agency, local public body, school district or state educational institution. 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 personal property having a current resale value of more than five thousand dollars ($5,000) may be made by any 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.

B. 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.

C. The appropriate approval authority may condition the approval of the sale or other disposition of any real or personal property upon the property being offered for sale to a state agency, local public body, school district or state educational institution.

D. The appropriate approval authority shall have the power to credit any payment received from the sale of any such real or 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 personal property without warranty.

E. This section shall not apply to any computer software or hardware of any state agency.

F. 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 highway commission or leases of county hospitals with any person pursuant to the Hospital Funding Act."

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HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 322, AS AMENDED

# CHAPTER 292

**CHAPTER 292, LAWS 2001**

AN ACT

RELATING TO PROCUREMENT; INCREASING THE AMOUNT OF EXCLUDED SMALL PURCHASES; PROVIDING ADDITIONAL EXEMPTIONS; AUTHORIZING ELECTRONIC NOTICES AND RESPONSES; PROVIDING LIMITATIONS; 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 Procurement Code is enacted to read:

"DEFINITION--ELECTRONIC.--"Electronic" includes electric, digital, magnetic, optical, electronic or similar medium."

## Section 2. Section 13-1-77 NMSA 1978 (being Laws 1984, Chapter 65, Section 50) is amended to read:

"13-1-77. DEFINITION--PURCHASE ORDER.--"Purchase order" means the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction."

## Section 3. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--

A. The provisions of the Procurement Code shall not apply to:

(1) procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

(2) procurement of tangible personal property or services for the governor's mansion and grounds;

(3) printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

(4) purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

(5) purchases of books and periodicals from the publishers or copyright holders thereof;

(6) travel or shipping by common carrier or by private conveyance or to meals and lodging;

(7) purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

(8) contracts with businesses for public school transportation services;

(9) procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

(10) minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

(11) municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

(12) the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

(13) contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

(14) contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct

care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

(15) contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

(16) contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

(17) contracts with professional entertainers;

(18) contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts; and

(19) works of art for museums or for display in public buildings or places.

## Section 4. Section 13-1-99 NMSA 1978 (being Laws 1984, Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE STATE PURCHASING AGENT.--Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

A. procurement of professional services;

B. small purchases having a value not exceeding one thousand five hundred dollars ($1,500);

C. emergency procurement;

D. procurement of highway construction or reconstruction by the state highway and transportation department;

E. procurement by the judicial branch of state government;

F. procurement by the legislative branch of state government;

G. procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;

H. procurement by the state fair commission of tangible personal property, services and construction under five thousand dollars ($5,000);

I. purchases from the instructional material fund;

J. procurement by all local public bodies;

K. procurement by regional education cooperatives;

L. procurement by charter schools; and

M. procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program."

## Section 5. Section 13-1-104 NMSA 1978 (being Laws 1984, Chapter 65, Section 77, as amended) is amended to read:

"13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state; in addition, an invitation or notice may be published electronically on the state purchasing agent's web site that is maintained for that purpose. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than ten thousand dollars ($10,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. A central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. A central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. Central purchasing offices shall not require that prospective bidders receive a notice or invitation for bids through electronic media.

D. As used in this subsection, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office."

## Section 6. Section 13-1-125 NMSA 1978 (being Laws 1984, Chapter 65, Section 98, as amended) is amended to read:

"13-1-125. SMALL PURCHASES.--

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars ($10,000) in accordance with the applicable small purchase regulations adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding twenty thousand dollars ($20,000), excluding applicable state and local gross receipts taxes, except for the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding one thousand five hundred dollars ($1,500) by issuing a direct purchase order to a contractor based upon the best obtainable price.

D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."

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

"ELECTRONIC TRANSMISSIONS.--The state purchasing agent shall work with the attorney general to develop guidelines for central purchasing offices to use electronic media, including acceptance of sealed bids and requests for proposals that include electronic signatures. The guidelines shall include:

A. appropriate security to prevent unauthorized access to electronically submitted bids or proposals prior to the date and time set for opening of bids or the deadline set for receipt for proposals, including the electronic bidding, approval and award process; and

B. accurate retrieval or conversion of electronic forms of information into a medium that permits inspection and copying."

## Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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HOUSE BILL 88, AS AMENDED

# CHAPTER 293

**CHAPTER 293, LAWS 2001**

AN ACT

RELATING TO EDUCATION; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 PERTAINING TO REGIONAL EDUCATION COOPERATIVES.

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

## Section 1. Section 15-3-2 NMSA 1978 (being Laws 1978, Chapter 166, Section 14, as amended) is amended to read:

"15-3-2. DIRECTOR OF DIVISION--DUTIES--FEDERAL FUNDS.--

A. The director of the property control division of the general services department shall:

(1) have control over all state buildings and lands except those under the control and management of the state highway and transportation department; the state fair commission; state institutions of higher learning; regional education cooperatives; the New Mexico school for the deaf; the New Mexico school for the visually handicapped; the supreme court; the commissioner of public lands; the state armory board, in accordance with Section 20-8-3 NMSA 1978; the building in which the legislature is housed, the adjacent utilities plant and the surrounding grounds; the museum of New Mexico; and the state library building and adjacent grounds. The director shall assign the use or occupancy of state buildings and lands under his control to the state agency or political subdivision that may make the best and highest beneficial use of the property;

(2) regulate the use or occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy;

(3) have custody of all maps, deeds, plats, plans, specifications, contracts, books and other papers connected with state buildings over which he exercises control;

(4) secure copies of all documents of title to all real property under his control held in the name of the state or for the use of the state, and index those documents so that the status of real property held by the state under his control can be readily ascertained;

(5) control the lease or rental of space in private buildings by state executive agencies other than the state land office;

(6) preserve, repair, clean, heat and light the buildings and improvements under his control that are located within the exterior boundaries of the city of Santa Fe, either with his own staff or by contract with private firms;

(7) care for and beautify the grounds and premises under his control that are located within the exterior boundaries of the city of Santa Fe, either with his own staff or by contract with private firms;

(8) make rules for the conduct of all persons in and about such buildings and grounds necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds;

(9) have the power to sell state buildings and real property under his control in accordance with Sections 13-6-2 and 13-6-3 NMSA 1978. Any such sale shall be by quitclaim deed;

(10) have the power to purchase title insurance or a title opinion in conjunction with the sale of state buildings or land; and

(11) have the power to enter into contracts for the improvement, alteration and reconstruction of the state buildings under his control, including the executive mansion, and for the design and construction of additional buildings, to the extent funds are available.

B. The provisions of this section shall be subject to federal law or regulation if the buildings or property were purchased with federal funds.

C. If the parties determine that it is in the best interest of the state, the director of the property control division of the general services department and the governing body in control of buildings or land otherwise exempted from the director's control pursuant to Paragraph (1) of Subsection A of this section may enter into an agreement pursuant to the Joint Powers Agreements Act to exercise such control and jurisdiction over the buildings or land as is specified in the agreement."

## Section 2. Section 22-2-6.3 NMSA 1978 (being Laws 1986, Chapter 94, Section 3, as amended) is amended to read:

"22-2-6.3. DEFINITIONS.--As used in the Public School Insurance Authority Act:

A. "authority" means the public school insurance authority;

B. "board" means the board of directors of the public school insurance authority;

C. "charter school" means a school organized as a charter school pursuant to the provisions of the 1999 Charter Schools Act;

D. "director" means the director of the public school insurance authority;

E. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions and regional education cooperatives;

F. "fund" means the public school insurance fund;

G. "group health insurance" means coverage that includes life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;

H. "risk-related coverage" means coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and

I. "school district" means a school district as defined in Subsection K of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students."

## Section 3. Section 22-2B-1 NMSA 1978 (being Laws 1993, Chapter 232, Section 1) is amended to read:

"22-2B-1. SHORT TITLE.--Chapter 22, Article 2B NMSA 1978 may be cited as the "Regional Cooperative Education Act"."

## Section 4. Section 22-2B-2 NMSA 1978 (being Laws 1993, Chapter 232, Section 2) is amended to read:

"22-2B-2. DEFINITIONS.--As used in the Regional Cooperative Education Act:

A. "council" means a regional education coordinating council; and

B. "cooperative" means a regional education cooperative."

## Section 5. Section 22-2B-3 NMSA 1978 (being Laws 1993, Chapter 232, Section 3) is amended to read:

"22-2B-3. REGIONAL EDUCATION COOPERATIVES AUTHORIZED.--

A. The state board may authorize the existence and operation of "regional education cooperatives". Upon authorization by the state board, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department of education; provided that:

(1) pursuant to the rules of the state board, cooperatives may own, and have control and management over, buildings and land independent of the director of the property control division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department of education. The state board shall, by rule, determine the provisions of the Public School Finance Act relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the state board, the state superintendent may, after considering the factors specified in Section 22-8-38 NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the state superintendent, the money appropriated or to be distributed to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The state board shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The state board shall also establish procedures for oversight of cooperatives to ensure compliance with state board rule. Cooperatives shall be exempt from the provisions of the Personnel Act.

C. The state board, with full participation by the cooperatives, shall develop a statewide long-range plan for educational and technical assistance activities in public and charter schools served by the cooperatives. The state board and cooperatives shall report on the initial planning activities to the legislative finance committee, the legislative education study committee and the office of the governor by November 15, 2001 and shall provide annual reports thereafter."

## Section 6. Section 22-10-3.3 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended) is amended to read:

"22-10-3.3. BACKGROUND CHECKS.--

A. An applicant for initial certification shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department of education 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 certificate 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 certification or employment decisions affecting the specific applicant. The applicant for initial certification 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, including a charter school. An applicant for employment who has been initially certified within twelve 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 of education 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, including a charter school, shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board or regional education cooperative 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, including a charter 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 of education is authorized to release copies of federal bureau of investigation records that are on file with the department of education and that are not more than twelve 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, including a charter school.

C. The department of education shall implement the provisions of Subsection A of this section on or before July 1, 1998."

## Section 7. REPEAL.--Section 22-2B-6 NMSA 1978 (being Laws 1993, Chapter 232, Section 6) is repealed.

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HOUSE BILL 139, AS AMENDED

# CHAPTER 294

**CHAPTER 294, LAWS 2001**

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO ACQUIRE AND LEASE PROPERTY TO QUALIFIED ENTITIES; AMENDING PROVISIONS RELATING TO THE OBLIGATIONS THAT MAY BE PLEDGED AND THE TYPES OF SECURITY THAT THE AUTHORITY MAY PROVIDE FOR THE PAYMENT OF PRINCIPAL, INTEREST AND OTHER COSTS RELATING TO BONDS OF THE AUTHORITY; AMENDING PROVISIONS RELATING TO THE AUTHORITY'S STATUS AS A GOVERNMENTAL INSTRUMENTALITY; DECLARING AN EMERGENCY.

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, 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; 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 6-21-4 NMSA 1978 (being Laws 1992, Chapter 61, Section 4) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED-- MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--BOND.--

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 finance authority" for the performance of essential public functions.

B. The authority shall be composed of twelve members. The state investment officer, the secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor.

C. The appointed members of the authority shall be appointed to four-year terms. The initial members shall be appointed to staggered terms of four years or less, so that the term of at least 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.

D. Each appointed member before entering upon his duty shall take an oath of office to administer the duties of his office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

E. The governor shall designate an appointed member of the authority to serve as chairman. The authority shall elect annually one of its members to serve as vice chairman. The authority shall appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper and consistent with the New Mexico Finance Authority Act.

F. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. 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 make copies of all minutes and other records and documents of the authority and 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.

G. Meetings of the authority shall be held at the call of the chairman or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. An ex-officio member may designate in writing another person to attend meetings of the authority and to the same extent and with the same effect act in his stead. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

H. Each member of the authority shall give bond as provided in the Surety Bond Act. All costs of the surety bonds shall be borne by the authority.

I. 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 benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

J. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

K. The authority is a governmental instrumentality for purposes of the Tort Claims Act."

## Section 3. Section 6-21-5 NMSA 1978 (being Laws 1992, Chapter 61, Section 5, as amended) is amended to read:

"6-21-5. POWERS OF THE AUTHORITY.--The authority is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the following powers:

A. to sue or be sued;

B. to adopt and alter an official seal;

C. to make and alter bylaws for its organization and internal management and to adopt, subject to the review and approval of the New Mexico finance authority oversight committee, such rules as are necessary and appropriate to implement the provisions of the New Mexico Finance Authority Act;

D. to appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

E. to make, enter into and enforce all contracts, agreements and other instruments necessary, convenient or desirable in the exercise of the authority's powers and functions and for the purposes of the New Mexico Finance Authority Act;

F. to acquire, construct, hold, improve, grant mortgages of, accept mortgages of, sell, lease, convey or dispose of real and personal property for its public purposes;

G. to acquire, construct or improve real property, buildings and facilities for lease and to pledge rentals and other income received from such leases to the payment of bonds;

H. to make loans, leases and purchase securities and contract to make loans, leases and purchase securities;

I. to make grants to qualified entities to finance public projects; provided that such grants are not made from the public project revolving fund;

J. to procure insurance to secure payment on any loan, lease or purchase payments owed to the authority by a qualified entity in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable and to pay any premiums for such insurance;

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

L. to accept, administer, hold and use all funds made available to the authority from any sources;

M. to borrow money and to issue bonds and provide for the rights of the holders of the bonds;

N. to establish and maintain reserve and sinking fund accounts to insure against and have funds available for maintenance of other debt service accounts;

O. to invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in the New Mexico Finance Authority Act;

P. to employ attorneys, accountants, underwriters, financial advisers, trustees, paying agents, architects, engineers, contractors and such other advisers, consultants and agents as may be necessary and to fix and pay their compensation;

Q. to apply for and accept gifts or grants of property, funds, services or aid in any form from the United States, any unit of government or any person and to comply, subject to the provisions of the New Mexico Finance Authority Act, with the terms and conditions of the gifts or grants;

R. to maintain an office at any place in the state it may determine;

S. subject to any agreement with bondholders, to:

(1) renegotiate any loan, lease or agreement;

(2) consent to any modification of the terms of any loan, lease or agreement; and

(3) purchase bonds, which may upon purchase be canceled; and

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

## Section 4. 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, subject to specific authorization by law for projects financed with money in the public project revolving fund, 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 5. Section 6-21-9 NMSA 1978 (being Laws 1992, Chapter 61, Section 9) is amended to read:

"6-21-9. PUBLIC PROJECT FINANCING--POWERS OF QUALIFIED ENTITIES.--A qualified entity may:

A. obligate itself to pay to the authority at periodic intervals a sum sufficient to pay all or part of debt service or other obligation, including fees and other charges imposed by the authority with respect to bonds issued by the authority to fund a public project, and to make such payments to the authority for deposit in the fund or account designated by the authority;

B. fulfill any obligation to pay the authority by the issuance of bonds in accordance with the laws authorizing such issuance by the qualified entity; provided that notwithstanding the provisions of any law to the contrary, such bonds may be sold at private sale to the authority at the price and upon the terms and conditions the qualified entity shall determine;

C. levy, collect and pay to the authority and obligate itself to continue to levy, collect and pay to the authority the proceeds from one or more sources of funds or revenues, including but not limited to charges, licenses, permits, taxes, user or other fees, special assessments or other funds or revenue available to the qualified entity, in accordance with the laws authorizing imposition or levy thereof by the qualified entity;

D. undertake and obligate itself to pay its contractual obligation to the authority solely from the proceeds from any of the sources specified in Subsection C of this section or, in accordance with the laws authorizing issuance of bonds by a qualified entity, impose upon itself a general obligation to impose a property tax to pay bonds held by the authority which may be additionally secured by a pledge of any of the sources specified in Subsection C of this section; provided, however, that any general obligation involving property tax revenues is subject to applicable constitutional debt requirements;

E. lease buildings, facilities and other real and personal property from the authority; and

F. enter into agreements, perform acts and delegate functions and duties that the qualified entity determines are necessary or desirable to enable the authority to assist the qualified entity in financing a public project."

## Section 6. Section 6-21-10 NMSA 1978 (being Laws 1992, Chapter 61, Section 10) is amended to read:

"6-21-10. PURCHASES IN NAME OF AUTHORITY--DOCUMENTATION.--

A. All tangible and intangible property, real and personal property and securities purchased, held or owned at any time by the authority shall at all times be purchased and held in the name of the authority, or may be mortgaged, assigned or otherwise encumbered as security for the repayment of bonds issued by the authority.

B. All securities purchased at any time by the authority, upon delivery to the authority, shall be accompanied by all documentation required by the authority and

shall include an approving opinion of recognized bond counsel, certification and guarantee of signatures and certification as to no litigation pending as of the date of delivery of the securities challenging the validity or issuance of such securities."

## Section 7. Section 6-21-11 NMSA 1978 (being Laws 1992, Chapter 61, Section 11, as amended) is amended to read:

"6-21-11. BONDS OF THE AUTHORITY--USE--SECURITY.--

A. The authority may issue and sell bonds in principal amounts it considers necessary to provide sufficient money for any purpose of the New Mexico Finance Authority Act, including:

(1) purchase of securities;

(2) making loans through the purchase of securities;

(3) making grants for public projects from money available to the authority except money in the public project revolving fund;

(4) the acquisition, construction or improvement of public projects, including real and personal property;

(5) the payment, funding or refunding of the principal of or interest or redemption premiums on bonds issued by the authority, whether the bonds or interest to be paid, funded or refunded have or have not become due;

(6) the establishment or increase of reserves or sinking funds to secure or to pay principal, premium, if any, or interest on bonds; and

(7) all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as otherwise provided in the New Mexico Finance Authority Act, all bonds or other obligations issued by the authority shall be obligations of the authority payable solely from the revenues, income, fees, charges or funds of the authority that may, pursuant to the provisions of the New Mexico Finance Authority Act, be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any political subdivision of the state.

C. As security for the payment of the principal, interest or premium, if any, on bonds issued by the authority, the authority is authorized to pledge, transfer and assign:

(1) any obligation that is payable to the authority, including rents and lease payments owing to the authority in connection with the leasing of real or personal property;

(2) the security for the qualified entity's obligations;

(3) money in the public project revolving fund or a subaccount of that fund subject to the provisions of Subsection C of Section 6-21-6 NMSA 1978;

(4) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or

(5) any income, revenues, funds or other money of the authority from any other source authorized for such pledge, transfer or assignment other than from the public project revolving fund under the New Mexico Finance Authority Act."

## Section 8. 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; or

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."

## Section 9. Section 6-21-26 NMSA 1978 (being Laws 1992, Chapter 61, Section 26) is amended to read:

"6-21-26. COURT PROCEEDINGS--PREFERENCE--VENUE.--Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the New Mexico Finance Authority Act or project or transaction undertaken by the authority pursuant to that act shall be preferred over all other civil cases in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding seeking a judicial declaration of the validity of the New Mexico Finance Authority Act or any project or transaction undertaken by the authority pursuant to that act. The venue of any such action or proceeding or any other action or proceeding against the authority shall be in the county in which the principal office of the authority is located."

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

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HOUSE BILL 163

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 295

**CHAPTER 295, LAWS 2001**

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENSURING MEDICAID ELIGIBILITY FOR ALL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES RECIPIENTS; ELIMINATING HOUSEHOLD GROUPS; ELIMINATING THE STATE HOUSING SUBSIDY; MODIFYING THE DISREGARDS PERMITTED; AMENDING THE NEW MEXICO WORKS ACT.

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

## Section 1. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended) 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 seventeen years of age or younger or who is eighteen years of age and is enrolled in high school;

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; and

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."

## Section 2. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and also Laws 1998, Chapter 9, Section 4 as amended by Laws 1999, Chapter 71, Section 1 and by Laws 1999, Chapter 273, Section 2 and also by Laws 1999, Chapter 280, Section 1) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--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 having custody of or residing with a dependent child who is a benefit group member 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 participant 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 provide to an applicant a resource planning session to ascertain his immediate

needs, assess financial and nonfinancial options, 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. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep his school-age children in school, immunize his children or engage in other activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to undergo appropriate substance abuse treatment.

I. The participant and a representative of the department shall sign the participant's individual responsibility plan. The department shall not allow a participant to decline to participate in developing an individual responsibility plan. The department shall not waive the requirement that a participant develop an individual responsibility plan. The department shall emphasize the importance of the individual responsibility plan to the participant.

J. If a participant does not develop an individual responsibility plan, refuses to sign an individual responsibility plan or refuses to attend semiannual reviews of an individual responsibility plan, he shall be required to enter into a conciliation pursuant to Subsection C of Section 27-2B-14 NMSA 1978. If the participant persists in noncompliance with the individual responsibility plan process after the conciliation, he shall be subject to sanctions pursuant to Section 27-2B-14 NMSA 1978.

K. The participant shall also sign a participation agreement that designates the number of hours that he must participate in work activities to meet participation standards.

L. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

M. The department shall meet semiannually with a participant to review and revise his individual responsibility plan.

N. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

## Section 3. Section 27-2B-6 NMSA 1978 (being Laws 1998, Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6) 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 or police reports 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; or

(4) whose application for supplemental security income is pending in the application or appeals process.

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-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended) 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) 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 5. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8) 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;

(6) the value of work-related equipment up to one thousand dollars ($1,000);

(7) in areas without public transportation, the value of one motor vehicle for each participant engaged in a work activity; and

(8) in areas with public transportation, the value of one motor vehicle."

## Section 6. Section 27-2B-11 NMSA 1978 (being Laws 1998, Chapter 8, Section 11 and Laws 1998, Chapter 9, Section 11) is amended to read:

"27-2B-11. 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, taking 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 such person shall be ineligible only for ten years;

(9) for five years following the date of release from any federal or state prison or county jail or following the date of completion of the terms of probation, a person convicted of a drug-related felony on or after August 22, 1996; however, the cash assistance of the other members of his assistance group shall be reduced only by the amount to which he otherwise would be entitled;

(10) a person who is a fleeing felon or a probation and parole violator;

(11) a person concurrently receiving supplemental security income, tribal temporary assistance for needy families or bureau of Indian affairs general assistance; and

(12) 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. At the time of application, a participant shall state in writing whether he or another member of the benefit group has been convicted on or after August 22, 1996 of a drug-related felony.

C. A person convicted of a drug-related felony may be eligible to receive services if the department in consultation with the corrections department determines that services would enhance his rehabilitation and employment success.

D. 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."

## Section 7. Section 27-2B-14 NMSA 1978 (being Laws 1998, Chapter 8, Section 14 and Laws 1998, Chapter 9, Section 14) 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.

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 8. Section 27-2B-15 NMSA 1978 (being Laws 1998, Chapter 8, Section 15 and Laws 1998, Chapter 9, Section 15) is amended to read:

"27-2B-15. MEDICAID ELIGIBILITY.--

A. The following are eligible for medicaid:

(1) a participant who is in transition to self-sufficiency due to employment or child support;

(2) a pregnant woman who meets the income and resource requirements for New Mexico's aid to families with dependent children as they existed on July 16, 1996;

(3) a member of a benefit group who is eighteen years of age or younger if the benefit group's income is below one hundred eighty-five percent of the federal poverty guidelines;

(4) a pregnant woman whose income is below one hundred eighty-five percent of the federal poverty guidelines;

(5) participants receiving federal supplemental security income;

(6) an aged, blind or disabled person in an institution who meets all the supplemental security income standards except for income;

(7) a person who meets all standards for institutional care but is cared for at home and meets eligibility standards for medicaid;

(8) a qualified medicare beneficiary, qualified disabled working person or specified low-income medicare beneficiary; and

(9) a foster child in the custody of the state or of an Indian pueblo, tribe or nation who meets eligibility standards for medicare.

B. Effective October 1, 2001, for the medicaid category designated "JUL medicaid" by the department, the income eligibility criteria shall be the same as the income eligibility criteria set forth in the New Mexico Works Act."

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HOUSE BILL 238, AS AMENDED

# CHAPTER 296

**CHAPTER 296, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; INCLUDING GRADE-LEVEL SCHOOLS IN THE PRIORITY FOR FULL-DAY KINDERGARTEN.

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

## Section 1. Section 22-2-19 NMSA 1978 (being Laws 2000, Chapter 107, Section 3) is amended to read:

"22-2-19. FULL-DAY KINDERGARTEN PROGRAMS.--

A. The state board shall adopt rules for the development and implementation of child-centered and developmentally appropriate full-day kindergarten programs. Establishment of full-day kindergarten programs shall be voluntary on the part of school districts and student participation shall be voluntary on the part of parents.

B. The department of education shall require schools with full-day kindergarten programs to conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate kindergarten.

C. The department of education shall monitor full-day kindergarten programs and ensure that they serve the children most in need based upon indicators in the at-risk index. If the department of education determines that a program is not meeting the benchmarks necessary to ensure the progress of students in the program, the department of education shall notify the school district that failure to meet the benchmarks shall result in the cessation of funding for the following school year. The department of education shall compile the program results submitted by the school districts and make an annual report to the legislative education study committee and the legislature.

D. Full-day kindergarten programs shall be phased in over a five-year period as follows with priority given to those school districts that serve children in schools with the highest proportion of students most in need based upon indicators in the at-risk index or that serve children by means of grade-level schools that serve an entire school district:

(1) effective with the 2000-2001 school year, one-fifth of New Mexico's kindergarten classes may be full day;

(2) effective with the 2001-2002 school year, two-fifths of New Mexico's kindergarten classes may be full day;

(3) effective with the 2002-2003 school year, three-fifths of New Mexico's kindergarten classes may be full day;

(4) effective with the 2003-2004 school year, four-fifths of New Mexico's kindergarten classes may be full day; and

(5) effective with the 2004-2005 school year, all of New Mexico's kindergarten classes may be full day.

E. School districts shall apply to the department of education to receive funding for full-day kindergarten programs. In granting approval for funding of full-day kindergarten programs, the department of education shall ensure that full-day kindergarten programs are first implemented in schools that have the highest proportion of students most in need based upon the at-risk index and in schools with available classroom space."

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HOUSE BILL 246

# CHAPTER 297

**CHAPTER 297, LAWS 2001**

AN ACT

RELATING TO INSURANCE; PROVIDING FOR CRIMINAL HISTORY BACKGROUND INVESTIGATIONS; PROVIDING FOR EXTENDED APPLICABILITY OF THE INSURANCE FRAUD ACT PROVIDING FOR PARTICIPATION IN A NATIONAL INSURANCE PRODUCER REGISTRY; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 59A-11-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 181, as amended by Laws 1999, Chapter 272, Section 3 and also by Laws 1999, Chapter 289, Section 4) 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 and furnished by, the superintendent. The application shall be signed by the applicant, under oath if required by the form, and by or on behalf of the proposed principal where expressly required in 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. Application for license as insurance agent shall be accompanied by appointment of the applicant as agent by at least one insurer, conditioned upon issuance of the license. Application for license as insurance solicitor or as agent or solicitor as to dental and health care plan, motor club, bail bondsman, and other principals shall be accompanied by appointment of the applicant by the proposed principal as solicitor or agent, as the case may be, subject to issuance of the license applied for.

D. In all such appointments the principal or principal's representative if so required by the superintendent shall certify in writing as to his knowledge of the applicant, as to the applicant's residence, experience had or special training received or to be given as to business to be transacted under the license, the applicant's business and personal reputation, whether the applicant is trustworthy and worthy of licensing, and whether satisfied that the applicant intends in good faith to engage in the business to be covered by the license, and appointment of the applicant is not to enable the applicant to evade the intent or spirit of any controlled business, anti-rebate or anti-discrimination law or other law.

E. 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.

F. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978, by bond where expressly required under other provisions of the Insurance Code, 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.

G. The superintendent shall 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.

H. The superintendent shall 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 2. Section 59A-11-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 193) is amended to read:

"59A-11-14. SUSPENSION, REVOCATION, REFUSAL TO CONTINUE LICENSE--GROUNDS.--

A. In addition to reason therefor provided under other provisions of the Insurance Code as to particular licenses, the superintendent may suspend, revoke or refuse to continue any license issued under Chapter 59A, Article 11 NMSA 1978 for any of the following reasons applicable as to licensee:

(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) violation of any provision of the Insurance Code or other law applicable to the business transacted under the license;

(3) willful failure to comply with, or willful violation of, any lawful order or rule of the superintendent;

(4) material misstatement, misrepresentation or fraud in obtaining the license;

(5) failure to pass any examination required by the superintendent, subsequent to issue of license, under Subsection D of Section 59A-11-10 NMSA 1978;

(6) misappropriation, conversion or unlawful withholding, or failure or refusal to pay over upon demand, any money belonging to insurers or others and received in conduct of business under the license;

(7) fraudulent or dishonest practices in conduct of business under the license;

(8) intentional material misrepresentation of the terms of any existing or proposed insurance policy, contract or other service within scope of the license;

(9) conviction by final judgment of a felony involving dishonesty or breach of trust;

(10) aiding, abetting or assisting another person to violate any provision of the Insurance Code; or

(11) if in conduct of affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or has shown himself to be incompetent, untrustworthy, financially irresponsible or a source of injury and loss to the public; or that the interests of the insureds or the public are not being properly served under the license.

B. The superintendent may suspend, revoke or refuse to continue the license of a firm or corporation for any of such causes as relate to any individual designated in or registered as to the license to exercise its powers.

C. The superintendent may require a criminal history background investigation of a current license holder by means of fingerprint checks by the department of public safety and the federal bureau of investigation, at the expense of the license holder, using the license holder's fingerprints or other identifying information. The information shall be used by the superintendent solely in determining whether to suspend, revoke or refuse to continue a license."

## Section 3. Section 59A-30-14 NMSA 1978 (being Laws 1985, Chapter 28, Section 14, as amended by Laws 1999, Chapter 60, Section 21 and also by Laws 1999, Chapter 289, Section 27) is amended to read:

"59A-30-14. OTHER PROVISIONS APPLICABLE.--To the extent not in conflict with the New Mexico Title Insurance Law, the following articles and provisions of the Insurance Code shall also apply to title insurers, title insurance agents and the business of title insurance:

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Chapter 59A, Article 5 NMSA 1978;

E. Chapter 59A, Article 6 NMSA 1978;

F. Chapter 59A, Article 7 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 9 NMSA 1978;

I. Chapter 59A, Article 10 NMSA 1978;

J. Chapter 59A, Article 11 NMSA 1978;

K. Chapter 59A, Article 12 NMSA 1978;

L. the Unauthorized Insurers Law;

M. Chapter 59A, Article 16 NMSA 1978;

N. the Insurance Fraud Act;

O. Chapter 59A, Article 34 NMSA 1978; and

P. The Insurance Holding Company Law."

## Section 4. Section 59A-44-41 NMSA 1978 (being Laws 1989, Chapter 388, Section 41, as amended) is amended to read:

"59A-44-41. APPLICABILITY OF INSURANCE CODE.--To the extent not in conflict with the express provisions of Chapter 59A, Article 44 NMSA 1978 and the reasonable implications thereof, the following provisions of the Insurance Code shall also apply as to fraternal benefit societies, and for such purpose a society 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. Sections 59A-8-1 and 59A-8-2 NMSA 1978;

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

F. the Insurance Fraud Act;

G. Chapter 59A, Article 18 NMSA 1978;

H. the Policy Language Simplification Law;

I. the Medicare Supplement Act;

J. Chapter 59A, Articles 20 and 22 NMSA 1978; and

K. the Insurers Conservation, Rehabilitation and Liquidation Law."

## Section 5. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIPTO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

(1) Chapter 59A, Article 1 NMSA 1978;

(2) Chapter 59A, Article 2 NMSA 1978;

(3) Chapter 59A, Article 4 NMSA 1978;

(4) Subsection C of Section 59A-5-22 NMSA 1978;

(5) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

(6) Chapter 59A, Article 8 NMSA 1978;

(7) Chapter 59A, Article 10 NMSA 1978;

(8) Section 59A-12-22 NMSA 1978;

(9) Chapter 59A, Article 16 NMSA 1978;

(10) Chapter 59A, Article 18 NMSA 1978;

(11) the Policy Language Simplification Law;

(12) Section 59A-22-14 NMSA 1978;

(13) the Insurance Fraud Act;

(14) the Minimum Healthcare Protection Act;

(15) Sections 59A-34-2, 59A-34-7 through

59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36,

59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;

(16) The Insurance Holding Company Law; and

(17) the Patient Protection Act.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

## Section 6. 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. the Insurance Fraud Act;

L. Chapter 59A, Article 18 NMSA 1978;

M. the Policy Language Simplification Law;

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

O. Section 59A-22-14 NMSA 1978;

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

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

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

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

T. 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;

U. The Insurance Holding Company Law, except Section 59A-37-7 NMSA 1978;

V. Section 59A-46-15 NMSA 1978; and

W. the Patient Protection Act."

## Section 7. Section 59A-48-19 NMSA 1978 (being Laws 1984, Chapter 127, Section 898) is amended to read:

"59A-48-19. OTHER PROVISIONS APPLICABLE.--In addition to those referred to in Chapter 59A, Article 48 NMSA 1978, the following articles and provisions of the Insurance Code shall also apply, to the extent reasonably applicable and subject to the provisions of that article, as to prepaid dental plan organizations, their sponsors, directors, officers, personnel and representatives and member contracts. For the purposes of this provision, such organizations may be referred to as "insurers" and such contracts as "policies":

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. Section 59A-5-33 NMSA 1978;

F. Sections 59A-6-1, 59A-6-3, 59A-6-4 and 59A-6-6 NMSA 1978;

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

H. Chapter 59A, Article 8 NMSA 1978;

I. Chapter 59A, Article 10 NMSA 1978;

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

K. the Insurance Fraud Act;

L. Chapter 59A, Article 18 NMSA 1978;

M. the Policy Language Simplification Law; and

N. Section 59A-34-10 NMSA 1978, as to domestic prepaid dental plans."

## Section 8. Section 59A-50-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 927) is amended to read:

"59A-50-21. OTHER PROVISIONS APPLICABLE.--In addition to those referred to in Chapter 59A, Article 50 NMSA 1978 as to particular matters, the following articles and provisions of the Insurance Code shall also, to the extent reasonably applicable and not in conflict with the provisions of Chapter 59A, Article 50 NMSA 1978 and the reasonable implications thereof, apply as to motor clubs, their sponsors, directors, officers, representatives, personnel and operations. For the purposes of such applicability, a motor club may be referred to in such articles and provisions 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. Chapter 59A, Article 10 NMSA 1978;

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

F. Chapter 59A, Article 16 NMSA 1978;

G. the Insurance Fraud Act; and

H. the Insurers Conservation, Rehabilitation and Liquidation Law."

## Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"PRODUCER LICENSING--NATIONAL PRODUCER REGISTRY--FEES COLLECTED.--The division may contract with a nongovernmental entity, including the national association of insurance commissioners or its affiliates or subsidiaries, to perform ministerial functions related to licensure of producers. Fees collected shall be remitted to the division on a schedule approved by the superintendent. The division may adopt by rule any uniform standards and procedures necessary to participate in a national producer registry."

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HOUSE BILL 258, AS AMENDED

# CHAPTER 298

**CHAPTER 298, LAWS 2001**

AN ACT

RELATING TO PIPELINE SAFETY; PROVIDING FOR SAFETY OF INTRASTATE PIPELINES; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 19-7-57 NMSA 1978 (being Laws 1912, Chapter 82, Section 53, as amended) is amended to read:

"19-7-57. COMMISSIONER--POWERS--EASEMENTS--RIGHTS OF WAY.--The commissioner may grant rights of way and easements over, upon or across state lands for public highways, railroads, tramways, telegraph, telephone and power lines, irrigation works, mining, logging and other purposes upon payment by the grantee of the price fixed by the commissioner, which shall not be less than the minimum price for the lands, used, as fixed by law. The commissioner may grant a right of way or easement

over, upon or across state lands for oil, hazardous liquid and gas pipelines if the right-of-way grant or easement requires compliance with the Pipeline Safety Act, Section 70-3-11, et seq., NMSA 1978, and rules adopted pursuant to that act and provides for regulatory and agencies' access to records of compliance."

## Section 2. Section 70-3-13 NMSA 1978 (being Laws 1969, Chapter 71, Section 3) is amended to read:

"70-3-13. POWERS AND DUTIES OF COMMISSION.--The commission:

A. shall promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil, hazardous liquids as defined in 49 CFR 195.2 and gas and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance, including internal and external surveillance for pipe integrity and installation of emergency flow restricting devices, of oil, hazardous liquid and gas pipeline facilities as may be required by federal law. Safety standards shall not be applicable to oil, hazardous liquid or gas pipeline facilities in existence on the date the safety standards are adopted; provided, however, that whenever the commission upon investigation and hearing determines that an oil, hazardous liquid or gas pipeline facility is hazardous to life or property, it may require the person operating the oil, hazardous liquid or gas pipeline facility to take the steps necessary to remove the hazards. Safety regulations shall be practicable and designed to meet the need for pipeline safety. Safety rules promulgated for oil, hazardous liquid and gas pipeline facilities or the transportation of oil, hazardous liquids and gas shall be consistent with federal law and rules. Safety rules adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation. Rules adopted pursuant to the Pipeline Safety Act shall substantially conform to federal pipeline safety rules;

B. may advise, consult, contract and cooperate with any agency of the federal government or any other state in projects of common interest in the regulation of safety of oil, hazardous liquid and gas pipeline facilities and the transportation of oil, hazardous liquids and gas and administer the authority delegated to the commission by any contract with the federal government or any agency thereof;

C. may accept, receive, apply for or administer grants or other funds or gifts from public or private agencies, including the federal government, or from any other person;

D. may make investigations consistent with the Pipeline Safety Act and, in connection therewith, enter private or public property at all reasonable times. The results of investigations shall be reduced to writing if any enforcement action is contemplated and a copy thereof furnished to the operator of the oil, hazardous liquid or gas pipeline facilities investigated before any enforcement action is initiated; and

E. may require persons subject to the Pipeline Safety Act to maintain the records, file the reports and develop the plans for inspection and maintenance of oil, hazardous liquid or gas pipeline facilities as the commission may, by rule, require for proper administration of the Pipeline Safety Act; provided, however, that the use of the term "rights of way" does not authorize the commission to prescribe the location or routing of any oil, hazardous liquid or gas pipeline facility."

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HOUSE BILL 279, AS AMENDED

# CHAPTER 299

**CHAPTER 299, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR EDUCATION CERTIFICATES FROM CERTAIN TWO-YEAR PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS FOR COMPLETION OF AN EDUCATION PROGRAM LEADING TO ALTERNATIVE OR EDUCATIONAL ASSISTANT CERTIFICATION AND PROFESSIONAL DEVELOPMENT COURSEWORK.

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

## Section 1. Section 21-13-12 NMSA 1978 (being Laws 1963, Chapter 17, Section 11, as amended) is amended to read:

"21-13-12. DEGREES AND CERTIFICATES AWARDED.--

A. The community college board of a community college may award the appropriate degree upon the completion of a curriculum organized for that purpose and approved by the commission on higher education. An associate degree or certificate may be awarded only to students as recommended by the faculty, the chief academic officer and the president of the community college as having completed satisfactorily the prescribed course of study.

B. The community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education."

## Section 2. A new section of Chapter 21, Article 14 NMSA 1978 is enacted to read:

"ELEMENTARY AND SECONDARY EDUCATION CURRICULUM AND COURSEWORK.--The branch community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education."

## Section 3. A new section of Chapter 21, Article 14A NMSA 1978 is enacted to read:

"ELEMENTARY AND SECONDARY EDUCATION CURRICULUM AND COURSEWORK.--The off-campus board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education."

## Section 4. A new section of Chapter 21, Article 16 NMSA 1978 is enacted to read:

"ELEMENTARY AND SECONDARY EDUCATION CURRICULUM AND COURSEWORK.--The board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education."

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

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

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

B. determine policy for the operation of all public schools and vocational education programs in the state, 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 a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator according to law for incompetency, immorality or 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. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate rules governing all such adult educational programs;

N. require any school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and

accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

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

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

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

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

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

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

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

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

W. provide for management and other necessary personnel to operate any public school or school district that has failed to meet requirements of law, state board standards or state board rules; provided that the operation of the public school or

school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or rules have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

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

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

Z. 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;

AA. develop a systemic framework for professional development that provides training to ensure quality teachers and principals and that improves and enhances student achievement. The state board shall work with public school educators, 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 of education in approving local school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts, including teaching strategies, curriculum materials, distance learning networks and web sites to ensure that the state board's rules pertaining to content standards and benchmarks are used by New Mexico teachers;

BB. approve education curricula and programs offered in all two-year public post-secondary educational institutions, including northern New Mexico state school, except those in Chapter 21, Article 12 NMSA 1978, that lead to certificates for alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 or certification for educational assistant; and

CC. 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 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."

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SENATE BILL 28, AS AMENDED

# CHAPTER 300

**CHAPTER 300, LAWS 2001**

AN ACT

RELATING TO LOTTERY PROCEEDS; PROVIDING THAT ALL NET REVENUE BE DEPOSITED IN THE LOTTERY TUITION FUND; MAKING AN APPROPRIATION.

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

## Section 1. Section 6-24-3 NMSA 1978 (being Laws 1995, Chapter 155, Section 3) is amended to read:

"6-24-3. PURPOSES.--The purposes of the New Mexico Lottery Act are to:

A. establish and provide for the conduct of a fair and honest lottery for the entertainment of the public; and

B. provide the maximum amount of revenues, without imposing additional taxes or using other state revenues, for the purpose of providing tuition assistance to resident undergraduates at New Mexico post-secondary educational institutions."

## Section 2. Section 6-24-23 NMSA 1978 (being Laws 1995, Chapter 155, Section 23, as amended) is amended to read:

"6-24-23. LOTTERY TUITION FUND CREATED--PURPOSE.--

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the lottery tuition fund is appropriated to the commission on higher education for distribution to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law."

## Section 3. Section 6-24-24 NMSA 1978 (being Laws 1995, Chapter 155, Section 24, as amended) is amended to read:

"6-24-24. DISPOSITION OF REVENUE.--

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenues from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.

B. The authority shall transmit all net revenues to the state treasurer, who shall deposit them in the lottery tuition fund. Estimated net revenues shall be transmitted monthly to the state treasurer for deposit in the fund; provided that the total amount of annual net revenues for the fiscal year shall be transmitted no later than August 1 each year.

C. In determining net revenues, operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act.

D. An amount up to two percent of the gross annual revenues shall be set aside as a reserve fund to cover bonuses and incentive plans for lottery retailers, special promotions for retailers, purchasing special promotional giveaways, sponsoring special promotional events, compulsive gambling rehabilitation and such other purposes as the board deems necessary to maintain the integrity and meet the revenue goals of the lottery. The board shall report annually to the governor and each regular session of the legislature on the use of the money in the reserve fund. Any balance in excess of fifty thousand dollars ($50,000) at the end of any fiscal year shall be transferred to the lottery tuition fund."

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# CHAPTER 301

**CHAPTER 301, LAWS 2001**

AN ACT

RELATING TO CEMETERIES; LIMITING LIABILITY WHEN A MUNICIPALITY ACQUIRES A CEMETERY THAT HAS NO RECORDS OR OTHER MATERIALS; DECLARING AN EMERGENCY.

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

## Section 1. Section 3-40-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-41-8) is amended to read:

"3-40-7. TRANSFER OF OTHER CEMETERIES TO CEMETERY BOARD.--

A. Subject to the approval of the governing body of the municipality, a cemetery board may accept any cemetery within or adjacent to the municipality used as a burial place by the inhabitants of the municipality from any person, corporation or organization owning, controlling or maintaining the cemetery.

B. If the cemetery board accepts a cemetery whose records have been lost or destroyed or are otherwise nonexistent, the cemetery board or the municipality shall not be liable for any liabilities of prior owners.

C. Any cemetery accepted by the cemetery board as provided in this section shall become part of the municipality and shall be governed as any other municipal cemetery is governed."

## Section 2. Section 3-40-9 NMSA 1978 (being Laws 1973, Chapter 395, Section 8) is amended to read:

"3-40-9. ACQUISITION OR CONDEMNATION OF AN EXISTING CEMETERY.--

A. Except as provided in Subsection B of Section 3-40-7 NMSA 1978, a municipality shall not acquire or condemn a cemetery or part of a cemetery unless a detailed audit listing all the assets and liabilities of the cemetery is prepared by a certified public accountant and submitted to the governing body. The municipality shall not be held liable for any liabilities not shown in the audit.

B. Any person, estate, trust, receiver or other group acting as a unit shall transfer to the municipality all records, property, trusts and other relevant material pertaining to the cemetery or part of the cemetery acquired or condemned by the municipality. The acquisition or condemnation and transfer of a cemetery or part of a

cemetery shall be in compliance with the Endowed Care Cemetery Act of 1961 and other provisions relating to cemeteries."

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

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SENATE BILL 83

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 302

**CHAPTER 302, LAWS 2001**

AN ACT

RELATING TO INSURANCE; CHANGING FEES AND METHOD OF DETERMINING FEES FOR CERTAIN INSURANCE COMPANIES.

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 by Laws 1999, Chapter 272, Section 2 and also by Laws 1999, Chapter 289, Section 2) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect and receipt for, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows:

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 -

(a) filing appointment, per kind of insurance, each insurer . . . . . 20.00

(b) continuation of appointment, each insurer, each year continued . . . . . 20.00

(3) variable annuity agent's license -

(a) filing application for license and issuance of license, if issued . . . . . 30.00

(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 -

(1) filing application for original license and issuance of license, if issued . . . . . 30.00

(2) continuation of appointment, per kind of insurance, each year . . . . . 20.00

G. broker license -

(1) filing application for license and issuance of original license, if issued . . . . . 30.00

(2) annual continuation of license . . . . . 30.00

H. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine. . . . . 25.00

(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 regulations, 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 -

(1) filing application for original license and issuance of license, if issued . . . . . 100.00

(2) annual continuation of license . . . . . 100.00

L. adjuster license -

(1) filing application for original license and issuance of license, if issued . . . . . 30.00

(2) annual continuation of license . . . . . 30.00

M. rating organization or rating advisory organization license -

(1) filing application for license and issuance of license, if issued . . . . . 100.00

(2) annual continuation of license . . . . . 100.00

N. nonprofit health care plans -

(1) filing application for preliminary permit and issuance of permit, if issued . . . . . 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 -

(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) 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

(b) annual continuation of certificate of authority . . . . . 100.00

(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 -

(1) filing application for license and issuance of license, if issued . . . . . 25.00

(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.

Notwithstanding the fees required in this subsection, an insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, or both, whenever any form or rate-filing fees in excess of those imposed by the laws of this state are charged to insurers in New Mexico doing business in another state or whenever any 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 shall be imposed upon every insurer from every other 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 fails to comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent shall refuse to grant or shall withdraw approval of the tendered form or rate filing.

Except as to certain appointment fees as specified in Section 59A-11-8 NMSA 1978, all fees are deemed earned when paid and are not refundable."

## Section 2. A new Section 59A-6-1.2 NMSA 1978 is enacted to read:

"59A-6-1.2. PROPERTY AND CASUALTY ANNUAL RATES AND FORMS FILING FEES.--The annual filing fee for rates and forms due in advance on July 1 for each company in the following groupings shall be equal to the product produced by multiplying three thousandths by the company's previous calendar year's direct written premium as shown on its annual financial statement, but not to exceed an amount of one thousand five hundred dollars ($1,500) and not to be less than an amount of one hundred dollars ($100):

A. private passenger automobile - liability and physical damage;

B. homeowner's and farm owners';

C. workers' compensation;

D. other casualty, including surety and fidelity; and

E. other property."

## Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 362, AS AMENDED

# CHAPTER 303

**CHAPTER 303, LAWS 2001**

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; REQUIRING UTILITY RIGHT-OF-WAY APPLICATIONS TO BE PROCESSED WITHIN SIX MONTHS; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1) is amended to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. No person, including any municipality, shall begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits.

D. No approval shall be required for construction in progress on the effective date of this section or for additions to or modifications of an existing plant or transmission line.

E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values.

G. No application shall be approved pursuant to this section which violates an existing state, county or municipal land use statutory or administrative regulation

unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act be applicable with respect to such a person, including a municipality.

I. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue its order within six months is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional ten months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values."

## Section 2. Section 62-9-3.2 NMSA 1978 (being Laws 1980, Chapter 20, Section 18, as amended) is amended to read:

"62-9-3.2. APPLICATION FOR DETERMINATION OF RIGHT-OF-WAY WIDTH.--

A. Unless otherwise agreed to by the parties, no person shall begin the construction of any transmission line requiring a width for right of way of greater than one hundred feet without first obtaining from the commission a determination of the necessary right-of-way width to construct and maintain the transmission line. For the purposes of this subsection, "construction" does not include acquisition of rights of way, preparation of surveys or ordering of equipment.

B. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities requiring a width for right of way of greater than one hundred feet.

C. Application for the right-of-way width determination shall contain all information required by the commission to make its determination, be made in writing, setting forth the facts involved, and be filed with the commission.

D. The applicant shall cause notice of the time and place of hearing on the application for the right-of-way determination to be given to any owner of property proposed to be taken and, if applicable, to the person in actual occupancy of the property. Notice shall be given by mailing a copy by ordinary first class mail at least twenty days before the time set for hearing. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

E. The commission shall, after public hearing, act upon the application.

F. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue its order within six months is deemed to be approval of the application."

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SENATE BILL 452, AS AMENDED

# CHAPTER 304

**CHAPTER 304, LAWS 2001**

AN ACT

RELATING TO MEDICAID; PROVIDING FOR RECOGNITION OF CLINICAL NURSE SPECIALISTS AS MID-LEVEL PROVIDERS IN THE MEDICAID PROGRAM; ENACTING A SECTION OF THE NMSA 1978.

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:

"CLINICAL NURSE SPECIALISTS.--The department shall recognize clinical nurse specialists as mid-level providers in the medicaid program provided that the clinical nurse specialists comply with the requirements for licensure pursuant to the Nursing Practice Act and that the services provided by the clinical nurse specialists are covered and reimbursable in accordance with Title 19 or Title 21 of the

federal act."

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SENATE BILL 475

# CHAPTER 305

**CHAPTER 305, LAWS 2001**

AN ACT

RELATING TO PUBLIC IMPROVEMENTS; ESTABLISHING A METHOD FOR MUNICIPALITIES AND COUNTIES TO CREATE TAX-LEVYING PUBLIC IMPROVEMENT DISTRICTS TO CONSTRUCT AND FINANCE NECESSARY PUBLIC IMPROVEMENTS IN THE STATE; 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 27 of this act may be cited as the "Public Improvement District Act".

## Section 2. DEFINITIONS.--As used in the Public Improvement District Act:

A. "clerk" means the clerk of the municipality or county, or any person appointed by the district board to be the district clerk pursuant to Section 6 of the Public Improvement District Act;

B. "county" means a county that forms a public improvement district pursuant to the Public Improvement District Act in an unincorporated area or in an incorporated area with the municipality's consent;

C. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support;

D. "development agreement" means an agreement between a property owner or developer, the county or municipality, or district concerning the improvement of specific property within the district, which agreement may be used to establish obligations of the owner or developer, the county or municipality or the district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within a district;

E. "district" means a public improvement district formed pursuant to the Public Improvement District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

F. "district board" means the board of directors of the district, which shall be comprised of members of the governing body, ex officio, or, at the option of the governing body, five directors appointed by the governing body of the municipality or county in which the district is located, until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted, as provided in Section 9 of the Public Improvement District Act;

G. "election" means an election held in compliance with the provisions of Sections 6 and 7 of the Public Improvement District Act;

H. "enhanced services" means public services provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas. "Enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Public Improvement District Act;

I. "general plan" means the general plan described in Section 3 of the Public Improvement District Act, as the plan may be amended from time to time;

J. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the public improvement district is located;

K. "municipality" means an incorporated city, village or town;

L. "owner" means:

(1) the person who is listed as the owner of real property in the district on the current property tax assessment roll in effect at the time that the action, proceeding, hearing or election has begun. For purposes of voting in elections held pursuant to the Public Improvement District Act, when the owner of record title is a married person, only one spouse in whose name title is held may vote at such election. Where record title is held in more than one name, each owner may vote the number of fractions of acres represented by his legal interest or proportionate share of and in the lands within the district;

(2) the administrator or executor of an estate holding record title to land within the district;

(3) the guardian of a minor or incompetent person holding record title to land within the district, appointed and qualified under the laws of the state;

(4) an officer of a corporation holding record title to land within the district, which officer has been authorized by resolution of the corporation's board of directors to act with respect to such land;

(5) the general partner of a partnership holding record title to land within the district; and

(6) the trustee of a trust holding record title to land within the district;

M. "public infrastructure improvements" means all improvements listed in this subsection and includes both on-site improvements and off-site improvements that directly or indirectly benefit the district. Such improvements include necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Public infrastructure improvements" includes:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities;

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) school sites and facilities with the consent of the governing board of the public school district for which the site or facility is to be acquired, constructed or renovated;

(15) library and other public educational or cultural facilities;

(16) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection; and

(17) inspection, construction management and program management costs;

N. "public infrastructure purpose" means:

(1) planning, design, engineering, construction, acquisition or installation of public infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for public infrastructure, including facilities owned, leased or installed by an owner;

(3) acquiring interests in real property or water rights for public infrastructure, including interests of an owner;

(4) establishing, maintaining and replenishing reserves in order to secure payment of debt service on bonds;

(5) funding and paying from bond proceeds interest accruing on bonds for a period not to exceed three years from their date of issuance;

(6) funding and paying from bond proceeds fiscal, financial and legal consultant fees, trustee fees, discount fees, district formation and election costs and all costs of issuance of bonds issued pursuant to the Public Improvement District Act, including, but not limited to, fees and costs for bond counsel, financial advisors, consultants and underwriters, costs of obtaining credit ratings, bond insurance

premiums, fees for letters of credit and other credit enhancement costs and printing costs;

(7) providing for the timely payment of debt service on bonds or other indebtedness of the district;

(8) refinancing any outstanding bonds with new bonds, including through the formation of a new public improvement district; and

(9) incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection;

O. "resident qualified elector" means a person who resides within the boundaries of a district or proposed district and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978;

P. "special levy" means a levy imposed against real property within a district that may be apportioned according to direct or indirect benefits conferred upon affected real property, as well as acreage, front footage, the cost of providing public infrastructure for affected real property, or other reasonable method, as determined by the governing body or district board, as applicable; and

Q. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 6 of the Public Improvement District Act.

## Section 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. 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 4 of the Public Improvement District Act;

(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 16 of the Public Improvement District Act. 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 4 of the Public Improvement District Act.

D. Before adopting a resolution pursuant to this section, a general plan for the district shall be filed with the clerk.

## Section 4. NOTICE AND PUBLIC HEARING.--

A. The notice of public hearing to be held concerning the formation of a public improvement district pursuant to the Public Improvement District Act shall be

mailed by registered or certified United States mail, postage prepaid, to all owners of real property in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or county in which the proposed district lies. The last publication shall be at least three days before the date of the hearing. The notice shall comply with requirements of Subsections B and C of this section.

B. The clerk shall execute a notice, which shall read substantially as follows:

"To whom it may concern:

The governing body of the (municipality)(county) of _____, on (Date), adopted the attached resolution declaring its intention to form a tax-levying public improvement district. A hearing on formation will be held on (Date), at (Time) at (Location). All persons owning or claiming an interest in property in the proposed district who object to the inclusion of their land in the district, to the formation of the district or to the contents of the general plan must file a written objection with the undersigned at the following address before the time set for the hearing.

(Date)_____

_____

Clerk

_____

Address

(Name of municipality or county)".

C. A summary of the resolution declaring the governing body's intention to form the district shall be attached to the notice, and the clerk shall cause a copy to be mailed to the owners of real property in the district and to all other persons claiming an interest in such property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution of intent to form the district. The clerk shall also publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed district lies. The clerk shall execute an affidavit of mailing stating the date of mailing and the names and addresses of the persons to whom the notices and copies of the resolutions were mailed. The clerk shall obtain an affidavit from the newspaper in which the publication was made. The clerk shall cause both affidavits to be placed in the official records of the municipality or county. The affidavits

are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

D. If the clerk is informed that the person listed on the assessment roll is no longer the owner and the name and address of the successor owner become known, the clerk shall cause a copy of the notice and resolution to be mailed to the successor owner as soon as practicable after learning of the change of ownership.

## Section 5. HEARING ON OBJECTIONS.--

A. Any person claiming an interest in real property that the resolution discloses is situated in the district may file a written objection with the clerk before 5:00 p.m. on the business day preceding the date and time set for the hearing. The objection may raise one or more of the following issues:

(1) that the objector's property would not be substantially benefited, directly or indirectly, from the public infrastructure improvements or enhanced services proposed to be financed, as set forth in the general plan, and that the property should be excluded from the district;

(2) that the district should not be formed, stating the specific reasons; and

(3) that the general plan should be modified, stating the reasons for modification.

B. At the hearing, including any adjournments or continuances, the governing body shall hear and pass on the written objections and the testimony and evidence presented in support of or opposition to the objections. The hearing shall be either transcribed by a court reporter or recorded by a tape recorder. The court reporter's transcript or a tape recording certified to be true and correct by the clerk shall be filed or otherwise preserved in the official records of the governing body.

C. In furtherance of the hearing, the clerk, on written request being presented, shall issue subpoenas or subpoenas duces tecum to compel the attendance and testimony of any person or the submission of any documents at the hearing. Compliance with the subpoena shall be enforced as if the subpoena were issued by a clerk of the state district court.

D. Testimony at the hearing need not be under oath, unless requested by any owner or required by the governing board. Requests by owners that the testimony be under oath must be made in writing and be filed with, or served on, the clerk before the hearing begins or the request is deemed waived.

E. The minutes or a copy of a written transcript or a tape recording of the proceedings of a hearing conducted pursuant to this section shall be open to public

inspection three working days after the conclusion of a hearing. Any person may request to examine or be furnished copies, printouts, photographs, transcripts or recordings of a hearing during regular office hours of the governing body. The custodian of the records shall furnish the copies, printouts, photographs, transcripts or recordings and may charge a reasonable fee which does not exceed the actual cost of reproducing the item requested.

## Section 6. ORDER FORMING DISTRICT--ELECTION.--

A. After the hearing, the governing body shall determine whether the district should be formed based upon the interests, convenience or necessity of the owners, residents of the district and citizens of the municipality or county in which the proposed district would be located. If the governing body determines that the district should be formed, it shall adopt a resolution ordering that the district be formed, deleting any property determined not to be directly or indirectly benefited by the district or modifying the general plan and then ordering that an election be held on the question whether to form the district. A resolution ordering a formation of the district shall state that the district will be governed by a district board consisting of members of the governing body, ex officio or, upon determination of the governing body, five directors appointed by the governing body, and shall contain the names of the five initial directors and the terms of office of each. If the governing body appoints a district board, it shall appoint a treasurer and a clerk from the appointed members.

B. A formation election shall include the owners unless a petition is presented to the governing body pursuant to Subsection I of Section 7 of the Public Improvement District Act. Each owner shall have the number of votes or portions of votes equal to the number of acres or portions of acres rounded upward to the nearest one-fifth of an acre owned by that owner in the submitted district. The question shall also be submitted to a vote of the resident qualified electors. The conduct of a formation election shall meet the requirements of Section 7 of the Public Improvement District Act.

## Section 7. NOTICE AND CONDUCT OF ELECTION--WAIVER.--

A. Any election pursuant to the Public Improvement District Act shall be a nonpartisan election called by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the municipality or county, or if there is no newspaper so circulated in the municipality, in a newspaper of general circulation in the county in which the municipality is located once a week for two consecutive weeks before the election. The notice shall state:

(1) the place of holding the election and provisions for voting by mail, if any;

(2) the hours during the day, not less than six, in which the polls will be open;

(3) if the election is a formation election, the boundaries of the proposed district;

(4) if the election is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be paid on the bonds and the maximum term of the bonds, not exceeding thirty years;

(5) if the election is a property tax levy election pursuant to Section 19 of the Public Improvement District Act, the maximum tax rate per one thousand dollars ($1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing maximum tax rate, if any;

(6) that a general plan is on file with the clerk;

(7) the purposes for which the property taxes or the special levies will be imposed, and the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, special levies, district revenues or bond proceeds; and

(8) that the imposition of property taxes or special levies will result in a lien for the payment thereof on property within the district.

B. The district board or, in the case of a formation election, the governing body, shall determine the date of the election and the polling places for the election and may consolidate county precincts. The district board or governing body may establish provisions for voting by mail.

C. Voter lists shall be used to determine the resident qualified electors. If the district includes land lying partly in and partly out of any county election precinct, the voter lists may contain the names of all registered voters in the precinct, and the precinct boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a resident qualified elector.

D. For all elections held pursuant to the Public Improvement District Act, a prospective elector who is not a resident qualified elector shall execute an affidavit stating that the elector is the owner of land in the proposed district and stating the area of land in acres owned by the prospective elector. Precinct board members may administer oaths or take all affirmations for these purposes.

E. Except as otherwise provided by this section, the election shall comply with the general election laws of this state. The ballot material provided to each voter shall include:

(1) for a formation election, an impartial description of the district improvements contemplated and a brief description of arguments for and against the formation of the district, if any;

(2) for an election concerning the imposition of property taxes, an impartial description of the taxes to be imposed, the method of apportionment, collection and enforcement and other details sufficient to enable each elector to determine the amount of tax it will be obligated to pay; a brief description of arguments for and against the imposition of taxes that are the subject of the election, if any; and a statement that the imposition of property taxes is for the provision of certain but not necessarily all public infrastructure improvements and services that may be needed or desirable within the district, and that other taxes, levies or assessments by other governmental entities may be presented for approval by owners and resident qualified electors; and

(3) for a formation election, the ballot, which shall pose the question to voted upon as "district, yes" and "district, no"; for a bond election, "bonds, yes" and "bonds, no"; for a property tax election, if no tax is in place, "property tax, yes" and "property tax, no"; and for an election to change an existing maximum or eliminate an existing tax, "tax change, yes" and "tax change, no", specifying the type of tax to which the proposed change pertains.

F. The governing body or, if after formation, the district board, may provide for the returns of the election to be made in person or by mail.

G. Within thirty days after an election, the governing body, or if after formation, the district board, shall meet and canvass the returns, determining the number of votes properly cast by owners and resident qualified electors. At least a three-fourths majority of the votes cast at the election shall be required for formation, issuing the bonds, imposing the tax or special levy or changing the tax or special levy. The canvass may be continued for an additional period not to exceed thirty days at the election of the governing body or district board for the purpose of completing the canvass. Failure of a majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election.

H. If a person listed on the assessment roll is no longer the owner of land in the district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of the Public Improvement District Act.

I. Notwithstanding any other provision of the Public Improvement District Act, if a petition for formation is signed by owners of all of the land in the district described in the petition and is approved by the municipality, county, the municipality or county may waive any or all requirements of posting, publication, mailing, notice, hearing and owner election. On receipt of such a petition, and after approval by an election of resident qualified electors, if any, the municipality or county shall declare the district formed without being required to comply with the provisions of the Public Improvement District Act for posting, publication, mailing, notice, hearing or owner election.

J. If no person has registered to vote within the district within fifty days immediately preceding any scheduled election date, any election required to be held pursuant to the Public Improvement District Act shall be held by vote of the owners. Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner.

K. In any election held pursuant to the Public Improvement District Act, an owner who is also a resident qualified elector shall have the number of votes or portion of votes to which he is entitled as an owner and shall not be entitled to an additional vote as a result of residing within the district.

## Section 8. FORMATION--DEBT LIMITATION.--

A. If the formation of the district is approved by at least a three-fourths majority of the votes cast at the election, the governing body shall cause a copy of the resolution ordering formation of the district to be delivered to the county assessor and the county in which the district is located and to the taxation and revenue department and the local government division of the department of finance and administration. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the county clerk.

B. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county. The amount of indebtedness evidenced by general obligation bonds issued pursuant to Section 19 of the Public Improvement District Act, special levy bonds issued pursuant to Section 20 of that act and revenue bonds issued pursuant to Section 21 of that act shall not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds, and shall not affect the general obligation bonding capacity of the municipality or county in which the district is located.

C. Bonds issued by a district shall not be a general obligation of the state, the county or the municipality in which the district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the district is located, irrespective of whether the district board is governed by the governing body of the county or municipality in which the district is located.

D. Following formation of the district, the district board shall administer in a reasonable manner the implementation of the general plan for the public infrastructure improvements of the district.

## Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, three of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year terms. If a vacancy occurs on the district board because of death, resignation or inability of the director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until his successor is appointed or elected.

B. A director may be a director of more than one district.

C. At the end of the appointed directors' initial term, the governing body shall resume governance of the district as its board or, at its option, shall hold an election of new directors by majority vote of the residents of the district.

## Section 10. POWERS OF A PUBLIC IMPROVEMENT DISTRICT.--

A. In addition to the powers otherwise granted to a district pursuant to the Public Improvement District Act, the district board, in implementing the general plan, may:

(1) enter into contracts and expend money for any public infrastructure purpose with respect to the district;

(2) enter into development agreements with municipalities, counties or other local government entities in connection with property located within the boundaries of the district;

(3) enter into intergovernmental agreements as provided in the Joint Powers Agreements Act for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or the county in the district and any other purpose authorized by the Public Improvement District Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse the municipality or county in which the district is located for providing enhanced services in the district;

(6) operate, maintain and repair public infrastructure;

(7) establish, impose and collect special levies for the purposes of funding public infrastructure improvements or enhanced services;

(8) employ staff, counsel and consultants;

(9) reimburse the municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

(10) accept gifts or grants and incur and repay loans for any public infrastructure purpose;

(11) enter into agreements with owners concerning the advance of money by owners for public infrastructure purposes or the granting of real property by the owner for public infrastructure purposes;

(12) levy property taxes, impose special levies or fees and charges for any public infrastructure purpose on any real property located in the district and, in conjunction with the levy of such taxes, fees and charges, set and collect administrative fees;

(13) pay the financial, legal and administrative costs of the district;

(14) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds;

(15) with the consent of the governing body of the municipality or county that formed the district, enter into agreements with persons outside of the district to provide enhanced services to persons and property outside of the district; and

(16) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way, whether in or out of the geographical limits of the district, the municipality or the county.

B. Public infrastructure improvements other than personalty may be located only in or on lands, easements or rights of way owned by the state, a county, a municipality or the district, whether in or out of the district, the municipality or the county.

C. An agreement pursuant to Paragraph (11) of Subsection A of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued or from advances, fees and charges collected from other owners or users or those having a right to use any public infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

D. Notwithstanding the provisions of the Procurement Code, or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board, whether appointed or composed of members of the governing body, ex officio, may enter into contracts to carry out any of the district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.

## Section 11. PERPETUAL SUCCESSION.--The district has perpetual succession until terminated pursuant to Section 24 of the Public Improvement District Act.

## Section 12. RECORDS--BOARD OF DIRECTORS--OPEN MEETINGS.--

A. The district shall keep the following records, which shall be open to public inspection:

(1) minutes of all meetings of the district board;

(2) all resolutions;

(3) accounts showing all money received and disbursed;

(4) the annual budget; and

(5) all other records required to be maintained by law.

B. The district board shall appoint a clerk and treasurer for the district.

## Section 13. CHANGE IN DISTRICT BOUNDARIES OR GENERAL PLAN.--

A. After the formation election, an area may be deleted from the district only following a hearing on notice to the owners of land in the district given in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board and voter approval by the owners and resident qualified electors

as provided in Sections 6 and 7 of the Public Improvement District Act. Lands within the district that are subject to the lien of property taxes, special levies or other charges imposed pursuant to the Public Improvement District Act shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, special levies or charges.

B. At any time after adoption of a resolution creating a district, an area may be added to the district upon the approval of the owners of land in the proposed addition area and the resident qualified electors residing therein, as well as the owners of land in the district and the resident qualified electors, in the same manner as required for the formation of a district.

C. The district board, following a hearing on notice to the owners of real property located in the district given in the manner prescribed for the formation hearing, may amend the general plan in any manner that it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on completion of the work to be performed under the general plan. No election shall be required solely for the purposes of this subsection.

**Section 14. PARTICIPATION BY MUNICIPALITY OR COUNTY.--The governing body of the municipality or county by resolution may summarily provide public services to the district or participate in the costs of any public infrastructure purpose.**

**Section 15. OTHER DISTRICTS OR IMPROVEMENTS.--The formation of a district pursuant to the Public Improvement District Act shall not prevent the subsequent establishment of similar districts or the improvement or assessment of land in the district by the municipality or county or the exercise by the municipality or county of any of its powers on the same basis as on all other land in its corporate boundaries.**

**Section 16. PROJECT APPROVAL.--Before constructing or acquiring any public infrastructure, the district board shall cause a study of the feasibility and benefits of the public infrastructure improvement project to be prepared, which shall include a description of the public infrastructure improvement to be constructed or acquired and enhanced services to be provided and estimated costs thereof, if any, and other information reasonably necessary to understand the project, a map showing, in general, the location of the project within the district, an estimate of the cost to construct, acquire, operate and maintain the project, an**

**estimated schedule for completion of the project, a map or description of the area to be benefited by the project and a plan for financing the project. For public infrastructure improvement projects undertaken by a district after formation, the district board shall hold a public hearing on the study and provide notice of the hearing by publication not less than two weeks in advance in the official newspaper of the municipality or county or, if there are none in the municipality or county, a newspaper of general circulation in the county. If the district board is composed of members other than the governing body, the notice shall be mailed to the governing body of the municipality or county in which the district is located. After the hearing, the district board may reject, amend or approve the report. If the report is amended substantially, a new hearing shall be held before approval. If the report is approved, the district board shall adopt a resolution approving the public infrastructure improvement of the project, identifying the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.**

**Section 17. FINANCES.--The projects to be constructed or acquired as shown in the general plan may be financed from the following sources of revenue:**

A. proceeds received from the sale of bonds of the district;

B. money of the municipality or county contributed to the district;

C. annual property taxes or special levies;

D. state or federal grants or contributions;

E. private contributions;

F. user, landowner and other fees and charges;

G. proceeds of loans or advances; and

H. any other money available to the district by law.

## Section 18. RECORDING DOCUMENTS.--The district shall file and record with the county clerk the resolution ordering formation of the district, the general plan of the district and the canvass of any general obligation bond election.

## Section 19. GENERAL OBLIGATION BONDS--TAX LEVY--EXCEPTION.--

A. At any time after the hearing on formation of the district, the district board, or, if before formation, the governing body, may from time to time order and call a general obligation bond election to submit to the owners and resident qualified electors the question of authorizing the district to issue general obligation bonds of the district to provide money for any public infrastructure purposes consistent with the general plan. The election may be held in conjunction with the formation election.

B. If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the district, sufficient, together with any money from the sources described in Section 17 of the Public Improvement District Act to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, services or enhanced services. A district's levy of property taxes shall constitute a lien on all taxable property within the district, including, without limitation, all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the district resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the election requirements of this section, a district may issue general obligation bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by the Public Improvement

District Act. No election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

## Section 20. SPECIAL LEVY--BONDS--IMPOSITION.--

A. At any time after the hearing on formation of the district, the district board may from time to time order that a hearing be held to determine whether a special levy should be imposed and special levy bonds issued to provide money for any public infrastructure purpose consistent with the general plan. The question of imposing a special levy may be considered at the hearing on district formation upon notice that both issues will be heard at that time, which notice shall include the information required in Subsection B of this section.

B. Notice of hearing shall be provided at least two weeks in advance of the hearing itself in a newspaper of general circulation in the municipality or county in which the district is located. The notice shall include the following:

(1) a description of the method by which the amount of the proposed special levy will be determined for each class of property to which the levy is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special levy;

(2) a description of the project to be financed with special levy bonds or revenues; and

(3) a statement that any person affected by the proposed special levy may object in writing or in person at the hearing.

C. Special levy bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually impose and cause a special levy to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the district that may be subject to the levy, including, without limitation, all leased property or improvements to leased land, sufficient, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies. Money derived from the imposition of the special levy when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Special levy revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, service or enhanced services.

E. The district board shall specify conditions under which the obligation to pay special levies may be prepaid and permanently satisfied.

F. Special levies against privately owned residential property shall be subject to the following provisions:

(1) the maximum amount of special levy that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the amount of special levy actually imposed may be increased by up to ten percent as a result of the delinquency or default by the owner of any other parcel within the district;

(2) the special levy shall be imposed for a specified time period, after which no further special levy shall be imposed and collected, except that special levies imposed solely to finance the cost of ongoing district services, maintenance or operations or enhanced services may be levied while such services, maintenance or operations or enhanced services are continuing; and

(3) nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special levies for a parcel whose size or use is changed. A change in the amount of a special levy imposed upon a parcel due to a change in its size or use shall not require voter approval if the method for changing the amount of special levy was approved in the election approving the special levy in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special levy.

G. A district's imposition of a special levy shall constitute a lien on the property within the district subject to the special levy, including property acquired by the state or its political subdivisions after imposition of the special levy, which shall be effective during the period in which the special levy is imposed and shall have priority co-equal to the lien of property taxes. A special levy shall be subject to foreclosure by the district at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and penalties otherwise applicable for delinquent property taxes, the district's actual costs of foreclosure and any other costs of the district resulting from the delinquency. All rights of redemption applicable to property sold in connection with property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special levy lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special levy shall be deposited in the special bond fund for payment of any obligations secured thereby.

H. No holder of special levy bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special levy bonds issued pursuant to that act are not a debt of the district, municipality or county, nor is the

payment of special levy bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

I. Subject to the requirements of this section, a district may issue special levy bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

J. Pursuant to this section, the district may issue and sell refunding bonds to refund any special levy bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

## Section 21. REVENUE BONDS--FEES AND CHARGES.--

A. At any time after the hearing on formation of the district, the district board may hold a hearing on the question of authorizing the district board to issue one or more series of revenue bonds of the district to provide money for any public infrastructure purposes consistent with the general plan.

B. If revenue bonds are approved by resolution, the district board may issue and sell revenue bonds of the district.

C. The revenue bonds may be sold in a public offering or in a negotiated sale; however, if the bonds are to be sold in a public offering, no revenue bonds may be issued by the district unless the revenue bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The district board may pledge to the payment of its revenue bonds any revenues of the district or revenues to be collected by the municipality or county in trust for the district and returned to the district.

E. The district shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any money from the sources described in Section 17 of the Public Improvement District Act, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees and charges shall be identified and noticed concurrently with the annual budget process of the district pursuant to Section 23 of the Public Improvement District Act.

F. If, in the resolution of the district board, the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues shall be maintained.

G. No holder of revenue bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant

to that act are not a debt of the district, municipality or county, nor is the payment of revenue bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

H. Subject to the requirements of this section, a district may issue revenue bonds at such times and in such amounts as the district deems appropriate to carry out a project in phases.

I. Pursuant to this section, the district may issue and sell refunding bonds to refund revenue bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

**Section 22. TERMS OF BONDS.--For any bonds issued in connection with Section 19, 20 or 21 of the Public Improvement District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by the Public Improvement District Act. Pending that use, the proceeds may be invested as determined by the district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper. The bonds may be payable from any combination of taxes, levies or revenues of the types described in Sections 19, 20 and 21 of the Public Improvement District Act.**

**Section 23. DISTRICT TAXES--ANNUAL FINANCIAL ESTIMATE--ANNUAL FINANCIAL ESTIMATE AND BUDGET--CERTIFICATION TO LOCAL GOVERNMENT DIVISION.--**

A. All property taxes for the operation and maintenance expenses of the district shall not exceed an amount equal to three dollars ($3.00) per one thousand dollars ($1,000) of net taxable value for all real and personal property in the district, unless a higher rate is approved by a vote of the resident qualified electors and owners, voting at an election not less than three years after the date of the formation of the district.

B. Once approved at an election or, in the case of a special levy, by resolution of the district board, the maximum rate of a property tax shall remain in effect until increased or decreased at a subsequent election, and the maximum rate of a special levy shall remain in effect until increased or decreased by resolution of the district board at a subsequent hearing.

C. If a maximum property tax rate is in effect, the district board, on petition of twenty-five percent of the resident qualified electors, or by the owners of twenty-five percent of the land area of the district, shall call an election to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements where the tax was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

D. If a maximum special levy is in effect, the district board, on petition of twenty-five percent of the resident qualified electors, or by the owners of twenty-five percent of the land area of the district, shall hold a hearing to determine whether to reduce the maximum special levy but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements, where the special levy was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

E. Upon presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax or special levy, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition. Signatures on a petition to reduce or eliminate a tax or special levy shall be valid for a period of sixty days.

F. When levying property tax or imposing a special levy, the district board shall make annual statements and estimates of the operation and maintenance expenses of the district, the costs of public improvements to be financed by the taxes or special levy and the amount of all other expenditures for public infrastructure improvements and enhanced services proposed to be paid from the taxes or special levy and of the amount to be raised to pay general obligation bonds of the district or

special levy bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the district or by the imposition and collection of special levies. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds or special levy bonds and shall adopt a budget. The district board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special levies of the district and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration. All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to district property taxes and to special levies, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies.

## Section 24. DISSOLUTION OF DISTRICT.--

A. The district shall be dissolved by the district board by a resolution of the district board upon a determination that each of the following conditions exist:

(1) all improvements owned by the district have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the district is located;

(2) either the district has no outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the district; and

(3) all obligations of the district pursuant to any development agreement with the municipality or county have been satisfied.

B. All property in the district that is subject to the lien of district taxes or special levies shall remain subject to the lien for the payment of general obligation bonds and special levy bonds, notwithstanding dissolution of the district. The district shall not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

## Section 25. LIMITATION OF LIABILITY.--Neither any member of the board of directors of a district nor any person acting on behalf of the district, while acting within the scope of his authority, shall be

**subject to any personal liability for any action taken or omitted within that scope of authority.**

**Section 26. CUMULATIVE AUTHORITY.--The Public Improvement District Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the Public Improvement District Act need not comply with the requirements of any other law applicable to the issuance of bonds.**

**Section 27. LIBERAL INTERPRETATION.--The Public Improvement District Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.**

**Section 28. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:**

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts,

mediators, court reporters, process servers and witness fees, but not including attorney contracts; and

S. contracts for services relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in county improvement districts pursuant to Section 4-55A-12.1 NMSA 1978 and in public improvement districts created pursuant to the Public Improvement District Act."

**Section 29. SEVERABILITY.--If any part or application of the Public Improvement District Act is held invalid, the remainder or its application to other situations shall not be affected.**

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SENATE BILL 755, AS AMENDED

# CHAPTER 306

**CHAPTER 306, LAWS 2001**

AN ACT

RELATING TO COURTS; PROVIDING FOR AN ADDITIONAL MAGISTRATE IN THE DONA ANA MAGISTRATE DISTRICT; PROVIDING FOR APPOINTMENT AND ELECTION; PROVIDING ADDITIONAL RESOURCES FOR THE PUBLIC DEFENDER DEPARTMENT; MAKING APPROPRIATIONS.

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

**Section 1. Section 35-1-10 NMSA 1978 (being Laws 1968, Chapter 62, Section 12, as amended) is amended to read:**

"35-1-10. MAGISTRATE COURT--DONA ANA DISTRICT.--There shall be five magistrates in Dona Ana magistrate district. Divisions 1, 2, 3, 4 and 5 shall operate as a single court in Las Cruces and shall rotate riding circuit to Anthony and Hatch on a regularly scheduled basis."

**Section 2. TEMPORARY PROVISION--DONA ANA MAGISTRATE--APPOINTMENT AND ELECTION.--The office of magistrate in Dona Ana magistrate division 5 shall be filled by appointment by the governor. The appointed magistrate shall begin serving on July 1, 2001 and shall serve until succeeded by a magistrate elected at the**

**general election in 2002. The elected magistrate's term of office shall begin on January 1, 2003.**

**Section 3. APPROPRIATION.--Ninety thousand dollars ($90,000) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal year 2002 for salary and benefits for an additional magistrate in the Dona Ana magistrate district. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.**

**Section 4. APPROPRIATION.--Eighty-seven thousand dollars ($87,000) is appropriated from the general fund to the public defender department for expenditure in fiscal year 2002 to provide salaries and benefits and furniture, supplies, equipment and in-state travel for an additional public defender attorney and support staff and to provide for costs of contract and conflict counsel due to increased workload in the Dona Ana magistrate district. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.**

**Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 130 AND 194, AS AMENDED

# CHAPTER 307

**CHAPTER 307, LAWS 2001**

AN ACT

RELATING TO PUBLIC ASSISTANCE; PROVIDING FOR BURIAL OR CREMATION EXPENSES FOR INDIGENT PERSONS.

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

## Section 1. Section 24-13-3 NMSA 1978 (being Laws 1939, Chapter 224, Section 3, as amended) is amended to read:

"24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the unclaimed decedent had known assets or property of sufficient value to defray the expenses of cremation or burial, invoices for the expenses shall be forwarded to such person or official authorized by law to be appointed administrator of the estate of the decedent, and such person or official shall pay the expenses out of the decedent's estate. To the extent that the deceased person is indigent, the burial or cremation expenses shall be borne by the county of residence of the deceased person. If the county of residence of the deceased person is not known, the burial or cremation expenses shall be borne by the county in which the body was found. The burial or cremation expenses may be paid by the county out of the general fund or the county indigent hospital claims fund in an amount up to six hundred dollars ($600) for the burial or cremation of any adult or minor."

## Section 2. Section 27-5-7.1 NMSA 1978 (being Laws 1993, Chapter 321, Section 16) is amended to read:

"27-5-7.1. COUNTY INDIGENT HOSPITAL CLAIMS FUND--AUTHORIZED USES OF THE FUND.--

A. The fund shall be used:

(1) to meet the county's contribution for support of sole community provider payments as calculated by the department for that county;

(2) to pay for expenses of burial or cremation of an indigent person; and

(3) to pay all claims that have been approved by the board that are not matched with federal funds under the state medicaid program.

B. The fund may be used to meet the county's obligation under Section 27-10-4 NMSA 1978."

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SENATE BILL 161

# CHAPTER 308

**CHAPTER 308, LAWS 2001**

AN ACT

RELATING TO THE HEMOPHILIA FUND; PROVIDING FOR PAYMENT OF INSURANCE OR MEDICARE PREMIUMS; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. Section 24-2A-3 NMSA 1978 (being Laws 1980, Chapter 26, Section 3) is amended to read:

"24-2A-3. HEMOPHILIA FUND CREATED--USE--CALCULATION OF COSTS.--

A. There is created in the state treasury the "hemophilia fund".

B. The fund shall be administered by the university and shall be used solely to provide hemophilia program services to eligible patients. The university may expend and distribute funds to:

(1) the university of New Mexico school of medicine for the costs of clinical evaluation, to include at least one visit per eligible patient per year;

(2) providers for the costs of blood products for each eligible patient, all as approved by the university of New Mexico school of medicine, to the extent not covered by insurance, medicaid or medicare;

(3) the university of New Mexico school of medicine for hemophilia program support, including nursing coordination, social services to patients and families and outreach for public education; and

(4) the university of New Mexico school of medicine for purchase of insurance or medicare coverage for patients who are eligible for coverage but have insufficient financial resources to pay the premiums."

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SENATE BILL 193

# CHAPTER 309

**CHAPTER 309, LAWS 2001**

AN ACT

RELATING TO INSURANCE; AUTHORIZING A LENDING INSTITUTION THAT IS A SUBSIDIARY OR AN AFFILIATE OF A STATE OR FEDERALLY CHARTERED BANK TO BE LICENSED TO SELL TITLE INSURANCE.

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

## Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1, as amended by Laws 1999, Chapter 272, Section 7 and also by Laws 1999, Chapter 289, Section 8) is amended to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private employer subject to the jurisdiction of the commission that is engaged in the business of providing telecommunications, electric, gas, water or steam heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution:

(1) that is a subsidiary or an affiliate of a state or federally chartered bank may be licensed to sell:

(a) any insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(b) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this subparagraph shall affect the rights and obligations of nationally chartered lending institutions; and

(2) other than one described in Paragraph (1) of this subsection, may be licensed to sell:

(a) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(b) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this subparagraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements; and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from that lending institution or from a particular insurer, agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent, solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance

advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the federal Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance with this subsection. "Nonpublic customer information" does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be subject to the inspection and audit by the insurance division. If the division determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the division, at a location in New Mexico the lending institution's records and knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agent's, solicitor's or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

O. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

R. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person, who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section."

**Section 2. Section 59A-12-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 217, as amended by Laws 1999, Chapter 272, Section 10 and also by Laws 1999, Chapter 289, Section 11) is amended to read:**

"59A-12-16. EXAMINATION FOR LICENSE.--

A. Each applicant for license as agent, solicitor or broker shall, prior to issuance of license, personally take and pass an examination authorized by the superintendent to establish the applicant's competence, knowledge and understanding of attendant responsibility and duties as to the insurance business to be transacted under the license applied for; except, that no such examination shall be required:

(1) for renewal or continuance of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978;

(2) of an applicant for limited license as provided in Section 59A-12-18 NMSA 1978;

(3) of applicants with respect to life and health, or life or health, insurances who hold the chartered life underwriter (C.L.U.) designation by the American college of life underwriters;

(4) of applicants with respect to property, casualty, surety, marine and transportation, and vehicle insurances, or any of them, who hold the designation of chartered property and casualty underwriter (C.P.C.U.) designation by the American institute of property and casualty underwriters;

(5) of applicants for temporary license as provided for in Section 59A-12-19 NMSA 1978;

(6) of an applicant for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(7) of an applicant for solicitor license who held license as agent in this state as to the same kind or kinds of insurance within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent; or

(8) of an applicant for broker or agent license, if the superintendent is satisfied that the applicant took and passed a similar examination in a state in which already licensed, subject to Section 59A-5-33

NMSA 1978.

B. The superintendent shall conduct examinations as provided for in Chapter 59A, Article 11 NMSA 1978."

## Section 3. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2001.

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SENATE BILL 309, AS AMENDED

# CHAPTER 310

**CHAPTER 310, LAWS 2001**

AN ACT

RELATING TO INSURANCE; MAKING CHANGES IN PROVISIONS OF THE HEALTH INSURANCE ALLIANCE ACT.

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

## Section 1. Section 59A-56-9 NMSA 1978 (being Laws 1994, Chapter 75, Section 9, as amended) is amended to read:

"59A-56-9. REINSURANCE.--

A. A member offering an approved health plan shall be reinsured for certain losses by the alliance. Within six months following the end of each calendar year in which the member offering the approved health plan paid more in incurred claims, plus the member's reinsurance premium pursuant to Subsection B of this section, than seventy-five percent of earned premiums received by the member on all approved health plans issued by the member, the member shall receive from the alliance the excess amount for the calendar year by which the incurred claims and reinsurance premium exceeded seventy-five percent of the earned premiums received by the alliance or its administrator.

B. The alliance shall withhold from all premiums that it receives a reinsurance premium as established by the board:

(1) for insured small employer groups, the reinsurance premium shall not exceed five percent of premiums paid by insured groups in the first year of coverage and shall not exceed ten percent of premiums for renewal years; and

(2) for eligible individuals, the reinsurance premium shall not exceed ten percent of premiums paid by individuals in the first year of coverage or continuation coverage and shall not exceed fifteen percent of premiums paid by individuals for renewal years. In determining the reinsurance premium for a particular calendar year, the board shall set the reinsurance premium at a rate that will recover the total reinsurance loss for the preceding year over a reasonable number of years in accordance with sound actuarial principles."

## Section 2. Section 59A-56-11 NMSA 1978 (being Laws 1994, Chapter 75, Section 11, as amended) is amended to read:

"59A-56-11. ASSESSMENTS.--

A. After the completion of each calendar year, the alliance shall assess all its members for the net reinsurance loss in the previous calendar year and for the net administrative loss that occurred in the previous calendar year, taking into account investment income for the period and other appropriate gains and losses using the following definitions:

(1) net reinsurance losses shall be the amount determined for the previous calendar year in accordance with Subsection A of Section 59A-56-9 NMSA 1978 for all members offering an approved health plan reduced by reinsurance premiums charged by the alliance in the previous calendar year. Net reinsurance losses shall be calculated separately for group and individual coverage. If the reinsurance premiums for either category of coverage exceed the amount calculated in accordance with Subsection A of Section 59A-56-9 NMSA 1978, the premiums shall be applied first to offset the net reinsurance losses incurred in the other category of coverage and second to offset administrative losses; and

(2) net administrative losses shall be the administrative expenses incurred by the alliance in the previous calendar year and projected for the current calendar year less the sum of administrative allowances received by the alliance, but in the event of an administrative gain, net administrative losses for the purpose of assessments shall be considered zero and the gain shall be carried forward to the administrative fund for the next calendar year as an additional allowance.

B. The assessment for each member shall be determined by multiplying the total losses of the alliance's operation, as defined in Subsection A of this section, by a fraction, the numerator of which is an amount equal to that member's total premiums, or the equivalent, exclusive of premiums received by the member for an approved health plan for health insurance written in the state during the preceding calendar year and the denominator of which equals the total premiums of all health insurance written in the state during the preceding calendar year exclusive of premiums for approved health plans; provided that total premiums shall not include payments by the secretary of human services pursuant to a contract issued under Section 1876 of the federal

Social Security Act, total premiums exempted by the federal Employee Retirement Income Security Act of 1974 or federal government programs.

C. If assessments exceed actual reinsurance losses and administrative losses of the alliance, the excess shall be held at interest by the board to offset future losses.

D. To enable the board to properly determine the net reinsurance amount and its responsibility for reinsurance to each member:

(1) by April 15 of each year, each member offering an approved health plan shall submit a listing of all incurred claims for the previous year; and

(2) by April 15 of each year, each member shall submit a report that includes the total earned premiums received during the prior year less the total earned premiums exempted by federal government programs.

E. The alliance shall notify each member of the amount of its assessment due by May 15 of each year. The assessment shall be paid by the member by June 15 of each year.

F. The proportion of participation of each member in the alliance shall be determined annually by the board, based on annual statements filed by each member and other reports deemed necessary by the board. Any deficit incurred by the alliance shall be recouped by assessments apportioned among the members pursuant to the formula provided in Subsection B of this section; provided that fifty percent of the assessment paid for any member shall be allowed as a credit on the following annual premium tax return for that member.

G. The board may defer, in whole or in part, the payment of an assessment of a member if, in the opinion of the board, after approval of the superintendent, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event payment of an assessment against a member is deferred, the amount deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the deferment shall pay the assessment in full plus interest at the prevailing rate as determined by regulation of the superintendent within four years from the date payment is deferred. After four years but within five years of the date of the deferment, the board may sue to recover the amount of the deferred payment plus interest and costs. Board actions to recover deferred payments brought after five years of the date of deferment are barred. Any amount received shall be deducted from future assessments or reimbursed pro rata to the members paying the deferred assessment."

## Section 3. Section 59A-56-13 NMSA 1978 (being Laws 1994, Chapter 75, Section 13, as amended) is amended to read:

"59A-56-13. ALLIANCE ADMINISTRATOR.--

A. The board may select an alliance administrator through a competitive request for proposal process. The board shall evaluate proposals based on criteria established by the board that shall include:

(1) proven ability to administer health insurance programs;

(2) an estimate of total charges for administering the alliance for the proposed contract period; and

(3) ability to administer the alliance in a cost-efficient manner.

B. The alliance administrator contract shall be for a period up to four years, subject to annual renegotiation of the fees and services, and shall provide for cancellation of the contract for cause, termination of the alliance by the legislature or the combining of the alliance with a governmental body.

C. At least one year prior to the expiration of an alliance administrator contract, the board may invite all interested parties, including the current administrator, to submit proposals to serve as alliance administrator for a succeeding contract period. Selection of the administrator for a succeeding contract period shall be made at least six months prior to the expiration of the current contract.

D. The alliance administrator shall:

(1) take applications for an approved health plan from small employers or a referring agent;

(2) establish a premium billing procedure for collection of premiums from insureds. Billings shall be made on a periodic basis, not less than monthly, as determined by the board;

(3) pay the member that offers an approved health plan the net premium due after deduction of reinsurance and administrative allowances;

(4) provide the member with any changes in the status of insureds;

(5) perform all necessary functions to assure that each member is providing timely payment of benefits to individuals covered under an approved health plan, including:

(a) making information available to insureds relating to the proper manner of submitting a claim for benefits to the member offering the approved health plan and distributing forms on which submissions shall be made; and

(b) making information available on approved health plan benefits and rates to insureds;

(6) submit regular reports to the board regarding the operation of the alliance, the frequency, content and form of which shall be determined by the board;

(7) following the close of each fiscal year, determine premiums of members, the expense of administration and the paid and incurred health care service charges for the year and report this information to the board and the superintendent on a form prescribed by the superintendent; and

(8) establish the premiums for reinsurance and the administrative charges, subject to approval of the board.

E. The board may require members issuing policies through the alliance to perform, subject to the oversight of the board, any or all of the administrative functions of the alliance related to enrollment, billing or other activity that members regularly perform in the normal course of business. Members shall be required to submit regular reports to the board of such activities, as specified by the board. Members performing such functions shall not be entitled to receive any portion of the administrative assessment or any other payment from the alliance for performing such services."

## Section 4. REPEAL.--Laws 1994, Chapter 75, Section 35, as amended by Laws 1997, Chapter 27, Section 1, is repealed.

## Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 334, AS AMENDED

# CHAPTER 311

**CHAPTER 311, LAWS 2001**

AN ACT

RELATING TO MEDICAL PRACTICE; PROVIDING FOR LICENSURE AND REGISTRATION OF ANESTHESIOLOGIST ASSISTANTS; ENACTING THE ANESTHESIOLOGIST ASSISTANTS ACT; DECLARING AN EMERGENCY.

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

## Section 1. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Anesthesiologist Assistants Act"."

## Section 2. A new section of Chapter 61, Article 6, NMSA 1978 is enacted to read:

"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 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 3. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"LICENSURE--REGISTRATION--ANESTHESIOLOGIST ASSISTANT--SCOPE OF AUTHORITY.--

A. The board may license qualified persons as anesthesiologist assistants.

B. No person shall 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 present the history 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 forms with the application fee to the board."

## Section 4. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"ANNUAL REGISTRATION OF EMPLOYMENT--EMPLOYMENT CHANGE.--

A. Upon becoming licensed, the board shall register the anesthesiologist assistant on the anesthesiologist assistants' roster, including his name, address and other board-required information and the anesthesiologist assistant's supervising anesthesiologist's name and address.

B. Annually, each anesthesiologist assistant shall register with the board, providing the anesthesiologist assistant's current name and address, the name and address of the supervising anesthesiologist for whom he is working and any additional information required by the board. Failure to register annually will result in the anesthesiologist assistant being required to pay a late fee or having his license placed on inactive status.

C. Every two years, each licensed anesthesiologist assistant in the state shall submit proof of completion of board-required continuing education to the board.

D. The registration of an anesthesiologist assistant shall be void upon changing his supervising anesthesiologist, until the anesthesiologist assistant registers a new supervising anesthesiologist with the board, accompanied by a change in supervision fee, in an amount to be determined by the board."

## Section 5. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"FEES.--The following fees shall be submitted as appropriate to the board:

A. an application fee, not to exceed one hundred fifty dollars ($150);

B. a license renewal fee, not to exceed one hundred dollars ($100) paid once every two years upon application for renewal of an anesthesiologist assistant's license;

C. a late fee not to exceed twenty-five dollars ($25.00), if the anesthesiologist assistant fails to renew his license by July 1 of his renewal year; and

D. a change in supervision fee, not to exceed fifty dollars ($50.00), but in no case shall the change in supervision fee exceed one-half of the license renewal fee."

## Section 6. A new section on Chapter 61, Article 6 NMSA 1978 is enacted to read:

"INACTIVE LICENSE.--

A. An anesthesiologist assistant who notifies the board in writing on forms prescribed by the board may elect to place his license on inactive status. An anesthesiologist assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as an anesthesiologist assistant.

B. An anesthesiologist assistant who engages in practice while his license is lapsed or on inactive status is practicing without a license and is subject to disciplinary action pursuant to the Anesthesiologist Assistants Act.

C. An anesthesiologist assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Anesthesiologist Assistants Act."

## Section 7. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"EXEMPTION FROM LICENSURE.--

A. An anesthesiologist assistant student enrolled in an anesthesiologist assistant educational program accredited by the commission on accreditation of the allied health education programs or its successor is exempt from licensure while functioning as an anesthesiologist assistant student. If the student is providing anesthesia, the student shall be supervised on a one-to-one basis by an anesthesiologist who is continuously present in the operating room.

B. An anesthesiologist assistant employed by the federal government is not required to be licensed as an anesthesiologist assistant pursuant to the Anesthesiologist Assistants Act while performing duties incident to that employment."

## Section 8. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"LICENSE--DENIAL, SUSPENSION OR REVOCATION.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend a license to practice as an anesthesiologist assistant or may place on probation, enter a stipulation, censure, reprimand or fine any person licensed as an anesthesiologist assistant for:

(1) procuring, aiding or abetting a criminal abortion;

(2) soliciting patients of any practitioner of the healing arts;

(3) soliciting or receiving any form of compensation from a person other than his registered employer for performing as an anesthesiologist assistant;

(4) willfully or negligently divulging privileged information, a professional secret or discussing a patient's condition or anesthesia care plan without the express permission of the supervising anesthesiologist;

(5) conviction of an offense punishable by incarceration in a state penitentiary or federal prison; to establish such a conviction a copy of the record of conviction certified to by the clerk of the court entering the conviction shall be conclusive evidence;

(6) using intoxicants or drugs in a habitual or excessive manner;

(7) fraud or misrepresentation in applying for or procuring a license or renewal of a license to practice as an anesthesiologist assistant in New Mexico or another jurisdiction or in registering annually with the board;

(8) impersonating another person registered as an anesthesiologist assistant or allowing any person to use his license;

(9) aiding or abetting the practice of medicine by a person not licensed by the board;

(10) gross negligence in the performance of duties, tasks or functions assigned to him by a supervising anesthesiologist;

(11) manifesting incapacity or incompetence to perform as an anesthesiologist assistant;

(12) conduct resulting in the suspension or revocation by another state or jurisdiction of a registration, license, certification or other indicia of authorization to practice as an anesthesiologist assistant similar to acts constituting grounds for suspension or revocation in New Mexico; a certified copy of the record of the suspension or revocation from the jurisdiction imposing the penalty is conclusive evidence of the suspension or revocation;

(13) conduct unbecoming a person registered as an anesthesiologist assistant or detrimental to the best interests of the public;

(14) conduct outside the scope of duties assigned by the supervising anesthesiologist;

(15) repeated similar negligent acts;

(16) injudicious administering of drugs;

(17) revocation, termination, suspension or restriction of hospital privileges;

(18) posing as a physician, physician assistant or a certified registered nurse anesthetist;

(19) performing or attempting to perform tasks not permitted by the approved job description;

(20) failure to complete the required number of hours of approved continuing education;

(21) failure to comply with universal blood and body fluid precautions as established by hospital policy;

(22) failure to comply with any code of ethics established by the national commission for the certification of anesthesiologist assistants;

(23) failure to notify the board of revocation or failure to maintain certification from the national commission for the certification of anesthesiologist assistants;

(24) failure to notify the board of all information required by the board regarding malpractice claims brought concerning the care delivered by an anesthesiologist assistant; or

(25) discontinuation of employment at a university in New Mexico with a medical school.

B. Both the anesthesiologist assistant and the supervising anesthesiologist are responsible for notifying the board of the occurrence of any event listed in Subsection A of this section."

## Section 9. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"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 anaesthesiologist 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 anesthesiolgist;

(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 two. No anesthesiologist shall supervise, except in emergency cases, more than three 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."

## Section 10. A new section of Chapter 61, Article 6 NMSA 1978 is enacted to read:

"SUPERVISING ANESTHESIOLOGIST--RESPONSIBILITIES.--

A. Supervising anesthesiologists shall be licensed to practice pursuant to the Medical Practice Act and shall be approved by the board.

B. The anesthesiologist actually supervising the licensed anesthesiologist assistant at the time is individually responsible and liable for the acts and omissions that the anesthesiologist assistant performs in the scope of his duties. Nothing in the Anesthesiologist Assistants Act relieves a supervising anesthesiologist of the responsibility and liability of his own acts or omissions.

C. An anesthesiologist may have that number of anesthesiologist assistants under his supervision as permitted by the board."

## Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 370,

AS AMENDED, WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 312

**CHAPTER 312, LAWS 2001**

AN ACT

RELATING TO IMPROVEMENT DISTRICTS; PROVIDING ADDITIONAL MEANS FOR FINANCING NEEDED PUBLIC IMPROVEMENTS IN MUNICIPALITIES AND COUNTIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 3-33-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-1, as amended) is amended to read:

"3-33-1. IMPROVEMENT DISTRICT--AUTHORIZATION.--

A. Whenever a governing body determines that the creation of an improvement district is necessary for the public safety, health or welfare, the governing body may create an improvement district for any one or any combination of projects authorized in Chapter 3, Article 33 NMSA 1978 by the:

(1) provisional order method; or

(2) petition method.

B. The governing body may adopt any ordinance or resolution necessary or proper to accomplish the purposes of Chapter 3, Article 33 NMSA 1978.

C. The improvement district shall include, for the purpose of assessment or imposition of an improvement district property tax, all the property that the governing body determines is benefitted by the improvement, including property lying without the municipality creating the improvement district if such property abuts or is served by improvements authorized by Chapter 3, Article 33 NMSA 1978 and including property utilized for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof, in the absence of a consent of congress."

## Section 2. Section 3-33-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-2, as amended by Laws 1991, Chapter 17, Section 1 and also by Laws 1991, Chapter 199, Section 2) is amended to read:

"3-33-2. IMPROVEMENT DISTRICT--DEFINITIONS.--As used in Chapter 3, Article 33 NMSA 1978:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the reallocation of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in Sections 3-33-3, 3-33-4,

3-33-4.1 and 3-33-6 NMSA 1978, except that it shall not include "to acquire" for the purposes of projects authorized in Section 3-33-6 NMSA 1978;

C. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the municipality or employed in connection with an improvement by the municipality or by a property owner subject to the improvement district property tax imposed by Section 3-33-14.1 NMSA 1978;

D. "improvement" means any one or any combination of projects in one or more locations authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978;

E. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon which an improvement district property tax will be imposed to pay for the cost of the improvement; and

F. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more developmental inadequacies under current local government standards and requirements, such as, but not limited to:

(1) inadequate street right of way or street access control;

(2) a lack of drainage easements of right of way;

(3) a lack of adequate park, recreation or open space area;

(4) a lack of an overall grading and drainage plan; or

(5) a lack of adequate subdivision grading both on and off the public right of way."

## Section 3. Section 3-33-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-3, as amended) is amended to read:

"3-33-3. IMPROVEMENT DISTRICT--PURPOSE.--An improvement district may be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including without limitation land served by any project and any right of way, easement or privilege appurtenant or related thereto:

A. a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project, including without limitation median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more streets, roads, bridges, walkways, pathways, curbs, gutters or sidewalks or any combination of the foregoing;

B. a storm sewer project, sanitary sewer project or water project, including without limitation investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals or property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

C. a flood control or storm drainage project, including without limitation the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways, outlets, syphons and drop structures, channel construction, diversions, rectification and protection with appurtenant structures such as concrete lining, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or provide drainage and lessen their danger and damages;

D. a utility project providing gas, water, electricity or telephone service;

E. railroad spurs, railroad tracks, railyards, rail switches and any necessary real property; or

F. on-site or off-site improvements required as a condition to obtaining required approvals of a development to be served by a project, including the payment of any fees or charges levied as a means of paying for all or part of such on-site or off-site improvements."

## Section 4. Section 3-33-14 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-7, as amended) is amended to read:

"3-33-14. IMPROVEMENT DISTRICT--PETITION METHOD--REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property to be benefited, exclusive of any land owned by the United States or the state of New Mexico, petition in writing the governing body to create an improvement district and construct the improvement described in the petition, the governing body may:

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 3-33-18 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The governing body may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land;

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land; or

(4) impose an improvement district property tax pursuant to Section 3-33-14.1 NMSA 1978.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land or paid for by the imposition of an improvement district property tax,

the governing body shall hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing."

## Section 5. A new Section 3-33-14.1 NMSA 1978 is enacted to read:

"3-33-14.1. IMPOSITION OF IMPROVEMENT DISTRICT PROPERTY TAX--LIMITATIONS.--

A. If in connection with the creation of the improvement district the governing body determines that it is in the best interest of the municipality to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the governing body shall enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the governing body deems necessary or appropriate. The governing body shall call an election within the improvement district for the purpose of authorizing the governing body to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose improvement district property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall also include procedures for the conduct of the election based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the governing body shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by municipalities and counties are made.

D. Bonds issued by the governing body for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act. The bonds may be sold at public or private sale and may be in denominations that the governing body determines.

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment and redemption, shall be as determined by the governing body. The bonds shall be executed in the name of and on behalf of the

improvement district by the mayor and clerk of the municipality. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act.

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the governing body shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

G. The bonds authorized in this section are general obligation bonds of the district, and the full faith and credit of the district are pledged to the payment of the bonds. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in Chapter 3, Article 33 NMSA 1978.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the governing body:

(1) proof of ownership;

(2) proof of loss or destruction;

(3) a surety bond in twice the face amount of the bond and coupons; and

(4) payment of the cost of preparing and issuing the new bond and coupons.

I. The governing body may in any proceeding authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The governing body may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the improvement district. Whenever the governing body deems it expedient to issue refunding bonds, it shall adopt an ordinance setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the governing body and the amount of refunding bonds that the governing body deems necessary and advisable to issue. The ordinance shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the

refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the mayor and clerk of the municipality. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the governing body, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses.

K. The principal amount of improvement district general obligation bonds that may be issued by the governing body for any improvement district shall not exceed twenty-five percent of the final estimated value of properties in the district after completion of the projects to be financed with the improvement district general obligation bonds and after development of the properties in the improvement district in accordance with their planned use, as determined by the governing body with the assistance of the engineer and other qualified professionals.

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the governing body may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as a property owner subject to the improvement district property tax or the governing body determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978."

## Section 6. Section 3-33-15 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-8, as amended) is amended to read:

"3-33-15. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY HEARING.--

A. The notice of the preliminary hearing required in Section 3-33-14 NMSA 1978 shall contain:

(1) the time and place when the governing body will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement district;

(4) the route of the improvement by streets or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;

(7) the estimated amount of the assessment against or improvement district property tax to be imposed upon each tract or parcel of land; and

(8) the amount of the cost to be assumed by the municipality, if any.

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the municipality once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing."

## Section 7. Section 3-33-16 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-9, as amended) is amended to read:

"3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--PROTEST--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT COURT.--

A. At the preliminary hearing of the governing body on the question of creating an improvement district as authorized in Section 3-33-14 NMSA 1978, an owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

(1) the proposed assessment or improvement district property tax;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The governing body shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The governing body may allow a fair price, based on its current value, as a set-off against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the governing body may:

(1) correct a mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment made against or an improvement district property tax imposed upon any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing.

D. An owner of a tract or parcel of land assessed or upon which it is proposed to impose an improvement district property tax, whether he appeared at the hearing or not, may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

## Section 8. Section 3-33-24 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-17, as amended) is amended to read:

"3-33-24. IMPROVEMENT DISTRICT--AUTHORITY TO ISSUE BONDS OR ASSIGNABLE CERTIFICATES.--

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 3-33-11 NMSA 1978, the governing body may proceed pursuant to the provisions of Section 3-33-14.1 NMSA 1978 or may issue in the name of the municipality bonds in such form as the governing body may determine or assignable certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 3-33-22 NMSA 1978 or placing the preliminary lien as provided in Section 3-33-11 NMSA 1978 to pay for the improvement have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 3-33-11 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 3-33-22 NMSA 1978; or

(3) be payable from the money collected from the assessments authorized in Section 3-33-22 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 3-33-23 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 3-33-23 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 3-33-3 NMSA 1978 may be supplemented from gasoline tax money in the street improvement fund authorized by Section 3-34-1 NMSA 1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the municipality's proportion of the cost of the improvement;

(2) in payment of the proportionate cost if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the municipality if the municipality constructed the improvement with municipally owned or leased equipment and municipal employees.

E. Any municipality creating a street improvement fund as authorized by Section 3-34-1 NMSA 1978 may contract for the issuance and sale of bonds or assignable certificates.

F. Bonds or assignable certificates may be sold at public or private sale at a discount."

## Section 9. Section 4-55A-2 NMSA 1978 (being Laws 1980, Chapter 91, Section 2, as amended) is amended to read:

"4-55A-2. IMPROVEMENT DISTRICT--DEFINITIONS.--As used in the County Improvement District Act:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the real location of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "board" means the board of county commissioners;

C. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in the County Improvement District Act;

D. "county" means any county except an H class county;

E. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the county or employed in connection with an improvement by the county or by a property owner subject to the improvement district property tax imposed by Section 4-55A-12.1 NMSA 1978;

F. "improvement" means any one or any combination of projects in one or more locations authorized in the County Improvement District Act;

G. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon which an improvement district property tax will be imposed to pay for the cost of the improvement; and

H. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more developmental inadequacies under current local government standards and requirements, such as, but not limited to:

(1) inadequate street right of way or street access control;

(2) a lack of drainage easements of right of way;

(3) a lack of adequate park, recreation or open space area;

(4) a lack of an overall grading and drainage plan; or

(5) a lack of adequate subdivision grading both on and off the public right of way."

## Section 10. Section 4-55A-4 NMSA 1978 (being Laws 1980, Chapter 91, Section 4, as amended) is amended to read:

"4-55A-4. IMPROVEMENT DISTRICT--PURPOSE.--An improvement district may be created as authorized in the County Improvement District Act in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including land served by any project and any right of way, easement or privilege appurtenant or related thereto:

A. a street, road, bridge, walkway, overpass, underpass, parkway, alley, curb, gutter or sidewalk project, including median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more streets, roads, bridges, walkways, pathways, curbs, gutters or sidewalks or any combination of the foregoing;

B. any utility project for providing gas, water, electricity or telephone service;

C. any storm sewer project, sanitary sewer project or water project, including investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals and property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

D. a flood control or storm drainage project, including the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways, outlets, syphons and drop structures, channel construction, diversions, rectification and protection with appurtenant structures such as concrete lining, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers

and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or to provide drainage and lessen their danger and damages;

E. railroad spurs, railroad tracks, railyards, rail switches and any necessary real property; or

F. on-site or off-site improvements required as a condition to obtaining required approvals of a development to be served by a project, including the payment of any fees or charges levied as a means of paying for all or part of such on-site or off-site improvements."

## Section 11. Section 4-55A-12 NMSA 1978 (being Laws 1980, Chapter 91, Section 12, as amended) is amended to read:

"4-55A-12. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

A. At the preliminary hearing of the board on the question of creating an improvement district as authorized in Section 4-55A-10 NMSA 1978, any owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

(1) the proposed assessment or tax;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The board shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The board may allow a fair price, based on its current value, as a setoff against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the board may:

(1) correct any mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment to be made against or an improvement district property tax to be imposed upon any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing from time to time.

D. Within thirty days after the hearing, any owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax, whether he appeared at the hearing or not, may commence an action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district to set aside or correct the assessment or any proceedings relating to the improvement district. Thereafter, any owner or his heirs, assigns, successors or personal representatives are perpetually barred from any action or any defense of error or invalidity in the proceedings or assessments. Where no owner of a tract or parcel to be assessed has presented a protest during the hearing and all owners of the property to be assessed, upon conclusion of the hearing, submit written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the petition, such owners shall be deemed to have waived their right to bring any action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district or to set aside or correct the assessment or any proceedings relating to the improvement district."

## Section 12. Section 4-55A-12.1 NMSA 1978 (being Laws 1998, Chapter 47, Section 7) is amended to read:

"4-55A-12.1. IMPOSITION OF IMPROVEMENT DISTRICT PROPERTY TAX--LIMITATIONS.--

A. If in connection with the creation of the improvement district the board determines that it is in the best interest of the county to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the board shall enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the board deems necessary or appropriate. The board shall call an election within the improvement district for the purpose of authorizing the board to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall also include procedures for the conduct of the election

based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the board shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by counties are made.

D. Bonds issued by the board for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act. The bonds may be sold at public or private sale and may be in denominations that the board determines.

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment and redemption, shall be as determined by the board. The bonds shall be executed in the name of and on behalf of the improvement district by the chairman of the board. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act.

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the board shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

G. The bonds authorized in this section are general obligation bonds of the district, and the full faith and credit of the district are pledged to the payment of the bonds. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the County Improvement District Act.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the board:

(1) proof of ownership;

(2) proof of loss or destruction;

(3) a surety bond in twice the face amount of the bond and coupons; and

(4) payment of the cost of preparing and issuing the new bond and coupons.

I. The board may in any proceedings authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The board may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the district. Whenever the board deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board and the amount of refunding bonds that the board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the chairman of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the board, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses.

K. The principal amount of improvement district general obligation bonds that may be issued by the board for any improvement district shall not exceed twenty-five percent of the final estimated value of properties in the improvement district after completion of the projects to be financed with the improvement district general obligation bonds and after development of the properties in the improvement district in accordance with their planned use, as determined by the board with the assistance of the engineer and other qualified professionals.

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the board may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as the property owner subject to the improvement district property tax or the board determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978."

## Section 13. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts; and

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978."

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SENATE BILL 715, AS AMENDED

# CHAPTER 313

**CHAPTER 313, LAWS 2001**

AN ACT

RELATING TO EDUCATION; REQUIRING ANNUAL REPORTING BY SCHOOL DISTRICTS AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION ON EXPENDITURES OF FEDERAL FUNDS.

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

## Section 1. Section 22-1-6 NMSA 1978 (being Laws 1989, Chapter 308, Section 1, as amended) is amended to read:

"22-1-6. ANNUAL SCHOOL DISTRICT ACCOUNTABILITY REPORT REQUIRED.--

A. School districts are required to publish an annual school district accountability report to provide district-wide data for the previous school year. The state board shall establish the format for the accountability reports and ensure that the relevant data is provided annually to parents, students, educators, policymakers, legislators, the governor and business and economic development organizations. The department of education shall establish the following five indices through which public school performance shall be measured and reported to school districts:

(1) student achievement as measured by a nationally norm-referenced test approved by the department of education or through a performance-based instrument to measure proficiency;

(2) school safety;

(3) the dropout rate;

(4) attendance; and

(5) parent and community involvement.

The department of education shall establish the methodology for measuring each of the five indices.

B. Effective July 1, 1999, school districts shall annually administer a nationally norm-referenced test or a standards-based assessment to all students enrolled in a public school in grades three through nine. Only students with disabilities deemed incapable of taking the test as determined on their individual educational programs shall be exempted from this requirement. Students who have been assessed as non-English or limited English proficient using state approved language assessments and meeting required thresholds shall be exempted from this test and provided an alternative norm-referenced or standards-based assessment in their primary language. School districts shall report the following to the department of education:

(1) the results of the norm-referenced test or standards-based assessment;

(2) the number of enrolled students who did not take the test, the school in which they are enrolled and the reason for the exemption from the test; and

(3) separately and as part of the aggregate report, the results of assessments of students enrolled in special education class A, B, C and D programs who took the test and the school in which they are enrolled, except in cases where the number of students being reported is less than ten.

C. School districts shall set two-, four- and six-year benchmarks in each of the five indices for each public school. Local school boards may establish additional indices, if reviewed by the department of education, through which to measure the school district's performance in other areas.

D. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

(1) parent-teacher-school relationship and communication;

(2) quality of educational and extracurricular programs;

(3) instructional practices and techniques;

(4) resources;

(5) school personnel, including the school principal; and

(6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions, which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site; provided that at least half of those questions shall be developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed. The questionnaires shall indicate the public school site and shall be tabulated by the department of education within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

E. The annual accountability report shall also include a report of all federal funds distributed directly to the school district or received by the district from the department of education. For each distribution, the purpose for which the money was received shall be stated with a detailed accounting of the purposes for which the funds were expended.

F. The annual accountability report for each school district shall be adopted by the local school board, may be published no later than November 15 of each year and may be published at least once each school year in a newspaper of general circulation in the county where the school district is located. In publication, the report shall be titled "The School District Report Card" and disseminated in accordance with guidelines established by the state board to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

G. The department of education shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department of education shall provide the resources to train school district personnel in the use of the accountability data system.

H. The department of education shall verify data submitted by the school districts.

I. The state board shall measure the performance of every public school in New Mexico. Public schools achieving the highest level of performance shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools whose performance level is low.

J. The school district shall submit a copy of its annual accountability report to the legislative finance committee, the legislative education study committee and the library of the legislative council service."

## Section 2. Section 22-9-10 NMSA 1978 (being Laws 1939, Chapter 162, Section 5, as amended) is amended to read:

"22-9-10. REPORTS--FEDERAL FUNDS--FEDERAL AGENCIES--LEGISLATURE.--

A. Whenever required by any act of congress authorizing federal aid to education or any rules issued pursuant thereto:

(1) the state superintendent shall make reports with respect to expenditure of funds received and progress of education generally, progress of adult education generally or any other matters in the form and containing information required by the appropriate federal agencies; and

(2) the state librarian shall make reports with respect to expenditure of funds received and progress of library service in the form and containing information required by the appropriate federal agencies.

B. Annually, by November 1, the state superintendent shall submit to the legislative education study committee, the legislative finance committee and the library of the legislative council service a detailed report of all federal funds distributed to the state department of public education in the federal fiscal year ending September 30, one year prior to the date of the report, with a description of the purpose for which the state received the money and a detailed accounting of how the funds were expended."

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HOUSE BILL 323, AS AMENDED

# CHAPTER 314

**CHAPTER 314, LAWS 2001**

AN ACT

RELATING TO PUBLIC HEALTH; ALLOWING LICENSED HEALTH CARE PROVIDERS TO PROVIDE PRENATAL, DELIVERY AND POSTNATAL CARE TO A MINOR; PROVIDING A MINOR WITH THE CAPACITY TO CONSENT.

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

**Section 1. PREGNANCY--PRENATAL, DELIVERY AND POSTNATAL TREATMENT TO A FEMALE MINOR--CAPACITY TO CONSENT.--A health care provider shall have the authority, within the limits of his license, to provide prenatal, delivery and postnatal care to a female minor. A female minor shall have the capacity to consent to prenatal, delivery and postnatal care by a licensed health care provider.**

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HOUSE BILL 410

# CHAPTER 315

**CHAPTER 315, LAWS 2001**

AN ACT

RELATING TO CHILDREN; PROVIDING CRITERIA TO DETERMINE IF PARENTAL RIGHTS SHOULD BE TERMINATED WHEN A CHILD HAS BEEN IN THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT FOR A LENGTHY PERIOD; AMENDING A SECTION OF THE CHILDREN'S CODE.

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 the custody of the department 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. 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).

M. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

N. 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.

O. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological parents."

**Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 415, AS AMENDED

# CHAPTER 316

**CHAPTER 316, LAWS 2001**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE SMALL BUSINESS INVESTMENT ACT; PROVIDING FOR ALTERNATIVE COLLATERALIZATION OF INVESTMENTS; PROVIDING FOR DESIGNEES TO THE BOARD; PROVIDING FOR ADMINISTRATION OF THE SMALL BUSINESS INVESTMENT CORPORATION.

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

## Section 1. Section 58-29-4 NMSA 1978 (being Laws 2000, Chapter 97, Section 6) 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 for the purpose of creating new job opportunities by making equity investments in land, buildings or infrastructure for facilities to support new or expanding businesses. The corporation may:

(1) make equity investments in New Mexico small businesses that:

(a) have rural development business and industrial loans approved by the United States small business administration or the United States department of agriculture or indebtedness otherwise collateralized to the satisfaction of the board;

(b) are no more than forty-nine percent of the total capital equity of a business; and

(c) pay an annual dividend to the severance tax permanent fund of not less than five percent of the original capital equity investment by the corporation in the small business;

(2) hold redeemable preferred stock of a small business for a fixed period of time not to exceed ten years and have rural development business and industrial loans approved by the United States small business administration or the United States department of agriculture or indebtedness otherwise collateralized to the satisfaction of the board;

(3) sue and be sued in all actions arising out of any act or omission in connection with its business or affairs;

(4) enter into any contracts or obligations relating to the corporation that are authorized or permitted by law;

(5) cooperate with small business development centers and regional economic development districts;

(6) invest not more than ten percent of the fund in any one small business enterprise; and

(7) make investments that consider the enhancement of economic development objectives of the state.

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. The state shall not be liable for any obligations incurred by the corporation."

## Section 2. Section 58-29-5 NMSA 1978 (being Laws 2000, Chapter 97, Section 7) 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) the president of the New Mexico bankers association or his designee;

(4) the president of the New Mexico independent community bankers association or his designee;

(5) as a non-voting member, the director of the New Mexico district of the United States small business administration or his designee; and

(6) four members appointed or elected as provided in this section.

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 initial four public directors of the board, and the full board shall then elect the president.

D. After the governor appoints the initial four public directors of the board, those directors shall determine by lot their initial terms, which shall be two directors for two years and two directors for four years. Thereafter, each public member director shall be appointed or elected to a four-year term. At the expiration of the terms of the two initial directors whose terms are two years, the governor shall appoint one director and the board shall elect one director for full four-year terms. At the expiration of the

terms of the two initial directors whose terms are four years, the governor shall appoint one director and the board shall elect one director for full four-year terms. Thereafter, as vacancies arise, public member directors shall be appointed or elected so that at all times two shall be appointed by the governor and two shall be elected by the board in accordance with provisions determined by the board.

E. The governor shall not remove a director he appoints unless the removal is approved by a two-thirds' vote of the members of the senate.

F. 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.

G. No two members of the board shall be employed by or represent the same company or institution.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 3. Section 58-29-6 NMSA 1978 (being Laws 2000, Chapter 97, Section 8) is amended to read:

"58-29-6. PRESIDENT--POWERS AND DUTIES.--

A. The board shall select a president of the corporation from among its members. The corporation is under the administrative control of the president or a person selected by the board to administer the operations of the corporation. The board shall periodically review and appraise the investment strategy being followed, and the president shall report at least once a month to the board on investment results and related matters. The president shall:

(1) act for the corporation in collecting and disbursing money necessary to administer the corporation and conduct its business;

(2) sign contracts and incur obligations on behalf of the corporation;

(3) perform all acts necessary to exercise power, authority or jurisdiction over the corporation to discharge its functions and fulfill its responsibilities; and

(4) make investments pursuant to the Small Business Investment Act and upon approval of the board.

B. The president shall submit an annual report, independently audited in accordance with generally accepted procedures governing annual reports, by October 1 of each year to the governor, the legislative finance committee and any other appropriate legislative committee indicating the business done by the corporation during the previously completed fiscal year and containing a statement of the resources and liabilities of the corporation. The report shall include:

(1) the average rate of return enjoyed by the corporation on invested assets;

(2) recommendations concerning desired changes in the corporation to promote its prompt and efficient administration of policies and claims;

(3) recommendations to the legislature and the governor regarding the continued operation of the corporation; and

(4) any other information the president deems appropriate."

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HOUSE BILL 546

# CHAPTER 317

**CHAPTER 317, LAWS 2001**

AN ACT

RELATING TO PROPERTY; REQUIRING SALE OR DISPOSITION OF PROPERTY OF A STATE AGENCY, LOCAL PUBLIC BODY, SCHOOL DISTRICT OR STATE EDUCATIONAL INSTITUTION BY NEGOTIATED SALE, DONATION, SEALED BID OR PUBLIC AUCTION; GIVING RIGHT OF FIRST REFUSAL TO DISPOSE OF STATE PROPERTY TO THE GENERAL SERVICES DEPARTMENT; RECONCILING 1989 AMENDMENTS TO A SECTION OF CHAPTER 13, ARTICLE 6 NMSA 1978; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 13-6-1 NMSA 1978 (being Laws 1961, Chapter 100, Section 1, as amended) is amended to read:

"13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE TANGIBLE PERSONAL PROPERTY.--

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of tangible personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:

(1) of a current resale value of five thousand dollars ($5,000) or less; and

(2) worn-out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

B. The governing authority shall, as a prerequisite to the disposition of any items of tangible personal property:

(1) designate a committee of at least three officials of the governing authority to approve and oversee the disposition; and

(2) give notification at least thirty days prior to its action making the deletion by sending a copy of its official finding and the proposed disposition of the property to the state auditor and the appropriate approval authority designated in Section 13-6-2 NMSA 1978, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority and maintained as a public record subject to the Inspection of Public Records Act.

D. The governing authority shall dispose of the tangible personal property by negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New

Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office of the governing authority by means of competitive sealed bid or public auction or, if a state agency, through the federal property assistance bureau of the general services department.

E. A state agency shall give the federal property assistance bureau of the general services department the right of first refusal when disposing of obsolete, worn-out or unusable tangible personal property of the state agency.

F. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, the governing authority may sell or, if the property has no value, donate the property to any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

G. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D, E or F of this section, it may order that the property be destroyed or otherwise permanently disposed of in accordance with applicable laws.

H. If the governing authority determines that the tangible personal property is hazardous or contains hazardous materials and may not be used safely under any circumstances, the property shall be destroyed and disposed of pursuant to Subsection G of this section.

I. No tangible personal property shall be donated to an employee or relative of an employee of a state agency, local public body, school district or state educational institution; provided that nothing in this subsection precludes an employee from participating and bidding for public property at a public auction.

J. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act."

## Section 2. Section 13-6-2 NMSA 1978 (being Laws 1979, Chapter 195, Section 3, as amended by Laws 1989, Chapter 211, Section 7 and also by Laws 1989, Chapter 380, Section 3) 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; and

(5) property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act."

## Section 3. Section 13-6-4 NMSA 1978 (being Laws 1979, Chapter 195, Section 5, as amended) is amended to read:

"13-6-4. DEFINITIONS.--As used in Chapter 13, Article 6 NMSA 1978:

A. "local public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions;

B. "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions other than state educational institutions;

C. "state educational institutions" means those institutions designated by Article 12, Section 11 of the constitution of New Mexico; and

D. "school districts" means those political subdivisions of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code."

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HOUSE BILL 625, AS AMENDED

# CHAPTER 318

**CHAPTER 318, LAWS 2001**

AN ACT

RELATING TO ELECTRIC GENERATION; PROVIDING FOR LOCAL GOVERNING BODY CONSTRUCTION PERMITTING OF GAS-FIRED ELECTRIC GENERATION FACILITIES; ENACTING A NEW SECTION OF THE AIR QUALITY CONTROL ACT.

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

## Section 1. A new section of the Air Quality Control Act is enacted to read:

"LOCAL GOVERNING BODY AUTHORITY-- CONSTRUCTION PERMITS-- ELECTRIC GENERATION FACILITIES.--

A. A local governing body may receive a construction permit for a gas-fired electric generation facility with a one hundred megawatt or less generating capacity in accordance with the Air Quality Control Act and may transfer the permit to the owner or operator of a facility that meets the specifications of the permit.

B. A facility that receives a construction permit transferred from a local governing body shall notify the department within thirty days of receiving the transferred construction permit. The permit shall be effective for that facility when the department receives notification of the transfer. The local governing body that transfers the construction permit shall notify the owner or operator of the local electric distribution company and the public regulation commission of the permitted project, including its net capacity rating and intended date of service.

C. As used in this section, "local governing body" means the council or other executive body charged with governing a municipality or county.

D. The department may cooperate with and lend assistance to any Indian nation, tribe or pueblo located in the state in developing permitting procedures that fulfill federal environmental protection agency standards and that parallel the state permitting procedures described in Subsections A and B of this section."

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HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

SUBSTITUTE FOR HOUSE BILL 866, AS AMENDED

# CHAPTER 319

**CHAPTER 319, LAWS 2001**

AN ACT

RELATING TO THE GENERAL SERVICES DEPARTMENT; REORGANIZING PROPERTY CONTROL STATUTES; PROVIDING FOR JOINT POWERS AGREEMENTS WITH EXEMPT AGENCIES; ELIMINATING THE TEN-YEAR LIMIT ON LONG-TERM LEASES; ALLOWING FOR CERTAIN NINETY-NINE YEAR LEASES; LIMITING OPERATION, MAINTENANCE, RENOVATION AND REPAIR COSTS TO CERTAIN LEASES; PROVIDING FOR ADMINISTRATIVE FEES ON CAPITAL PROJECTS; PROVIDING FOR MAINTENANCE FEES TO BE CREDITED TO CERTAIN STATE AGENCIES; PROVIDING FOR THE OPERATING BUDGET OF THE PROPERTY CONTROL DIVISION TO BE INCLUDED IN THE BUILDING USE FEES CHARGED TO STATE AGENCIES AND FUNDED IN THEIR BUDGETS; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

## Section 1. A new Section 15-3B-1 NMSA 1978 is enacted to read:

"15-3B-1. SHORT TITLE.--Chapter 15, Article 3B NMSA 1978 may be cited as the "Property Control Act"."

## Section 2. Section 15-3-22 NMSA 1978 (being Laws 1972, Chapter 74, Section 2) is recompiled as Section 15-3B-2 NMSA 1978 and 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 and the legislative branch; and

F. "secretary" means the secretary of general services."

## Section 3. Section 15-3-1 NMSA 1978 (being Laws 1968, Chapter 43, Section 1, as amended) is recompiled as Section 15-3B-3 NMSA 1978 and is amended to read:

"15-3B-3. PROPERTY CONTROL DIVISION--CREATION--DIRECTOR.--The "property control division" is created within the department. The director shall be appointed by the secretary with the governor's consent."

## Section 4. Section 15-3-2 NMSA 1978 (being Laws 1978, Chapter 166, Section 14, as amended) is recompiled as Section 15-3B-4 NMSA 1978 and is amended to read:

"15-3B-4. DIVISION--DUTIES--FEDERAL FUNDS.--

A. The division shall:

(1) assign the use or occupancy of state buildings and lands under its jurisdiction to the state agency or political subdivision that may make the best and highest beneficial use of the property;

(2) regulate the use or occupancy of buildings and real property under its jurisdiction and make reasonable requirements for the continuation of that use or occupancy;

(3) establish space standards for buildings under its jurisdiction;

(4) have custody of all maps, deeds, plats, plans, specifications, contracts, books and other papers connected with state buildings under its jurisdiction;

(5) secure copies of all documents of title to all real property under its jurisdiction held in the name of the state or for the use of the state, and index those documents so that the status of real property held by the state under its jurisdiction can be readily ascertained;

(6) control the lease or rental of space in private buildings by state executive agencies other than the state land office, including inspection for code compliance and life and safety issues. The director may act as lessee on behalf of a state agency if the division determines it is in the best interest of the state;

(7) make rules for the conduct of all persons in and about buildings and grounds under its jurisdiction necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds;

(8) have the power to sell state buildings and real property under its jurisdiction in accordance with Sections 13-6-2 and 13-6-3 NMSA 1978. Any such sale shall be by quitclaim deed;

(9) have the power to purchase title insurance or a title opinion in conjunction with the sale of state buildings or land;

(10) have the power to enter into contracts for the improvement, alteration and reconstruction of the state buildings under its jurisdiction, including the

governor's residence, and for the design and construction of additional buildings, to the extent funds are available;

(11) develop long-range programs for the continuing preservation and repair of buildings and improvements and for beautification of grounds and premises under its jurisdiction;

(12) conduct continuing review and analysis of requirements for additional structures and facilities to house state agencies;

(13) ensure that on-site inspections of capital projects are conducted to verify that construction specifications are being met; and

(14) receive gifts, grants and donations from the federal government or other sources for the public buildings repair fund.

B. The provisions of this section are subject to federal law or rules if the buildings or property was purchased with federal funds.

C. The division and a state agency or institution that controls property exempt from the jurisdiction of the division may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act giving the division the power to exercise control of the property as specified in the agreement."

## Section 5. Section 15-3-13 NMSA 1978 (being Laws 1978, Chapter 69, Section 1, as amended) is recompiled as Section 15-3B-5 NMSA 1978 and is amended to read:

"15-3B-5. POSITION OF STAFF ARCHITECT CREATED--DUTIES AND RESPONSIBILITIES.--

A. The position of "staff architect" is created within the division. The staff architect shall be a legal resident of and an architect registered in the state for at least two years. The staff architect shall assist the director in carrying out the provisions and requirements of the Property Control Act.

B. The staff architect shall review plans and specifications developed by architects or engineers contracted for the construction of new buildings or for the remodeling or renovation of existing state buildings under the jurisdiction of the division.

C. The staff architect may develop plans and specifications for state projects whose expenditures do not exceed five hundred thousand dollars ($500,000) and that consist of repair, replacement or remodeling of nonstructural elements.

D. A staff architect who subsequently leaves the position, or any firm he may subsequently be employed by, is prohibited for a period of two years from providing

architectural services or bidding on the construction, remodeling or renovation of a state building if he developed or worked on the plans or specifications for such construction, remodeling or renovation while employed as staff architect."

## Section 6. Section 15-3-11 NMSA 1978 (being Laws 1968, Chapter 43, Section 5, as amended) is recompiled as Section 15-3B-6 NMSA 1978 and is amended to read:

"15-3B-6. BUILDING AND REMODELING.--The division may do all acts necessary and proper for the redesigning, major renovation and remodeling of present state buildings and the erection of additional state buildings when needed. The division may let contracts for these purposes in accordance with the provisions of the Procurement Code. All such remodeling, major renovation and construction must first be approved by the state board of finance. This section applies only to state buildings under the division's jurisdiction."

## Section 7. Section 15-3-14 NMSA 1978 (being Laws 1968, Chapter 43, Section 8, as amended) is recompiled as Section 15-3B-7 NMSA 1978 and is amended to read:

"15-3B-7. LEASE OF LAND OR BUILDINGS FOR PRIVATE USE.--

A. The division may lease any land or building under its jurisdiction to private use until the land or building is needed for public use. All income from the leases shall be deposited in the public buildings repair fund. All leases shall be made in accordance with Sections 13-6-2.1 and 13-6-3 NMSA 1978. The division shall establish building use fees by rule for property under its jurisdiction; provided that this provision does not apply to residences furnished to state officials or employees for the legitimate convenience of the employer and that are not taxable benefits for general income tax purposes. All state departments and institutions whose property is under the jurisdiction of the division shall remit building use fees collected from lessees to the division for deposit into the public buildings repair fund. Departments and institutions may charge separate utility costs for property where the property is not separately metered, and those costs may be deposited to the credit of the department's or institution's operating budget.

B. The division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of tangible personal property, may enter into long-term leases of vacant lands where the lessor contracts with the state to construct and complete buildings, subject to the approval of the staff architect, as a condition precedent to the start of the lease term. The buildings shall comply with applicable state and federal laws and codes. A lease shall not be executed pursuant to this subsection until the staff architect has filed with the legislative finance committee a detailed statement of his evaluation and approval of the proposed building."

## Section 8. A new Section 15-3B-8 NMSA 1978 is enacted to read:

"15-3B-8. ACQUISITION OF LAND.--The division may acquire land through purchase or through gift or donation; provided, however, that acquisitions shall first be approved by the state board of finance. The title of acquired land shall vest in the state."

## Section 9. A new Section 15-3B-9 NMSA 1978 is enacted to read:

"15-3B-9. LEASE OF NEW MEXICO FINANCE AUTHORITY PROPERTY--MAINTENANCE AND REPAIR.--The division may enter into long-term leases, not to exceed ninety-nine years, on property owned by the New Mexico finance authority for state use. Lease of the property owned by the New Mexico finance authority may require the department to operate, maintain and make renovations and repairs to the property."

## Section 10. A new Section 15-3B-10 NMSA 1978 is enacted to read:

"15-3B-10. CAPITAL PROJECTS--ADMINISTRATIVE FEES.--The cost of a capital project shall include an administrative fee to cover the cost of administering the capital project. The fee shall be one percent of the estimated construction cost of a capital project located in Santa Fe county and one and one-half percent for a capital project located outside Santa Fe county."

## Section 11. Section 15-3-23.2 NMSA 1978 (being Laws 1984 (S.S.), Chapter 10, Section 10) is recompiled as Section 15-3B-11 NMSA 1978 and is amended to read:

"15-3B-11. CAPITAL PROJECTS--CONTINGENCY LIMITATION.--No more than six and one-half percent of the cost of a capital project shall be used for contingencies. For the purposes of this section, "contingencies" means unforeseeable elements of cost within the defined scope of the capital project."

## Section 12. Section 15-3-12 NMSA 1978 (being Laws 1975, Chapter 200, Section 1, as amended) is recompiled as Section 15-3B-12 NMSA 1978 and is amended to read:

"15-3B-12. FEASIBILITY STUDY OF ENERGY SOURCES.--Before a contract is executed for the construction, major alteration or renovation of a state-owned building, the division may have a feasibility study made on the use of energy sources other than fossil fuels for the heating and air conditioning of the proposed building. A copy of the feasibility study shall remain on file with the division and shall be open to public inspection."

## Section 13. Section 15-3-19 NMSA 1978 (being Laws 1977, Chapter 360, Section 1) is recompiled as Section 15-3B-13 NMSA 1978 and is amended to read:

"15-3B-13. PARKING FACILITIES REQUIRED FOR STATE BUILDINGS--STANDARDS.--

A. A state building shall not be constructed or enlarged to a major degree without providing adequate parking facilities, as approved by the staff architect, for the use of the public officers and employees employed in the building and for the use of those members of the public reasonably expected to enter the building on public business.

B. The provisions of this section shall not apply to historic sites or state buildings in historical zones as designated by local government ordinance."

## Section 14. Section 15-3-15 NMSA 1978 (being Laws 1968, Chapter 43, Section 9, as amended) is recompiled as Section 15-3B-14 NMSA 1978 and is amended to read:

"15-3B-14. CONCESSIONS.--

A. The division may grant concession contracts in state buildings under its jurisdiction, except concession contracts authorized to be entered into by the state parks division of the energy, minerals and natural resources department pursuant to Section 16-2-9 NMSA 1978 or the commission for the blind pursuant to Section 22-14-24 NMSA 1978, at such fees as the division prescribes.

B. Concessions shall be granted only under written contract, the faithful performance of which shall be secured by a bond prescribed by the division. All income from such concessions shall be deposited in the public buildings repair fund."

## Section 15. A new Section 15-3B-15 NMSA 1978 is enacted to read:

"15-3B-15. MAINTENANCE CHARGES--CREDITED TO AGENCY OPERATING BUDGET.--A state agency that occupies a facility under the jurisdiction of the division and that acts as the representative of the division pursuant to a use agreement between the division and the state agency may charge maintenance and utility costs to other entities that use the facility. The charges shall be deposited to the credit of the state agency to cover maintenance and utility expenses."

## Section 16. Section 15-3-23 NMSA 1978 (being Laws 1972, Chapter 74, Section 3, as amended) is recompiled as Section 15-3B-16 NMSA 1978 and is amended to read:

"15-3B-16. CAPITAL PROGRAM--FUND CREATED--ALLOCATION AND EXPENDITURE FOR CAPITAL OUTLAY.--

A. The "capital program fund" is created in the state treasury. To this fund shall be credited all appropriations for capital outlay projects under the jurisdiction of the division.

B. The capital program fund shall be allocated by the division for capital outlay projects specified by the legislature in accordance with the provisions of the Property Control Act."

## Section 17. Section 15-3-24 NMSA 1978 (being Laws 1972, Chapter 74, Section 4, as amended) is recompiled as Section 15-3B-17 NMSA 1978 and is amended to read:

"15-3B-17. CAPITOL BUILDINGS REPAIR FUND--CREATION--

EXPENDITURES.--

A. The "capitol buildings repair fund" is created in the state treasury. To this fund shall be transferred, after payments required by Laws 1997, Chapter 178, Section 1 to the New Mexico finance authority, all income, including distributions from the land grant permanent fund derived from lands granted to the state by the United States congress for legislative, executive and judicial public buildings. Two percent of this fund shall be transferred annually to a "state capitol maintenance fund", hereby created, as a special perpetual fund for the upkeep and maintenance of the capitol renovation and capitol grounds.

B. The capitol buildings repair fund may be used to repair, remodel and equip capitol buildings and adjacent lands, to repair or replace building machinery and building equipment located in capitol buildings and to contract for options to purchase real estate, such real estate, if purchased, to be put to state use; provided that no more than ten thousand dollars ($10,000) shall be expended for any single option. Any money used for consideration in acquiring an option to purchase real estate shall be applied against the purchase price of the real estate if the option is exercised. No money shall be expended from the capitol buildings repair fund without authorization of the state board of finance.

C. In the event a capital outlay project exceeds authorized project cost by five percent or less, the state board of finance may authorize the division to supplement the authorized cost by an allocation not to exceed five percent of the authorized cost from the capitol buildings repair fund to the extent of the unencumbered and unexpended balance of the fund."

## Section 18. Section 15-3-11.1 NMSA 1978 (being Laws 1996, Chapter 46, Section 1) is recompiled as Section 15-3B-18 NMSA 1978 and is amended to read:

"15-3B-18. PUBLIC BUILDINGS REPAIR FUND--CREATED--EXPENDITURES.--

A. The "public buildings repair fund" is created in the state treasury. The fund shall consist of appropriations, building use fees, concession fees, 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 division.

B. Expenditures may be made from the public buildings repair fund only for operating expenses of the division and necessary repair, renovation and purchase of physical plant equipment for public buildings under the jurisdiction of the division.

C. The division shall establish priorities for the use of the public buildings repair fund and shall submit to the legislature in each regular session a list of recommended expenditures to be made from the fund in the following fiscal year. The public buildings repair fund shall be expended pursuant to appropriations by the legislature."

## Section 19. Section 15-3-11.2 NMSA 1978 (being Laws 1996, Chapter 46, Section 2) is recompiled as Section 15-3B-19 NMSA 1978 and is amended to read:

"15-3B-19. BUILDING USE FEES--TRANSFERS TO FUND.--The secretary shall establish a schedule of building use fees for state agencies occupying space in state-owned buildings under the jurisdiction of the division. The building use fees shall equal the estimated cost for the next fiscal year of operating expenses for the division and planned and emergency repairs, renovations and purchase of physical plant equipment; provided that total fees shall not exceed ten million dollars ($10,000,000) in any fiscal year. The building use fees shall be included in the budget requests of pertinent state agencies. At the beginning of each fiscal year, the department of finance and administration shall transfer to the public buildings repair fund the amounts appropriated for building use fees."

## Section 20. Section 15-3-24.2 NMSA 1978 (being Laws 1998, Chapter 58, Section 1) is recompiled as Section 15-3B-20 NMSA 1978 and is amended to read:

"15-3B-20. PROPERTY CONTROL RESERVE FUND--CREATED--PURPOSE.--The "property control reserve fund" is created in the state treasury. The purpose of the fund is to provide a reserve account from which the division can purchase or construct

state office buildings, in particular to alleviate the state's reliance on expensive leased office space in Santa Fe. The fund shall consist of appropriations, money from the sale of real property under the jurisdiction of the division, gifts, grants, donations, bequests and income from investment of the fund. Money in the fund shall not revert to the general fund at the end of any fiscal year. The division shall administer the fund subject to appropriation by the legislature. The legislature shall appropriate money in the fund to the division to purchase or acquire land and construct state office buildings in Santa Fe in accordance with the state's four-year major capital improvements plan. Disbursements from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his authorized representative."

## Section 21. Section 15-3-34 NMSA 1978 (being Laws 1991, Chapter 39, Section 1) is amended to read:

"15-3-34. PUBLIC BUILDINGS--FLAG DISPLAY.--The prisoner of war and missing in action flag shall be displayed on legal public holidays in New Mexico at all public buildings with flagpoles owned by the state in accordance with rules adopted by the New Mexico veterans' service commission."

## Section 22. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"STATE EDUCATIONAL INSTITUTIONS--ADEQUATE PARKING.--The staff architect of a university, or the commission on higher education in the case of state educational facilities that do not employ a staff architect, shall review all plans for the construction or major enlargement of a state educational facility prior to the execution of a contract for such work and shall certify to the state board of finance that adequate parking is provided for the use of staff employed in the facility, students who attend classes or events in the facility and members of the public reasonably expected to enter the facility. If adequate parking is not provided for, no contract may be entered into."

## Section 23. REPEAL.--Sections 15-3-7 through 15-3-10, 15-3-13.8, 15-3-16, 15-3-20, 15-3-21, 15-3-23.1, 15-3-23.3 and 15-3-31 through 15-3-33 NMSA 1978 (being Laws 1975, Chapter 10, Sections 1 and 2, Laws 1968, Chapter 43, Sections 3 and 4, Laws 1984, Chapter 64, Section 19, Laws 1968, Chapter 43, Section 10, Laws 1977, Chapter 360, Section 2, Laws 1972, Chapter 74, Section 1, Laws 1980, Chapter 11, Section 1, Laws 1984 (S.S.), Chapter 10, Section 11, Laws 1968, Chapter 43, Section 12, Laws 1971, Chapter 285, Section 1 and Laws 1980, Chapter 10, Section 1, as amended) are repealed.

**Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 556, AS AMENDED

# CHAPTER 320

**CHAPTER 320, LAWS 2001**

AN ACT

RELATING TO EMINENT DOMAIN; CHANGING THE RATE OF INTEREST IN CERTAIN CONDEMNATION PROCEEDINGS.

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

## Section 1. Section 42A-1-24 NMSA 1978 (being Laws 1981, Chapter 125, Section 20) is amended to read:

"42A-1-24. DETERMINATION OF COMPENSATION AND DAMAGES--INTEREST.--

A. For the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer.

B. Whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded interest at the rate of ten percent a year upon the unpaid portion of the compensation awarded from the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned. The judgment shall not include interest upon the amount represented by funds deposited by the condemnor pursuant to the provisions of Sections 42A-1-19 and 42A-1-22 NMSA 1978.

C. The court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation and to make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges.

D. The judgment shall credit against the total amount awarded to the condemnee any payments or deposits paid over to him made before the date of entry of judgment by the condemnor as compensation for the property taken, including any funds which the condemnee withdrew from the amount deposited by the condemnor pursuant to the provisions of Section 42A-1-19 or 42A-1-22 NMSA 1978.

E. If the amount to be credited against the award under Subsection D of this section exceeds the total amount awarded, the court shall require that the condemnee pay the excess to the condemnor.

F. The price paid for similar property by one other than the condemnor may be considered on the question of the value of the property condemned or damaged if there is a finding that there have been no material changes in conditions between the date of the prior sale and the date of taking, that the prior sale was made in a free and open market and that the property is sufficiently similar in the relevant market with respect to situation, usability, improvements and other characteristics."

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HOUSE BILL 601

# CHAPTER 321

**CHAPTER 321, LAWS 2001**

AN ACT

RELATING TO PROPERTY TAXATION; CONFORMING THE TERMS OF CERTAIN VALUATION INCREASE LIMITATIONS FOR RESIDENTIAL PROPERTY; PROVIDING FOR AN ANNUAL INFLATION ADJUSTMENT OF THE INCOME QUALIFICATION FOR THE LIMITATION ON INCREASES IN VALUATION OF CERTAIN RESIDENTIAL PROPERTY OF PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER; PROVIDING FOR CURRENT AND CORRECT VALUATION OF RESIDENTIAL PROPERTY IN CERTAIN COUNTIES; AMENDING SECTIONS OF THE PROPERTY TAX CODE; DECLARING AN EMERGENCY.

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) 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:

(1) "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:

(a) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(b) to the spouse of the transferor that takes effect upon the death of the transferor;

(c) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(d) 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;

(e) 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;

(f) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(g) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(h) from a revocable trust described in Subparagraph (g) of this paragraph back to the settlor or trustor or to the beneficiaries of the trust;

(2) "net new value" means "net new value" as defined in Section 7-37-7.1 NMSA 1978; and

(3) "prior year value" means the value for property taxation purposes of residential property subject to valuation under the Property Tax Code in the prior tax year."

## Section 2. Section 7-36-21.3 NMSA 1978 (being Laws 2000, Chapter 21, Section 1) is amended to read:

"7-36-21.3. LIMITATION ON INCREASE IN VALUE FOR SINGLE-FAMILY DWELLINGS OCCUPIED BY OWNER SIXTY-FIVE YEARS OF AGE OR OLDER.--

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. The limitation of value specified in Subsection A 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, occupancy and income eligibility for the tax year for which application is made.

C. For the 2002 tax year and each subsequent tax year the maximum amount of modified gross income in Subsection A 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.

D. The limitation of value specified in Subsection A 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."

## Section 3. Section 7-38-18 NMSA 1978 (being Laws 1973, Chapter 258, Section 58, as amended by Laws 2000, Chapter 92, Section 4 and also by Laws 2000, Chapter 94, Section 4) is amended to read:

"7-38-18. PUBLICATION OF NOTICE OF CERTAIN PROVISIONS RELATING TO REPORTING PROPERTY FOR VALUATION AND CLAIMING OF EXEMPTIONS.--

A. Each county assessor shall have a notice published in a newspaper of general circulation within the county at least once a week during the first three full weeks in January of each tax year, which notice shall include a brief statement of the provisions of:

(1) Section 7-38-8 NMSA 1978 relating to requirements for reporting property for valuation for property taxation purposes;

(2) Section 7-38-8.1 NMSA 1978 relating to requirements for reporting exempt property;

(3) Section 7-38-13 NMSA 1978 relating to filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, disabled veteran, head-of-family and other exemptions;

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property; and

(6) Section 7-36-21.3 NMSA 1978 relating to requirements for claiming eligibility for the limitation on increases in 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.

B. The department shall develop and issue a uniform form of notice to be used by county assessors to fulfill the requirements of this section."

## Section 4. Section 7-38-20 NMSA 1978 (being Laws 1973, Chapter 258, Section 60, as amended) is amended to read:

"7-38-20. COUNTY ASSESSOR AND DEPARTMENT TO MAIL NOTICES OF VALUATION.--

A. By April 1 of each year, the county assessor shall mail a notice to each property owner informing him of the net taxable value of his property that has been valued for property taxation purposes by the assessor.

B. By May 1 of each year, the department shall mail a notice to each property owner informing him of the net taxable value of his property that has been valued for property taxation purposes by the department.

C. Failure to receive the notice required by this section does not invalidate the value set on the property, any property tax based on that value or any subsequent procedure or proceeding instituted for the collection of the tax.

D. The notice required by this section shall state:

(1) the property owner's name and address;

(2) the description or identification of the property valued;

(3) the classification of the property valued;

(4) the value set on the property for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property;

(7) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;

(8) the allocations of net taxable values to the governmental units;

(9) briefly, the eligibility requirements and application procedures and deadline for claiming eligibility for a limitation on increases in the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person sixty-five years of age or older; and

(10) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units or denial of a claim for an exemption or for the limitation on increases in valuation for property taxation purposes.

E. The county assessor may mail the valuation notice required pursuant to Subsection A of this section to taxpayers with the preceding tax year's property tax bills

if the net taxable value of the property has not changed since the preceding taxable year. In this early mailing, the county assessor shall provide clear notice to the taxpayer that the valuation notice is for the succeeding tax year and that the deadlines for protest of the value or classification of the property apply to this mailing date."

**Section 5. TEMPORARY PROVISION--APPLICATION DEADLINE EXTENDED FOR CLAIMING ENTITLEMENT TO PROPERTY VALUATION INCREASE LIMITATION.--Notwithstanding any provision of the Property Tax Code to the contrary, the deadline shall be extended to May 1, 2001 for making application to the county assessor to claim entitlement to the limitation on increases in valuation for single family dwellings owned and occupied by certain persons sixty-five years of age or older pursuant to Section 7-36-21.3 NMSA 1978 for the 2001 property tax year. County assessors shall adjust, as necessary, the valuation for property taxation purposes of the 2001 property tax year of single family dwellings owned and occupied by applicants who file a timely application and meet the requirements of Section 7-36-21.3 NMSA 1978.**

**Section 6. APPLICABILITY.--The provisions of this act apply to property tax year 2001 and succeeding tax years.**

**Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 623, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 322

**CHAPTER 322, LAWS 2001**

AN ACT

RELATING TO PROBATION AND PAROLE; ENACTING THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION.

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

The Interstate Compact for Adult Offender Supervision 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:

# INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

## Article I - Purpose

A. The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community and is authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdictions. 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 and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) to provide the framework for the promotion of public safety and protection of the rights of victims in the community through the control and regulation of the interstate movement of offenders;

(2) to provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving states; and

(3) to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

C. In addition, this compact will:

(1) create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies and that will promulgate rules to achieve the purpose of this compact;

(2) ensure an opportunity for input and timely notice to victims and to jurisdictions as to where defined offenders are authorized to travel or to relocate across state lines;

(3) establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators;

(4) monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

D. The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this

compact and bylaws and rules promulgated hereunder.

E. 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 are therefore public business.

Article II - Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "adult" means both individuals legally

classified as adults and juveniles treated as adults by court order, statute or operation of law;

B. "bylaws" mean those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct;

C. "compact" means the Interstate Compact for Adult Offender Supervision;

D. "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 offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

E. "compacting state" means any state that has enacted the enabling legislation for this compact;

F. "commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

G. "interstate commission" means the interstate commission for adult offender supervision established by this compact;

H. "member" means the commissioner of a compacting state or his designee, who shall be a person officially connected with the commissioner;

I. "non-compacting state" means any state that has not enacted the enabling legislation for this compact;

J. "offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies;

K. "person" means any individual, corporation, business enterprise or other legal entity, either public or private;

L. "rules" means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

M. "state" means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

N. "state council" means the resident members of the state council for interstate adult offender supervision created by each compacting state under Article IV of this compact.

Article III - The Compact Commission

A. The compacting states hereby create the "interstate commission for adult offender supervision". The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued and such 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. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. 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; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-

commissioner members of the interstate commission shall be ex-officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

B. 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. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

C. The interstate commission shall establish an executive committee that shall include commission officers, members and others as shall be 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 amendment to the compact. The executive committee shall oversee the day-to-day activities managed by the executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact and its bylaws as directed by the interstate commission and perform other duties as directed by the interstate commission or set forth in the bylaws.

Article IV - The State Council

Each compacting state shall create a "state council for interstate adult offender supervision" that shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the compacting state. While each compacting 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 and victims groups and its compact administrator. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each compacting state, including development of policy concerning operations and procedures of the compact within that state.

Article V - Powers and Duties of the Interstate Commission The interstate commission shall have the following powers:

A. to adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

B. to promulgate rules that 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. to oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

D. to enforce compliance with compact provisions and interstate commission rules and bylaws, using all necessary and proper means, including the use of judicial process;

E. to establish and maintain offices;

F. to purchase and maintain insurance and bonds;

G. to borrow, accept or contract for services of personnel, including members and their staffs;

H. to establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions, including an executive committee as required by Article III that shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

I. to elect or appoint such 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, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

J. to accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of same;

K. to lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed;

L. to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

M. to establish a budget and make expenditures and levy dues as provided in Article X of this compact;

N. to sue and be sued;

O. to provide for dispute resolution among compacting states;

P. to perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

Q. to 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 any recommendations that may have been adopted by the interstate commission;

R. to coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

S. to establish uniform standards for the reporting, collecting and exchanging of data.

Article VI - Organization and Operation of the Interstate Commission

A. The interstate commission shall, by a majority of the members, within twelve months of 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 such other committees as may be necessary;

(3) providing reasonable standards and procedures:

(a) for the establishment of committees; and

(b) for any 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 each such meeting;

(5) establishing the titles and responsibilities of the officers of the interstate commission;

(6) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(7) providing a mechanism for winding-up the operations of the interstate commission and for the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;

(8) providing transition rules for "start-up" administration of the compact; and

(9) 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 from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so 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 any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

C. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

D. The members, officers, executive director and employees of the interstate commission 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 any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person. The interstate commission shall defend the commissioner of a compacting state, or his representatives or employees or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any 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 wrongdoing on the part of such person. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees or

the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons 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 gross negligence or intentional wrongdoing on the part of such person.

## Article VII - Activities of the Interstate Commission

A. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

B. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

C. 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 on behalf of the compacting state and shall not delegate a vote to another compacting state. However, a 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. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

D. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

E. 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. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to non-disclosure and confidentiality provisions.

F. 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 shall promulgate rules consistent with the principles contained in the federal Government in the Sunshine Act, 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by a two-thirds' vote that a 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 any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigatory records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

(9) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

G. For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.

H. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

Article VIII - Rulemaking Functions of the Interstate Commission

A. The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. Section 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. Section 1 et seq., as may be amended. All rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

C. When promulgating a rule, the interstate commission shall:

(1) publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) provide an opportunity for an informal hearing; and

(4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

D. Not later than sixty days after a rule is promulgated, any interested person may 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 such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) notice to victims and opportunity to be heard;

(2) offender registration and compliance;

(3) violations or returns;

(4) transfer procedures and forms;

(5) eligibility for transfer;

(6) collection of restitution and fees from offenders;

(7) data collection and reporting;

(8) the level of supervision to be provided by the receiving state;

(9) transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) mediation, arbitration and dispute resolution.

E. The existing rules governing the operation of the previous compact superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

F. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

Article IX - Oversight, Enforcement, and Dispute

Resolution by the Interstate Commission

A. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non-compacting states that may significantly affect compacting states. 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. In any 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, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

B. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities. The interstate commission

shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and non-compacting states. The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

C. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Section B of Article XII of this compact.

Article X - 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 that 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 the compacting state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The interstate commission shall not incur any 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 XI - 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, 2001, or upon enactment into law by the thirty-fifth state. 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 non-compacting states or their designees will be

invited to participate in interstate commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

B. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall 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 XII - 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 enacting a statute 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 any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(2) remedial training and technical assistance as directed by the interstate commission; and

(3) suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to 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.

The grounds for default include failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission

bylaws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate 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, in addition to any other penalties imposed herein, the defaulting state may 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 suspension. 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 and the majority and minority leaders of the defaulting state's legislature and the state council of such termination. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a re-enactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

C. 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 and 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 such litigation, including reasonable attorney fees.

D. 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 wound-up and any surplus funds shall be distributed in accordance with the bylaws.

Article XIII - 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 constructed to effectuate its purposes.

Article XIV - 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 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. All agreements between the interstate commission and the compacting states are binding in accordance with their terms. 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 such meaning or interpretation. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Article XV - Repeal

Sections 31-5-1 through 31-5-3 NMSA 1978 (being Laws 1937, Chapter 10, Sections 1 and 3 and Laws 1959, Chapter 34, Section 1) are repealed.

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HOUSE BILL 669

# CHAPTER 323

**CHAPTER 323, LAWS 2001**

AN ACT

RELATING TO HAZARDOUS MATERIALS; AMENDING THE HAZARDOUS WASTE ACT TO PROVIDE FOR THE REGULATION OF THE MANAGEMENT OF USED OIL.

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

## Section 1. Section 74-4-3 NMSA 1978 (being Laws 1977, Chapter 313, Section 3, as amended) is amended to read:

"74-4-3. DEFINITIONS.--As used in the Hazardous Waste Act:

A. "board" means the environmental improvement board;

B. "director" or "secretary" means the secretary of environment;

C. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

D. "division" or "department" means the department of environment;

E. "federal agency" means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government printing office;

F. "generator" means any person producing hazardous waste;

G. "hazardous agricultural waste" means hazardous waste generated as part of his licensed activity by any person licensed pursuant to the Pesticide Control Act or any hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;

H. "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

I. "hazardous waste" means any solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste;

J. "manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during transportation from point of generation to point of disposal, treatment or storage;

K. "person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

L. "regulated substance" means:

(1) any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; and

(2) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

M. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923);

N. "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

O. "tank installer" means any individual who installs or repairs an underground storage tank;

P. "transporter" means a person engaged in the movement of hazardous waste, not including movement at the site of generation, disposal, treatment or storage;

Q. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to

change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

R. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines that are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor; or

(9) pipes connected to any tank that is described in Paragraphs (1) through (8) of this subsection; and

S. "used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

## Section 2. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

"74-4-4. DUTIES AND POWERS OF THE BOARD.--

A. The board shall adopt regulations for the management of hazardous waste as may be necessary to protect public health and the environment, that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator's facility and on the production or energy recovery activity occurring at that facility;

(b) record-keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of the waste;

(f) implementation of programs to reduce the volume or quantity and toxicity of the hazardous waste generated;

(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste

generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

(h) the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued pursuant to the Hazardous Waste Act and that the generator of hazardous waste has a program in place to reduce the volume or quality and toxicity of waste to the degree determined by the generator to be economically practicable and that the proposed method of treatment, storage or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment;

(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

(a) record-keeping concerning the hazardous waste transported and its source and delivery points;

(b) transportation of the hazardous waste only if properly labeled;

(c) compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection; and

(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facilities that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended;

(4) establishing standards applicable to distributors or marketers of any fuel produced from hazardous waste, or any fuel that contains hazardous waste, for:

(a) furnishing the information stating the location and general description of the facility; and

(b) furnishing the information describing the production or energy recovery activity carried out at the facility;

(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including but not limited to requirements for:

(a) maintaining the records of all hazardous waste identified or listed under this subsection that is treated, stored or disposed of, as the case may be, and the manner in which such waste was treated, stored or disposed of;

(b) satisfactory reporting, monitoring, inspection and compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of all such waste and any liquid that is not a hazardous waste, except with respect to underground injection control into deep injection wells, received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Regulations adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this

subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

(6) requiring each person owning or operating or both an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste identified or listed under this subsection to have a permit issued pursuant to requirements established by the board;

(7) establishing procedures for the issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which regulations shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt regulations:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt regulations concerning underground storage tanks as may be necessary to protect public health and the environment that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, and that shall include:

(1) standards for the installation, operation and maintenance of underground storage tanks;

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity testing and monitoring of underground storage tanks;

(5) standards for the closure and dismantling of underground storage tanks;

(6) requirements for record-keeping; and

(7) requirements for the reporting, containment and remediation of all leaks from any underground storage tanks.

D. Notwithstanding the provisions of Subsection A of this section, the board may adopt regulations for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, if the board determines, after notice and public hearing, that such federal regulations are not sufficient to protect public health and the environment. As used in this subsection, "transformation" means an incinerator, pyrolysis, distillation, gasification or biological conversion other than composting.

E. The board shall adopt regulations concerning the management of used oil that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

F. In the event the board wishes to adopt regulations that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such regulations by reference to the federal regulations without setting forth the provisions of the federal regulations."

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HOUSE BILL 701

# CHAPTER 324

**CHAPTER 324, LAWS 2001**

AN ACT

RELATING TO MEDICAID; PROVIDING THAT APPROPRIATIONS FOR MEDICAID PAYMENTS MAY BE EXPENDED FOR OBLIGATIONS FOR PRIOR FISCAL YEARS.

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

## Section 1. Section 6-5-10 NMSA 1978 (being Laws 1994, Chapter 11, Section 1) is amended to read:

"6-5-10. STATE AGENCY REVERSIONS--DIRECTOR POWERS--COMPLIANCE WITH FEDERAL RULES AND REGULATIONS.--

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, as adjusted, shall revert to the general fund within ten days of release of the audit report for that fiscal year.

B. The director of the financial control division of the department of finance and administration may modify a reversion required pursuant to Subsection A of this section if the reversion would violate federal law, rules or regulations pertaining to supplanting of state funds with federal funds or other applicable federal provisions.

C. Appropriations to the human services department for medicaid payments may be expended by the department for medicaid obligations for prior fiscal years."

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HOUSE BILL 868, AS AMENDED

# CHAPTER 325

**CHAPTER 325, LAWS 2001**

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING THAT THE PROVISIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT APPLY TO CERTAIN ABOVE GROUND STORAGE TANKS; CLARIFYING THE REGULATORY AUTHORITY OVER CERTAIN FLAMMABLE LIQUIDS.

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

## Section 1. Section 59A-52-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 962) is amended to read:

"59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE STANDARDS--SAVINGS CLAUSE--DEFINITION.--

A. The commission shall adopt rules for the safe vehicular transportation, storage, handling and use of flammable and combustible liquids; provided that the commission shall not adopt any rule conflicting with the jurisdiction of the department of environment over the regulation of storage tanks pursuant to the Hazardous Waste Act or the Ground Water Protection Act.

B. The rules shall be in keeping with the latest generally recognized safety standards for flammable and combustible liquids. Rules in substantial conformity with the published standards of the national fire protection association for vehicular transportation, storage, handling and use of flammable and combustible liquids shall be deemed to be in substantial conformity with the generally accepted and recognized standards of safety concerning the same subject matter.

C. The rules shall include reasonable provisions under which facilities in service prior to the effective date of the rules and not in strict conformity therewith may be continued in service. Nonconforming facilities in service prior to the adoption of the rules that are found by the state fire marshal to constitute a distinct hazard to life or property may not be excepted from the rules or permitted to continue in service. For guidance in enforcement, the rules may delineate those types of nonconformities that should be considered distinctly hazardous and those nonconformities that should be evaluated in the light of local conditions. If the need for compliance with any rule is conditioned on local factors, the rules shall provide that reasonable notice be given to the proprietor of the facility affected of intention to evaluate the need for compliance and of the time and place at which he may appear and offer evidence thereon.

D. As used in Chapter 59A, Article 52 NMSA 1978, the term "flammable liquid" shall mean any liquid having a flash point below one hundred degrees Fahrenheit, and "combustible liquid" shall mean any liquid having a flash point at or above one hundred degrees Fahrenheit and below two hundred degrees Fahrenheit."

## Section 2. Section 74-4-3 NMSA 1978 (being Laws 1977, Chapter 313, Section 3, as amended) is amended to read:

"74-4-3. DEFINITIONS.--As used in the Hazardous Waste Act:

A. "above ground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. "Above ground storage tank" does not include any:

(1) farm, ranch or residential tank used for storing motor fuel or heating oil for noncommercial purposes;

(2) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or the oil field service industry operations;

(7) tank associated with an emergency generator system;

(8) pipes connected to any tank that is described in Paragraphs (1) through (8) of this subsection; or

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business;

B. "board" means the environmental improvement board;

C. "corrective action" means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. "director" or "secretary" means the secretary of environment;

E. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

F. "division" or "department" means the department of environment;

G. "federal agency" means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government printing office;

H. "generator" means any person producing hazardous waste;

I. "hazardous agricultural waste" means hazardous waste generated as part of his licensed activity by any person licensed pursuant to the Pesticide Control Act or any hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;

J. "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

K. "hazardous waste" means any solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste;

L. "manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during transportation from point of generation to point of disposal, treatment or storage;

M. "person" means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

N. "regulated substance" means:

(1) any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; and

(2) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

O. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923);

P. "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

Q. "storage tank" means an above ground storage tank or an underground storage tank;

R. "tank installer" means any individual who installs or repairs a storage tank;

S. "transporter" means a person engaged in the movement of hazardous waste, not including movement at the site of generation, disposal, treatment or storage;

T. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous; and

U. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. "Underground storage tank" does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines that are regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank associated with an emergency generator system;

(10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection."

## Section 3. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

"74-4-4. DUTIES AND POWERS OF THE BOARD.--

A. The board shall adopt rules for the management of hazardous waste as may be necessary to protect public health and the environment, that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous

waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator's facility and on the production or energy recovery activity occurring at that facility;

(b) record-keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of the waste;

(f) implementation of programs to reduce the volume or quantity and toxicity of the hazardous waste generated;

(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

(h) the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued pursuant to the Hazardous Waste Act and that the generator of hazardous waste has a program in place to reduce the volume or quality and toxicity of waste to the degree determined by the generator to be economically practicable and that the proposed method of treatment, storage or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment;

(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

(a) record-keeping concerning the hazardous waste transported and its source and delivery points;

(b) transportation of the hazardous waste only if properly labeled;

(c) compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection; and

(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facilities that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended;

(4) establishing standards applicable to distributors or marketers of any fuel produced from hazardous waste, or any fuel that contains hazardous waste, for:

(a) furnishing the information stating the location and general description of the facility; and

(b) furnishing the information describing the production or energy recovery activity carried out at the facility;

(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including but not limited to requirements for:

(a) maintaining the records of all hazardous waste identified or listed under this subsection that is treated, stored or disposed of, as the case may be, and the manner in which such waste was treated, stored or disposed of;

(b) satisfactory reporting, monitoring, inspection and compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of all such waste and any liquid that is not a hazardous waste, except with respect to underground injection control into deep injection wells, received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Rules adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

(6) requiring each person owning or operating or both an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste identified or listed under this subsection to have a permit issued pursuant to requirements established by the board;

(7) establishing procedures for the issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which rules shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt rules concerning storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended. Rules adopted pursuant to this subsection shall include:

(1) standards for the installation, operation and maintenance of storage tanks;

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity testing and monitoring of storage tanks;

(5) standards for the closure and dismantling of storage tanks;

(6) requirements for record-keeping; and

(7) requirements for the reporting, containment and remediation of all leaks from any storage tanks.

D. Notwithstanding the provisions of Subsection A of this section, the board may adopt rules for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, if the board determines, after notice and public hearing, that such federal regulations are not sufficient to protect public health and the environment. As used in this subsection, "transformation" means an incinerator, pyrolysis, distillation, gasification or biological conversion other than composting.

E. In the event the board wishes to adopt rules that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such rules by reference to the federal regulations without setting forth the provisions of the federal regulations."

## Section 4. Section 74-4-4.3 NMSA 1978 (being Laws 1981 (S.S.), Chapter 8, Section 7, as amended) is amended to read:

"74-4-4.3. ENTRY--AVAILABILITY OF RECORDS.--

A. For purposes of developing or assisting in the development of any rules, conducting any study, taking any corrective action or enforcing the provisions of the Hazardous Waste Act, upon request of the secretary or his authorized representative:

(1) any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such hazardous wastes and permit the secretary or his authorized representatives:

(a) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are or have been generated, stored, treated, disposed of or transported from or where a storage tank is located; and

(b) to inspect and obtain samples from any person of any hazardous wastes and samples of any containers or labeling for the wastes; and

(2) any person who owns or operates a storage tank, or any tank subject to study under Section 9009 of the Resource Conservation and Recovery Act of 1976 that is used for storing regulated substances, shall furnish information relating to such tanks, including their associated equipment and their contents, conduct monitoring or testing, permit the secretary or his authorized representative at all reasonable times to have access to and to copy all records relating to such tanks and permit the secretary or his authorized representative to have access for corrective action. For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing the provisions of the Hazardous Waste Act, the secretary or his authorized representative is authorized to:

(a) enter at reasonable times any establishment or other place where a storage tank is located;

(b) inspect or obtain samples from any person of any regulated substance in such tank;

(c) conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water or ground water; and

(d) take corrective action.

B. Any person owning property to which access is necessary in order to investigate or clean up a facility where hazardous waste is generated, stored, treated or disposed of, or where storage tanks are located, shall:

(1) permit the secretary or his authorized representative to obtain samples of soil or ground water, or both, at reasonable times; and

(2) provide access to such property for structures or equipment necessary to monitoring or cleanup of hazardous wastes or leaking from storage tanks; provided that:

(a) such structures or equipment do not unreasonably interfere with the owner's use of the property; or

(b) the owner is adequately compensated for activities that unreasonably interfere with his use or enjoyment of such property.

C. Each inspection shall be commenced and completed with reasonable promptness. If the secretary or his representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

D. Any records, reports or information obtained by the department under this section shall be available to the public, except that upon a showing satisfactory to the department that records, reports or information, or a particular part thereof, to which the secretary or his authorized representatives have access under this section, if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code, such information or particular portion thereof shall be considered confidential, except that such record, report, document or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the Resource Conservation and Recovery Act of 1976, or when relevant in any proceedings under the Hazardous Waste Act.

E. Any person not subject to the provisions of Section 1905 of Title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars ($5,000) or to imprisonment not to exceed one year or both.

F. In submitting data under the Hazardous Waste Act, a person required to provide such data may:

(1) designate the data the person believes is entitled to protection under this subsection; and

(2) submit such designated data separately from other data submitted under the Hazardous Waste Act. A designation under this paragraph shall be made in writing and in such manner as the secretary may prescribe."

## Section 5. Section 74-4-4.4 NMSA 1978 (being Laws 1987, Chapter 179, Section 6, as amended) is amended to read:

"74-4-4.4. STORAGE TANKS--REGISTRATION--INSTALLER CERTIFICATION--FEES.--

A. By rule, the board shall require an owner of a storage tank to register the tank with the department and impose reasonable conditions for registration, including the submission of plans, specifications and other relevant information relating to the tank. For purposes of this subsection only, the term "owner" means: in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns the storage tank; and in the case of a storage tank in use before November 8, 1984 but no longer in use on that date, any person who owned the tank immediately before the discontinuation of its use. The owner of a tank taken out of operation on or before January 1, 1974 shall not be required to notify under this subsection. The owner of a tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984 shall not be required to notify under this subsection. Evidence of current registration pursuant to this subsection shall be available for inspection at the site of the storage tank.

B. By rule, the board shall require any person who, beginning thirty days after the United States environmental protection agency administrator prescribes the form of notice pursuant to Section 9002(a)(5) of the Resource Conservation and Recovery Act of 1976 and for eighteen months thereafter, deposits a regulated substance into a storage tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By rule, the board may require tank installers to obtain certification from the department and develop procedures for certification that will ensure that storage tanks are installed and repaired in a manner that will not encourage or facilitate leaking.

If the board requires certification, it is unlawful for a person to install or repair a storage tank unless he is a certified tank installer. In accordance with the Uniform Licensing Act, the department may suspend or revoke the certification for a tank installer upon grounds that he:

(1) exercised fraud, misrepresentation or deception in obtaining his certification;

(2) exhibited gross incompetence in the installation or repair of a storage tank; or

(3) was derelict in the performance of a duty as a certified tank installer.

D. By rule, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

(1) reviewing and acting upon applications for the registration of storage tanks;

(2) reviewing and acting upon applications for the certification of tank installers; and

(3) implementing and enforcing any provision of the Hazardous Waste Act applicable to storage tanks and tank installers, including standards for the installation, operation and maintenance of storage tanks and for the certification of tank installers."

## Section 6. Section 74-4-4.8 NMSA 1978 (being Laws 1993, Chapter 298, Section 2) is amended to read:

"74-4-4.8. STORAGE TANK FUND CREATED--APPROPRIATION.--

A. There is created in the state treasury the

"storage tank fund", which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the storage tank program.

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state treasurer for credit to the storage tank fund.

C. Balances remaining in the storage tank fund at the end of a fiscal year shall not revert to the general fund."

## Section 7. Section 74-4-10 NMSA 1978 (being Laws 1981 (1st S.S.), Chapter 8, Section 9, as amended) is amended to read:

"74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL PENALTIES.--

A. Whenever on the basis of any information the secretary determines that any person has violated, is violating or threatens to violate any requirement of the Hazardous Waste Act, any rule adopted and promulgated pursuant to that act or any condition of a permit issued pursuant to that act, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any order issued pursuant to Subsection A of this section may include a suspension or revocation of any permit issued by the secretary. Any penalty assessed in the order shall not exceed ten thousand dollars ($10,000) per day of noncompliance for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements. For violations related to storage tanks, "per violation" means per tank.

C. If a violator fails to take corrective actions within the time specified in a compliance order, the secretary may:

(1) assess a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of continued noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to the Hazardous Waste Act.

D. Whenever on the basis of any information the secretary determines that the immediate termination of a research, development and demonstration permit is necessary to protect human health or the environment, the secretary may order an immediate termination of all research, development and demonstration operations permitted pursuant to the Hazardous Waste Act at the facility.

E. Whenever on the basis of any information the secretary determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 74-4-9 NMSA 1978, the secretary may issue an order requiring corrective action, including corrective action beyond a facility's boundaries or other response measure as he deems necessary to protect human health or the environment or may commence an action in district court in the district in which

the facility is located for appropriate relief, including a temporary or permanent injunction.

F. Any order issued under Subsection E of this section may include a suspension or revocation of authorization to operate under Section 74-4-9 NMSA 1978 and shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. If any person named in an order fails to comply with the order, the secretary may assess, and the person shall be liable to the state for, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for each day of noncompliance with the order.

G. Any order issued pursuant to this section, any other enforcement proceeding initiated pursuant to this section or any claim for personal or property injury arising from any conduct for which evidence of financial responsibility must be provided may be issued to or taken against the insurer or guarantor of an owner or operator of a treatment, storage or disposal facility or storage tank if:

(1) the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal Bankruptcy Code; or

(2) jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment.

H. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. Upon such request, the secretary shall promptly conduct 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 his recommendation based on the record to the secretary, who shall make the final decision.

I. In connection with any proceeding under this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.

J. Penalties collected pursuant to an administrative order shall be deposited in the state treasury to be credited to the hazardous waste emergency fund."

## Section 8. Section 74-4-11 NMSA 1978 (being Laws 1977, Chapter 313, Section 11, as amended) is amended to read:

"74-4-11. PENALTY--CRIMINAL.--

A. No person:

(1) shall knowingly transport or cause to be transported any hazardous waste identified or listed pursuant to the Hazardous Waste Act to a facility that does not have a permit under that act or the federal Resource Conservation and Recovery Act;

(2) shall knowingly treat, store or dispose of any hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without having obtained a hazardous waste permit pursuant to that act or the federal Resource Conservation and Recovery Act;

(b) in knowing violation of any material condition or requirement of a hazardous waste permit; or

(c) in knowing violation of any material condition or requirement of any applicable interim status rules or standards;

(3) shall knowingly omit material information or make any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the Hazardous Waste Act;

(4) who knowingly generates, stores, treats, transports, disposes of, exports or otherwise handles any hazardous waste shall knowingly destroy, alter, conceal or fail to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with rules adopted and promulgated pursuant to the Hazardous Waste Act;

(5) shall knowingly transport without a manifest or cause to be transported without a manifest any hazardous waste required by rules adopted and promulgated pursuant to the Hazardous Waste Act to be accompanied by a manifest; or

(6) shall knowingly export hazardous waste identified or listed pursuant to the Hazardous Waste Act:

(a) without the consent of the receiving country; or

(b) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, in a manner that is not in conformance with such agreement.

B. Any person who violates any of the provisions of Paragraphs (1) through (6) of Subsection A of this section is guilty of a fourth degree felony and upon conviction shall be punished by a fine of not more than ten thousand dollars ($10,000)

per violation per day or by imprisonment for a definite term of not more than eighteen months or both. For a second or subsequent violation of the provisions of Paragraphs (1) through (6) of Subsection A of this section, the person is guilty of a third degree felony and shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) per violation per day or by imprisonment for not more than three years or both.

C. Any person who knowingly violates any rule adopted and promulgated pursuant to Subsection C of Section 74-4-4 or 74-4-4.4 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000) per violation per day or by imprisonment for a definite term of one year or both. For violations related to storage tanks, "per violation" means per tank.

D. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of the violation that he creates a substantial danger of a substantial adverse environmental impact is guilty of a third degree felony if the violation causes a substantial adverse environmental impact.

E. As used in this section, a "substantial adverse environmental impact" exists when an act or omission of a person causes harm or damage:

(1) to human beings; or

(2) to flora, wildlife, fish or other aquatic life or water fowl; to the habitats of wildlife, fish, other aquatic life, water fowl or livestock; to agricultural crops; to any ground water or surface water; or to the lands or waters of this state where such harm or damage amounts to more than ten thousand dollars ($10,000).

F. Any person who knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and who knows at the time of the violation that he creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars ($100,000), or both. Any person, other than an individual, that knowingly transports, treats, stores, disposes of or exports any hazardous waste in violation of Subsection A of this section and knows at that time that it places an individual in imminent danger of death or serious bodily injury is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars ($250,000)."

## Section 9. Section 74-4-12 NMSA 1978 (being Laws 1977, Chapter 313, Section 12, as amended) is amended to read:

"74-4-12. PENALTY--CIVIL.--Any person who violates any provision of the Hazardous Waste Act, any rule made pursuant to that act or any compliance order

issued by the director pursuant to Section 74-4-10 NMSA 1978 may be assessed a civil penalty not to exceed ten thousand dollars ($10,000) for each day during any portion of which a violation occurs. For violations related to storage tanks, "per violation" means per tank."

## Section 10. Section 74-4-13 NMSA 1978 (being Laws 1983, Chapter 302, Section 3, as amended) is amended to read:

"74-4-13. IMMINENT HAZARDS--AUTHORITY OF DIRECTOR--PENALTIES.--

A. Notwithstanding any other provision of the Hazardous Waste Act, whenever the secretary is in receipt of evidence that the past or current handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or the condition or maintenance of a storage tank may present an imminent and substantial endangerment to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or is contributing to such activity, to take such other action as may be necessary or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The secretary may also take other action, including but not limited to issuing such orders as may be necessary to protect health and the environment.

B. Any person who willfully violates or fails or refuses to comply with any order of the secretary under Subsection A of this section may in an action brought in the appropriate district court to enforce such order be fined not more than five thousand dollars ($5,000) for each day in which the violation occurs or the failure to comply continues.

C. Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the secretary shall provide immediate notice to the appropriate local government agencies. In addition, the director shall require notice of such endangerment to be promptly posted at the site where the waste is located."

## Section 11. Section 74-4A-11 NMSA 1978 (being Laws 1979, Chapter 380, Section 10, as amended) is amended to read:

"74-4A-11. COMMITTEE DUTIES.--At the beginning of each interim, the committee shall hold one organizational meeting to develop a work plan and budget for the period prior to January 1 preceding the next regular session of the legislature. 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 committee shall examine all matters relevant to the purposes of the Radioactive and Hazardous Materials Act and shall submit recommended legislation, together with a report on the activities and expenditures of the committee, to the legislature. In making recommendations, the committee shall review and monitor the following areas:

A. the generation, treatment, storage, transportation or disposal of radioactive or hazardous materials and wastes;

B. the control and handling of mixed waste transported to the waste isolation pilot plant site for disposal;

C. the progress and effectiveness of remediation actions at sites contaminated by radioactive or hazardous materials;

D. the compliance with the environmental protection agency, the council on environmental quality and the office of surface mining regulations and standards pursuant to federal environmental statutes;

E. the provision of activities and investigations and the dissemination of information by the environmental evaluation group; however, nothing in the Radioactive and Hazardous Materials Act shall be construed to limit the independent technical review and evaluation by that group of the impact on health and safety of the waste isolation pilot plant;

F. the disposition of uranium mine and mill tailings;

G. the means through which disposition of low-level wastes may be accomplished, such as participation in a regional compact with other states;

H. the state emergency response capability;

I. the Ground Water Protection Act, in cooperation with other legislative committees, regarding the use or management of storage tanks and releases;

J. the Hazardous Chemicals Information Act, in cooperation with other legislative committees; and

K. such matters assigned by the legislature and consultations and negotiations with the federal government and other state governments or their representatives and agreements and revisions thereto."

## Section 12. Section 74-6B-2 NMSA 1978 (being Laws 1990, Chapter 124, Section 2, as amended) is amended to read:

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

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

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

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

## Section 13. Section 74-6B-3 NMSA 1978 (being Laws 1990, Chapter 124, Section 3, as amended) is amended to read:

"74-6B-3. DEFINITIONS.--As used in the Ground Water Protection Act:

A. "above ground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank used for storing motor fuel or heating oil for noncommercial purposes;

(2) pipeline facility, including gathering lines that are regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or the oil field service industry operations;

(7) tank associated with an emergency generator system;

(8) pipes connected to any tank that is described in Paragraphs (1) through (8) of this subsection; or

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business;

B. "board" means the environmental improvement board;

C. "corrective action" means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. "department" means the department of environment;

E. "operator" means any person in control of or having responsibility for the daily operation of a storage tank;

F. "owner" means:

(1) in the case of a storage tank in use or brought into use on or after November 8, 1984, a person who owns the storage tank; and

(2) in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, a person who owned the tank immediately before the discontinuation of its use;

G. "person" means an individual or any legal entity, including all governmental entities;

H. "regulated substance" means:

(1) a substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including a substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; and

(2) petroleum, including crude oil or a fraction thereof, that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

I. "release" means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

J. "secretary" means the secretary of environment;

K. "site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks;

L. "storage tank" means an above ground storage tank or an underground storage tank; and

M. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank associated with an emergency generator system;

(10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection."

## Section 14. Section 74-6B-4 NMSA 1978 (being Laws 1990, Chapter 124, Section 4, as amended) is amended to read:

"74-6B-4. STORAGE TANK COMMITTEE--CREATION--TERMS-- POWERS AND DUTIES.--

A. An advisory committee to be known as the "storage tank committee" is created. It shall consist of seven members:

(1) the secretary or his designee; and

(2) six members to be appointed by and to serve at the pleasure of the governor and to be chosen from the following groups, with no more than one member from each group:

(a) fire protection districts;

(b) elected local government officials;

(c) wholesalers of motor fuels;

(d) independent retailers of motor fuels;

(e) individuals knowledgeable about corrective actions in connection with leaking storage tanks; and

(f) private citizens or interest groups.

B. Except for the initial terms of the members, the term of the appointed members shall be three years. For the purpose of staggering subsequent appointments, the initial terms of the six appointed members shall be: two for one year; two for two years; and two for three years. Members shall serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the governor for the remainder of the unexpired term.

C. The committee may:

(1) recommend proposed rules to the board or the secretary;

(2) establish procedures, practices and policies governing the committee's activities;

(3) review corrective actions of the department and submit comments to the secretary; and

(4) review payments from the corrective action fund and submit its comments on the payments to the secretary, except payments made pursuant to Section 74-6B-13 NMSA 1978.

D. 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 storage tank fund."

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

"74-6B-6. CIVIL LIABILITY FOR DAMAGE TO PROPERTY FROM LEAKING STORAGE TANK.--Nothing in the Ground Water Protection Act prohibits any existing or future claim for relief a person may have as a result of damages sustained because of a release from a storage tank."

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

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

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

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

C. The department shall make expenditures from the corrective action fund in accordance with rules adopted by the board or the secretary for corrective action

taken by the state, owners or operators at sites contaminated by storage tanks; provided that:

(1) payments may be made only for corrective action taken by persons qualified by the department to perform the work pursuant to rules adopted by the board;

(2) no expenditures from the fund shall be paid to or on behalf of an owner or operator for corrective action, other than a minimum site assessment or sampling, if the corrective action is conducted by a person that is a subsidiary, parent or otherwise affiliated with the owner or operator;

(3) expenditures shall be made by the department to perform corrective action, to pay for the costs of minimum site assessment in excess of ten thousand dollars ($10,000) or to make payments to or on behalf of an owner or operator in accordance with Section 74-6B-13 NMSA 1978;

(4) any corrective action taken shall be taken at sites in the order of priority appearing on the priority lists, unless an emergency threat to public health, safety and welfare or to the environment exists;

(5) when available revenues are limited and the fund can no longer be approved as a financial responsibility mechanism, priorities for expenditures from the fund shall also be based on financial need as determined by rules adopted by the board; and

(6) corrective action involving remediation shall follow a competitive bidding procedure based on technical merit and cost effectiveness.

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

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

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

G. The board, by rule, may provide for a specific amount to be reserved in the fund for emergencies. The amount reserved may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or to the environment exists.

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

## Section 17. Section 74-6B-8 NMSA 1978 (being Laws 1990, Chapter 124, Section 8, as amended) is amended to read:

"74-6B-8. LIABILITY--COST RECOVERY.--

A. An owner or operator of a storage tank from which a release has occurred shall be strictly liable for the owner's, operator's and department's cost of taking corrective action at the site.

B. An owner or operator otherwise liable under Subsection A of this section shall not be liable for expenditures from the state corrective action fund associated with corrective action at the site if he has proved to the department that he has complied with the following:

(1) the owner or operator:

(a) is in substantial compliance with all of the requirements and provisions of rules adopted by the board to fulfill the requirements of Paragraphs (1) through (7) of Subsection C of Section 74-4-4 NMSA 1978;

(b) has paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(c) has conducted a minimum site assessment in accordance with rules of the board and, if contamination is found, has taken action to prevent continuing contamination; and

(d) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring; and

(2) for sites where storage tanks were removed or properly abandoned prior to March 7, 1990, the owner or the operator:

(a) has paid all storage tank fees required by Section 74-4-4.4 NMSA 1978 and a two hundred dollar ($200) fee per site;

(b) has conducted a minimum site assessment in accordance with rules of the board; and

(c) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring.

C. In the event that the department determines that an owner or operator has not complied with the requirements of Subsection B of this section, the department may bring an action in district court against the owner or operator to recover expenditures from the corrective action fund incurred by the department in taking corrective action at the site. In addition, the department may bring an action in district court to recover any expenditures made of federal funds from the leaking underground storage tank trust fund in taking corrective action. These expenditures made from the corrective action fund and from federal funds include but are not limited to costs of investigating a release and undertaking corrective action, administrative costs and reasonable attorney fees. Expenditures recovered under this section, except for any recovered federal funds, shall be deposited into the corrective action fund.

D. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy and has a right of subrogation against any third party who caused or contributed to the release. The right of subrogation shall apply regardless of any defenses available to the owner or operator under Subsection B of this section. The right of subrogation shall apply to sites where corrective action is taken by owners or operators under Section 74-6B-13 NMSA 1978 as well as to sites where corrective action is taken by the state."

## Section 18. Section 74-6B-9 NMSA 1978 (being Laws 1990, Chapter 124, Section 9, as amended) is amended to read:

"74-6B-9. STORAGE TANK FEE--DEPOSIT IN STORAGE TANK FUND.--On July 1 of each year, there is due from and shall be paid by either the owner or the operator a fee of one hundred dollars ($100) for each storage tank owned or operated. The fees shall be paid to the department and deposited in the storage tank fund created in Section 74-4-4.8 NMSA 1978."

## Section 19. Section 74-6B-13 NMSA 1978 (being Laws 1992, Chapter 64, Section 10, as amended by Laws 1997, Chapter 104, Section 3 and also by Laws 1997, Chapter 222, Section 3) is amended to read:

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

A. Unless provided otherwise in this section, all costs in excess of ten thousand dollars ($10,000) that are necessary to perform a minimum site assessment in accordance with the rules of the board shall be paid from the corrective action fund.

B. Payment of the cost of corrective action, including the cost of a minimum site assessment, shall be made by the department following application and proper documentation of the costs and in accordance with rules adopted by the secretary establishing eligible and ineligible costs. Ineligible costs include attorney fees, repair or upgrade of tanks, loss of revenue and costs of monitoring a contractor.

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

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

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

F. Before any payment is made for a corrective action pursuant to this section to or on behalf of an owner or operator, payment shall first be made to reimburse the federal leaking underground storage tank trust fund for any costs incurred for that corrective action.

G. Counties and municipalities are exempt from the requirements to pay any portion of the initial ten thousand dollars ($10,000) of a minimum site assessment."

**Section 20. REPEAL.--Sections 74-6B-12 and 74-6B-13.1 NMSA 1978 (being Laws 1991, Chapter 260, Section 1 and Laws 1995, Chapter 6, Section 19, as amended) are repealed.**

**Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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SENATE BILL 333, AS AMENDED

# CHAPTER 326

**CHAPTER 326, LAWS 2001**

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENSURING MEDICAID ELIGIBILITY FOR ALL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES RECIPIENTS; ELIMINATING HOUSEHOLD GROUPS; ELIMINATING THE STATE HOUSING SUBSIDY;

MODIFYING THE DISREGARDS PERMITTED; AMENDING THE NEW MEXICO WORKS ACT.

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

## Section 1. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended) 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 seventeen years of age or younger or who is eighteen years of age and is enrolled in high school;

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; and

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."

## Section 2. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and also Laws 1998, Chapter 9, Section 4 as amended by Laws 1999, Chapter 71, Section 1 and by Laws 1999, Chapter 273, Section 2 and also by Laws 1999, Chapter 280, Section 1) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--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 having custody of or residing with a dependent child who is a benefit group member 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 participant 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 provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, 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. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep his school-age children in school, immunize his children or engage in other activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to undergo appropriate substance abuse treatment.

I. The participant and a representative of the department shall sign the participant's individual responsibility plan. The department shall not allow a participant to decline to participate in developing an individual responsibility plan. The department shall not waive the requirement that a participant develop an individual responsibility plan. The department shall emphasize the importance of the individual responsibility plan to the participant.

J. If a participant does not develop an individual responsibility plan, refuses to sign an individual responsibility plan or refuses to attend semiannual reviews of an individual responsibility plan, he shall be required to enter into a conciliation pursuant to Subsection C of

Section 27-2B-14 NMSA 1978. If the participant persists in noncompliance with the individual responsibility plan process after the conciliation, he shall be subject to sanctions pursuant to Section 27-2B-14 NMSA 1978.

K. The participant shall also sign a participation agreement that designates the number of hours that he must participate in work activities to meet participation standards.

L. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

M. The department shall meet semiannually with a participant to review and revise his individual responsibility plan.

N. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

## Section 3. Section 27-2B-6 NMSA 1978 (being Laws 1998, Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6) 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 or police reports 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; or

(4) whose application for supplemental security income is pending in the application or appeals process.

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-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended) 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) 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 5. Section 27-2B-8 NMSA 1978 (being Laws 1998, Chapter 8, Section 8 and Laws 1998, Chapter 9, Section 8) 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;

(6) the value of work-related equipment up to one thousand dollars ($1,000);

(7) in areas without public transportation, the value of one motor vehicle for each participant engaged in a work activity; and

(8) in areas with public transportation, the value of one motor vehicle."

## Section 6. Section 27-2B-11 NMSA 1978 (being Laws 1998, Chapter 8, Section 11 and Laws 1998, Chapter 9, Section 11) is amended to read:

"27-2B-11. 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, taking 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 such person shall be ineligible only for ten years;

(9) for five years following the date of release from any federal or state prison or county jail or following the date of completion of the terms of probation, a person convicted of a drug-related felony on or after

August 22, 1996; however, the cash assistance of the other members of his assistance group shall be reduced only by the amount to which he otherwise would be entitled;

(10) a person who is a fleeing felon or a probation and parole violator;

(11) a person concurrently receiving supplemental security income, tribal temporary assistance for needy families or bureau of Indian affairs general assistance; and

(12) 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. At the time of application, a participant shall state in writing whether he or another member of the benefit group has been convicted on or after August 22, 1996 of a drug-related felony.

C. A person convicted of a drug-related felony may be eligible to receive services if the department in consultation with the corrections department determines that services would enhance his rehabilitation and employment success.

D. 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."

## Section 7. Section 27-2B-14 NMSA 1978 (being Laws 1998, Chapter 8, Section 14 and Laws 1998, Chapter 9, Section 14) 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.

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 8. Section 27-2B-15 NMSA 1978 (being Laws 1998, Chapter 8, Section 15 and Laws 1998, Chapter 9, Section 15) is amended to read:

"27-2B-15. MEDICAID ELIGIBILITY.--

A. The following are eligible for medicaid:

(1) a participant who is in transition to self-sufficiency due to employment or child support;

(2) a pregnant woman who meets the income and resource requirements for New Mexico's aid to families with dependent children as they existed on July 16, 1996;

(3) a member of a benefit group who is eighteen years of age or younger if the benefit group's income is below one hundred eighty-five percent of the federal poverty guidelines;

(4) a pregnant woman whose income is below one hundred eighty-five percent of the federal poverty guidelines;

(5) participants receiving federal supplemental security income;

(6) an aged, blind or disabled person in an institution who meets all the supplemental security income standards except for income;

(7) a person who meets all standards for institutional care but is cared for at home and meets eligibility standards for medicaid;

(8) a qualified medicare beneficiary, qualified disabled working person or specified low-income medicare beneficiary; and

(9) a foster child in the custody of the state or of an Indian pueblo, tribe or nation who meets eligibility standards for medicare.

B. Effective October 1, 2001, for the medicaid

category designated "JUL medicaid" by the department, the

income eligibility criteria shall be the same as the income

eligibility criteria set forth in the New Mexico Works Act."

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SENATE BILL 392, AS AMENDED

# CHAPTER 327

**CHAPTER 327, LAWS 2001**

AN ACT

RELATING TO PUBLIC HEALTH; ALLOWING LICENSED HEALTH CARE PROVIDERS TO PROVIDE PRENATAL, DELIVERY AND POSTNATAL CARE TO A MINOR; PROVIDING A MINOR WITH THE CAPACITY TO CONSENT.

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

## Section 1. PREGNANCY--PRENATAL, DELIVERY AND POSTNATAL TREATMENT TO A FEMALE MINOR--CAPACITY TO CONSENT.--

A health care provider shall have the authority, within the limits of his license, to provide prenatal, delivery and postnatal care to a female minor. A female minor shall have the capacity to consent to prenatal, delivery and postnatal care by a licensed health care provider.

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SENATE BILL 396

# CHAPTER 328

**CHAPTER 328, LAWS 2001**

AN ACT

RELATING TO TAXATION; AUTHORIZING CERTAIN COUNTIES TO IMPOSE A COUNTY EDUCATION GROSS RECEIPTS TAX FOR CONSTRUCTION AND RENOVATION OF PUBLIC SCHOOLS AND OTHER EDUCATIONAL FACILITIES; AUTHORIZING THE ISSUANCE OF COUNTY EDUCATION GROSS RECEIPTS TAX REVENUE BONDS; 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 the County Local Option Gross Receipts Taxes Act, Section 7-20E-20 NMSA 1978, is enacted to read:

"7-20E-20. COUNTY EDUCATION GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--ELECTION--USE OF REVENUE.--

A. Upon submission of a resolution to the governing body pursuant to Subsection C of this section, the governing body of a county shall enact an ordinance imposing an excise tax at a rate of one-half of one percent on any person engaging in business in the county for the privilege of engaging in business in the county. The tax imposed pursuant to this subsection may be referred to as the "county education gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing a county education gross receipts tax pursuant to Subsection A of this section shall dedicate the revenue only for the payment of county education gross receipts tax bonds for public school capital projects and off-campus instruction program capital projects, if any, in the county. The tax shall be imposed for the period necessary for payment of the principal and interest on the county education gross receipts tax revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. Upon a finding of need, the boards of every school district in a county that is either located wholly within the exterior boundaries of the county or that has a student membership no more than ten percent of whom reside outside the exterior boundaries of the county may enter into a joint agreement to submit a resolution to the governing body of the county requiring the governing body to impose a county education gross receipts tax and to issue county education gross receipts tax revenue bonds for funding public school capital projects and, if applicable, off-campus instruction program capital projects. The boards must agree to provide at least one-fourth of the bond proceeds for capital projects for an off-campus instruction program, if one of the school districts in the county has established such a program. The remaining revenues shall be distributed proportionately to each school district for public school capital outlay projects based on the ratio that the population of each school district, according to the 2000 federal decennial census, bears to the population of all of the school districts in the county who are parties to the agreement.

D. An ordinance imposing the county education gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within sixty 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 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 education 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 education gross receipts tax fails, a resolution from the boards of school districts in the county may not again be proposed to the governing body requesting imposition of the tax for a period of one year from the date of the election.

E. The proceeds from county education gross receipts tax revenue bonds shall be administered by the governing body and disbursed by the county treasurer to the respective school districts in the amounts and for the purposes authorized in this section and as set out in the resolution submitted by the boards to the governing body.

F. As used in this section:

(1) "board" means the governing body of a school district;

(2) "capital projects" means the designing, constructing and equipping of new buildings; the remodeling, renovating or making additions to and equipping existing buildings; or the improving or equipping of the grounds surrounding buildings;

(3) "county" means:

(a) a class B county with a population of less than twenty-five thousand according to the 1990 federal decennial census and a net taxable value for property tax purposes for the 1999 property tax year of more than five hundred million dollars ($500,000,000);

(b) a county that has imposed a local hospital gross receipts tax pursuant to the Local Hospital Gross Receipts Tax Act, which tax will expire on December 31, 2001; and

(c) a county in which the question of imposing school district general obligation debt for public school capital outlay projects has been submitted to the voters and has failed to pass at least twice in at least two school districts in the county in the six-year period immediately prior to imposition of a county education gross receipts tax; and

(4) "off-campus instruction program" means a program established by a school district pursuant to the Off-Campus Instruction Act."

## Section 2. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through L 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 receipt 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 may not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of 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 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. 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.

N. 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.

O. 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.

P. 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; and

(8) "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.

Q. 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 3. A new section of the Public School Capital Outlay Act is enacted to read:

"EFFECT UPON SCHOOL DISTRICT INDEBTEDNESS REQUIREMENT.--To meet the requirement in the Public School Capital Outlay Act that a school district be indebted at a certain level, the amount of county education gross receipts tax revenue bond debt incurred by a county for public school capital projects of the school district shall be deemed to be indebtedness."

## Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

_____

SENATE BILL 516, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 329

**CHAPTER 329, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE FOR ALLOCATION OF CERTAIN INCOME OF NONRESIDENTS EARNED IN NEW MEXICO WITHIN TWENTY MILES OF AN INTERNATIONAL BORDER.

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

## Section 1. Section 7-2-11 NMSA 1978 (being Laws 1965, Chapter 202, Section 9, as amended) is amended to read:

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

A. Net income of any individual having income that is taxable both within and without this state shall be

apportioned and allocated as follows:

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

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act, but if the income is not allocated or apportioned by that act, then it may be allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

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

(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided:

(a) if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year, the compensation may be allocated to the taxpayer's state of residence; and

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, is not receiving development training funds under Section

21-19-7 NMSA 1978 and that meets the qualifications of one of Items 1) through 4) of this subparagraph, the compensation may be allocated to the taxpayer's state of residence: 1) the business had no payroll in New Mexico during the previous calendar year; 2) the business had a payroll in New Mexico for less than the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding the highest monthly payroll for such residents in the previous calendar year; 3) the business had a payroll in New Mexico for the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent both the payroll for all employees in January 2001 and the payroll for New Mexico residents twelve months prior to the commencement of the new calendar year; or 4) the business had a payroll in New Mexico for the entire previous calendar year, but had no payroll in New Mexico within one year prior to January 1, 2001, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent the payroll for such residents twelve months earlier;

(5) gambling winnings of a nonresident shall be allocated to this state if the gambling winnings arose from a source within this state; and

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

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

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

**Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2002.**

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SENATE BILL 541, AS AMENDED

# CHAPTER 330

**CHAPTER 330, LAWS 2001**

AN ACT

RELATING TO SUBSTANCE ABUSE; PROVIDING FOR TREATMENT, PREVENTION AND INTERVENTION EXPANSION; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

## Section 1. TEMPORARY PROVISION--SUBSTANCE ABUSE TREATMENT EXPANSION.--

A. The department of health shall:

(1) develop and implement regionally coordinated addiction intervention services for addicted persons who voluntarily seek treatment and their families; coordinate the level of care to meet their treatment needs and follow addicted persons coming out of the justice system or who are referred by the justice system as an alternative to criminal penalties;

(2) increase substance abuse treatment capacity and assist regions in developing treatment infrastructure to provide regional and local access to a full range of services to make effective treatment available on request; provided that this shall be accomplished by a phased-in plan over a three-year period, with phase one implementation in fiscal year 2002, to address regional disparities in service availability and increase client capacity in proportion to funding appropriations each year;

(3) expand capacity of regionally coordinated comprehensive integrated treatment services that represent effective, science-based, state-of-the-art practices in substance abuse treatment and that provide for the full continuum of graduated treatment options and levels of care as defined by the American society of addiction medicine. Clients shall be clinically assessed through standardized assessments to determine the most appropriate level of care for their level of acuity. Services are to include both clinical and pharmacological treatment interventions and provide for regionally based treatment continua;

(4) provide substance abuse treatment services to adults requesting treatment and their families, within appropriated funding limitations. The department shall adopt financial eligibility criteria and a sliding fee schedule for those who require treatment services based on clinical assessment and who are financially in need, are uninsured for substance abuse treatment services or who do not meet priority poverty levels. The department shall assist persons eligible for medicaid or other insurance coverage of substance abuse treatment services in accessing provider benefits;

(5) in collaboration with the corrections department, provide substance abuse treatment and community reintegration programs and services to persons under probation and parole supervision through the regionally coordinated treatment system and community corrections as appropriate to client needs and service locality, within appropriated funding limitations, to establish referral protocols and enhance community-based systems for this population through service system integration between the corrections department and the department of health;

(6) develop and implement harm reduction initiatives that reduce death and mortality from drug addiction and improve the quality of life of addicted persons, including opiate maintenance therapy in jails and prisons and expansion of methadone maintenance and other pharmacological therapies, to provide greater statewide access to persons addicted to drugs;

(7) in partnership with foundations, educational institutions and the private sector, develop and implement research programs that develop science-based models of treatment and harm reduction services that will advance the practice of addiction medicine and practice;

(8) expand and enhance the quality of services and the capacity of the regionally coordinated addiction treatment provider system through the development of an addiction medicine consultation network incorporating use of telemedicine to provide access to addiction psychiatry specialists by rural providers serving persons with dually diagnosed addiction and mental illness disorders;

(9) with its regionally coordinated substance abuse treatment system, provide services that meet the highest standards of addiction medicine practice and provide training to develop that capacity in the provider system;

(10) conduct a statewide, regionally based needs assessment in cooperation with the behavioral health advisory board located in each region, community corrections advisory boards and committees and the public and citizens of each region during fiscal year 2002 to identify service gaps and capacity needs in each region of the state; and develop a plan of phased-in funding of the service delivery system to achieve the goal of substance abuse treatment on request with a full range of graduated treatment options in each of the state's five regions. The plan shall address the necessary percentage of funding required each year, beginning with fiscal year

2003, to achieve appropriate infrastructure and service capacity expansion to meet the needs for the state; and

(11) expand statewide science-based substance abuse prevention programs for youth.

B. The department of health and its regional provider system shall coordinate with other state and local service agencies, such as the human services department, to seek temporary assistance for needy families and medicaid as appropriate to client need, pursuant to the New Mexico Works Act.

C. The department of health, in collaboration with the corrections department, shall establish referral protocols for regionally coordinated treatment services for persons leaving corrections programs and requiring continuing substance abuse treatment.

D. For the purpose of providing substance abuse treatment and community reintegration programs, minimizing repeat offenses and prison time served, the corrections department, in consultation with the department of health, shall implement a residential evaluation and treatment center to be considered as an alternative correctional sanction and sentencing alternatives at an existing corrections department prison facility for selected nonviolent prisoners and parole violators. The corrections department shall incorporate substance abuse treatment with community reintegration programs as an alternative to prison for selected offenders with pretrial, probation, parole or technical parole violation status. The purposes of the programs are to identify and effectively trace substance abusers in the criminal justice system and to provide effective community reintegration programs designed to minimize the potential for repeat offenses and prison time served.

E. The corrections department, in consultation with the department of health, shall provide residential treatment programs for selected females released and paroled from prison who are diagnosed with a mental illness and substance abuse problems to prepare them for reintegration into community living.

F. The corrections department, in consultation with the department of health, shall provide for a residential treatment program for selected females released or paroled from prison and their minor children under the age of eleven years, to provide a continuum of addiction services care and effective family functional development for reintegration into community living.

## Section 2. APPROPRIATIONS.--

A. Five million dollars ($5,000,000) is appropriated from the general fund to the department of health behavioral health treatment program for expenditure in fiscal years 2001 and 2002 to expand and implement regionally based substance abuse intervention, treatment and harm reduction initiatives. The department of health may

use the appropriation to match any federal funding available for this purpose. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

B. One million dollars ($1,000,000) is appropriated from the general fund to the department of health for expenditure in fiscal years 2001 and 2002 to provide coordinated substance abuse and treatment services and community reintegration programs, collaboratively planned with the corrections department, for persons under supervision and parole of the corrections department. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

C. One million eight hundred thousand dollars ($1,800,000) is appropriated from the general fund to the department of health for expenditure in fiscal years 2001 and 2002 to expand statewide science-based substance abuse prevention programs for youth. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

D. Two million dollars ($2,000,000) is appropriated from the general fund to the corrections department for expenditure in fiscal years 2001 and 2002 for substance abuse treatment to include the following, and any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund:

(1) five hundred thousand dollars ($500,000) to implement a residential evaluation and treatment center at an existing corrections department prison as an alternative correctional sanction sentencing alternative for selected nonviolent prisoners and parole violators;

(2) five hundred thousand dollars ($500,000) to provide residential treatment for females released from prison who are dually diagnosed with mental illness and substance abuse to transition and reintegrate them into the community; and

(3) one million dollars ($1,000,000) to provide residential treatment and family and community reintegration services for the women living with their children and for female offenders who are paroled or released with substance abuse problems and their children under eleven years of age.

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

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SENATE BILL 628, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 331

**CHAPTER 331, LAWS 2001**

AN ACT

RELATING TO EDUCATION; EXPANDING THE READING AND WRITING TESTING REQUIREMENTS FOR STUDENTS IN THE ELEMENTARY, MIDDLE AND JUNIOR HIGH SCHOOL GRADES.

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

## Section 1. Section 22-2-8.5 NMSA 1978 (being Laws 1986, Chapter 33, Section 6, as amended) is amended to read:

"22-2-8.5. ADDITIONAL STATEWIDE TESTING.--

A. The state board shall expand the program of educational accountability established through its educational standards by adding reading assessments and writing production tests to its existing uniform statewide system of assessment to determine pupil status, progress and degree of achievement of basic skills and of essential educational competencies.

B. The department of education shall involve local school district personnel, especially certified elementary reading specialists, in the development of methods on a statewide basis to measure student reading performance in order to assist school districts in the assessment of student problem areas in kindergarten through third grade. The assessment shall provide a means of demonstrating continuous progress in reading and diagnostic information on phonics, phonemic awareness and comprehension.

C. The department of education shall involve local school district personnel, especially certified school instructors in the elementary, middle or junior high school grades, in the development or selection of a uniform statewide writing production test for school districts to measure student writing performance in order to assist school districts in the assessment of student problem areas. The writing production test shall be administered to each student, once when attending elementary school and once when attending a middle or junior high school."

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SENATE BILL 673

# CHAPTER 332

**CHAPTER 332, LAWS 2001**

AN ACT

RELATING TO TAXATION; CHANGING THE LENGTH OF THE RENEWAL PERIOD FOR NONTAXABLE TRANSACTION CERTIFICATES.

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, 1992, every nontaxable transaction certificate, except for nontaxable transaction certificates of the series applicable to the twelve-year period beginning January 1, 1992 and issued by the department prior to that date, is void with respect to transactions after December 31, 1991. The department shall issue separate series of nontaxable transaction certificates for the twelve-year period beginning January 1, 1992 and for each twelve-year period beginning on January 1 of every twelfth year succeeding calendar year 1992. 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. 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, the department may refuse to approve the application of the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to issue nontaxable transaction certificates to the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates

for execution by that buyer or lessee to report to the department annually the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require a seller or lessor engaged in business in New Mexico to report to the department annually the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 714

# CHAPTER 333

**CHAPTER 333, LAWS 2001**

AN ACT

RELATING TO HEALTH; CREATING THE HOLLY GONZALES EXPERIMENTAL TREATMENT FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

## Section 1. HOLLY GONZALES EXPERIMENTAL TREATMENT FUND CREATED.--

A. The "Holly Gonzales experimental treatment fund" is created in the state treasury.

B. The Holly Gonzales experimental treatment fund shall be administered by the secretary of health. The money in the fund shall be used solely for the purpose of paying for the costs of federal drug administration approved experimental treatments or procedures for children with catastrophic, debilitating or terminal illnesses. An attending physician of a patient seeking coverage of a treatment or procedure from the fund shall certify to the secretary of health that conventional treatments or procedures cannot control or cure the illness, the expected outcome for the patient is death and the experimental treatment or procedure has a reasonable chance of either curing or controlling the illness for an extended period of time. The patient shall provide documentation from his medical insurer that the experimental treatment is not included in the policy covering the patient.

C. The patient shall submit receipts to the secretary of health for payment from the Holly Gonzales experimental treatment fund for the direct expenses of the experimental treatment or procedure and for associated expenses necessarily incurred in obtaining the treatment or procedure.

D. Disbursements from the Holly Gonzales experimental treatment fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of health.

**Section 2. APPROPRIATION.--Five hundred thousand dollars ($500,000) is appropriated from the general fund to the Holly Gonzales experimental treatment fund for expenditure in fiscal years 2001 and 2002 for carrying out the purposes of the fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.**

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

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SENATE FLOOR SUBSTITUTE

FOR SENATE BILL 719

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 334

**CHAPTER 334, LAWS 2001**

AN ACT

RELATING TO GAMING; CHANGING PROVISIONS REGARDING GAMING ACTIVITIES AT HORSE RACETRACKS; AMENDING SECTIONS OF THE GAMING CONTROL ACT.

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

**Section 1. Section 60-2E-27 NMSA 1978 (being Laws 1997, Chapter 190, Section 29, as amended) is amended to read:**

"60-2E-27. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF OPERATIONS.--

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.

B. A racetrack's gaming operator's license shall automatically become void if:

(1) the racetrack no longer holds an active license to conduct pari-mutuel wagering; or

(2) the racetrack fails to maintain a minimum of three live race days a week with at least nine live races on each race day during its licensed race meet in the 1997 calendar year and in the 1998 and subsequent calendar years, four live race days a week with at least nine live races on each race day during its licensed race meet.

C. A gaming operator licensee that is a racetrack may have up to six hundred licensed gaming machines, but the number of gaming machines to be located on the licensee's premises shall be specified in the gaming operator's license.

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to whom the allocation is made, a gaming operator licensee that is a racetrack may allocate any number of its authorized gaming machines to another gaming operator licensee that is a racetrack. To be valid, the allocation agreement must bear the written approval of the board and the state racing commission, and this approval shall make specific reference to the meeting at which the action of approval was taken and the number of votes cast both for and against the approval. By allocating a number of its authorized machines to another racetrack, the allocating racetrack automatically surrenders all rights to operate the number of machines allocated. No racetrack shall operate or be authorized to operate more than seven hundred fifty gaming machines.

E. Gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. A gaming operator licensee that is a racetrack shall be permitted to conduct such games on only the aforementioned days for a daily period not to exceed twelve hours at the discretion of such licensee.

F. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 60-2E-26 NMSA 1978."

**Section 2. EFFECTIVE DATE.--The provisions of this act shall become effective when the compact negotiated between the state and the tribes during the first session of the forty-fifth legislature is approved in writing by the tribes, the state and the secretary of the interior and notice of such approval is published in the federal register.**

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SENATE BILL 797, AS AMENDED

# CHAPTER 335

**CHAPTER 335, LAWS 2001**

AN ACT

RELATING TO THE RETIREE HEALTH CARE AUTHORITY; PROVIDING FOR CONTRIBUTION LEVELS IN SUBSEQUENT FISCAL YEARS; AMENDING SECTIONS OF THE NMSA 1978.

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

## Section 1. Section 7-1-6.30 NMSA 1978 (being Laws 1990, Chapter 6, Section 20, as amended) is amended to read:

"7-1-6.30. DISTRIBUTION--RETIREE HEALTH CARE FUND.--For the period ending June 30, 2002, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred six percent of the total amount distributed to the retiree health care fund in the previous fiscal year. For the fiscal year beginning July 1, 2002 and subsequent fiscal years, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred twelve percent of the total amount distributed to the retiree health care fund in the previous fiscal year."

## 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. 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 10-7C-15 NMSA 1978 (being Laws 1990, Chapter 6, Section 15, as amended) is amended to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

A. Following completion of the preliminary contribution period, each participating employer shall make contributions to the fund in the amount of:

(1) one percent of each participating employee's annual salary for the period July 1, 1990 through June 30, 2002; and

(2) up to one and three-tenths percent of each participating employee's annual salary beginning July 1, 2002.

Each employer that chooses to become a participating employer after January 1, 1998 shall make contributions to the fund in the amount determined to be appropriate by the board.

B. Following completion of the preliminary contribution period, each participating employee, as a condition of employment, shall contribute to the fund an employee contribution in an amount equal to:

(1) one-half of one percent of the employee's salary for the period July 1, 1990 through

June 30, 2002; and

(2) up to sixty-five hundredths of one percent beginning July 1, 2002.

As a condition of employment, each participating employee of an employer that chooses to become a participating employer after January 1, 1998 shall contribute to the fund an amount that is determined to be appropriate by the board. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. A participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

D. The employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

E. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health Care Act.

F. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 2010, the legislature shall review and adjust the distribution pursuant to Section

7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act."

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SENATE BILL 71, AS AMENDED

# CHAPTER 336

**CHAPTER 336, LAWS 2001**

AN ACT

MAKING AN APPROPRIATION FOR RESTORATION AND REMEDIATION OF STATE TRUST LAND.

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

## Section 1. APPROPRIATION.--

One million two hundred twenty thousand dollars ($1,220,000) is appropriated from the state lands maintenance fund to the state land office for expenditure in fiscal year 2002 for watershed restoration, remediation of contaminated sites, remediation of unauthorized landfills, stabilization of archeological sites and surveys for cultural resources and for management of invasive noxious weeds on state trust land. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the state lands maintenance fund.

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SENATE BILL 326, AS AMENDED

# CHAPTER 337

**CHAPTER 337, LAWS 2001**

AN ACT

RELATING TO TAXATION; EXTENDING THE LIFE OF CERTAIN INVESTMENT CREDIT PROVISIONS AND REQUIRING LEGISLATIVE REVIEW OF THE USE AND EFFECTIVENESS OF THE CREDIT; EXTENDING THE PERIOD FOR APPLICATION OF CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS MANUFACTURING; AMENDING, REPEALING AND ENACTING SECTIONS OF LAW AND OF THE NMSA 1978.

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

## Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2011, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation; or

(4) processing natural resources, including hydrocarbons."

## Section 2. A new section of the Investment Credit Act is enacted to read:

"LEGISLATIVE OVERSIGHT.--The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature."

## Section 3. Section 7-9A-7 NMSA 1978 (being Laws 1979, Chapter 347, Section 7, as amended by Laws 1991, Chapter 159, Section 5 and also by Laws 1991, Chapter 162, Section 5) is amended to read:

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--

A. Prior to July 1, 2011, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2011, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000)."

## Section 4. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended by Laws 1991, Chapter 159, Section 6 and also by Laws 1991, Chapter 162, Section 6) 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) two hundred fifty thousand dollars ($250,000), 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 two million dollars ($2,000,000);

(2) five hundred thousand dollars ($500,000), or portion of that amount, in value of qualified equipment over two million dollars ($2,000,000) claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(3) 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."

## Section 5. Laws 1999, Chapter 36, Section 1 is amended to read:

"Section 1. Laws 1997, Chapter 62, Section 3 is amended to read:

"Section 3. Laws 1990, Chapter 3, Section 10, as amended by Laws 1992, Chapter 17, Section 1 and also by Laws 1992, Chapter 104, Section 1, is amended to read:

"Section 10. EFFECTIVE DATE.--The effective date of the provisions of Sections 1, 2, 4, 5, 7 and 9 of Laws 1990, Chapter 3 is January 1, 1991."""

Section 6. Laws 1999, Chapter 35, Section 4 is amended to read:

"Section 4. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is July 1, 1999."

Section 7. REPEAL.--

A. Laws 1990, Chapter 3, Sections 6 and 8 are repealed.

B. Laws 1999, Chapter 35, Sections 1 and 3 are repealed.

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# CHAPTER 338

**CHAPTER 338, LAWS 2001**

**WITH LINE-ITEM VETO**

AN ACTRELATING TO PUBLIC SCHOOLS; PROVIDING CRITERIA AND PROCEDURES FOR FUNDING PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS FOR PUBLIC SCHOOL BUILDINGS, INCLUDING CAPITAL OUTLAY FOR KINDERGARTEN CLASSROOMS; AUTHORIZING THE ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; CREATING A DEFICIENCIES CORRECTION UNIT AS PART OF THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL; CREATING THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

## Section 1. Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended) is amended to read:

"7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or by written direction from an authorized officer of the recipient of the bond money.

C. Except as provided in Subsection D of this section, proceeds from supplemental severance tax bonds shall be used only for public school capital outlay projects pursuant to the Public School Capital Outlay Act or the Public School Capital Improvements Act.

D. Proceeds from supplemental severance tax bonds issued pursuant to Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999 (1st S.S.) shall be used for the purposes specified in that paragraph.

E. Except as provided in Subsection F of this section, the state board of finance shall issue and sell all supplemental severance tax bonds when so instructed by resolution of the public school capital outlay council pursuant to Section 7-27-12.2 NMSA 1978.

F. The state board of finance shall issue and sell supplemental severance tax bonds authorized by Paragraph (2) of Subsection A of Section 19 of Chapter 6 of Laws 1999

(1st S.S.) when so instructed by resolution of the commission on higher education."

## Section 2. A new section of the Severance Tax Bonding Act, Section 7-27-12.2 NMSA 1978, is enacted to read:

"7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS.--

A. The public school capital outlay council is authorized to certify by resolution that proceeds of supplemental severance tax bonds are needed for public school capital outlay projects pursuant to Section 22-24-5 NMSA 1978 or for the state distribution for public school capital improvements pursuant to the Public School Capital Improvements Act. The resolution shall specify the total amount needed.

B. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act when the public school capital outlay council certifies by resolution the need for the issuance of the bonds. The amount of the bonds sold at each sale shall not exceed the lesser of the amount certified by the council or the amount that may be issued pursuant to the restrictions of Section 7-27-14 NMSA 1978.

C. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible.

D. The proceeds from the sale of the bonds are appropriated as follows:

(1) the amount certified by the superintendent of public instruction as necessary to make the distribution pursuant to Section 22-25-9 NMSA 1978 is appropriated to the public school capital improvements fund for the purpose of carrying out the provisions of the Public School Capital Improvements Act; and

(2) the remainder of the proceeds is appropriated to the public school capital outlay fund for the purpose of making awards of grant assistance pursuant to Section 22-24-5 NMSA 1978, except that, of the proceeds received from the sale of the bonds in fiscal year 2001, fifty million dollars ($50,000,000) shall be used for projects to correct outstanding deficiencies pursuant to Sections 22-24-4.1 and 22-24-4.2 NMSA 1978."

## Section 3. Section 7-27-27 NMSA 1978 (being Laws 1961, Chapter 5, Section 27, as amended) is amended to read:

"7-27-27. PURPOSE AND INTENT.--The purpose of the Severance Tax Bonding Act is to establish the authority who shall issue and sell all severance tax bonds for financing specific projects authorized by the legislature and all supplemental severance tax bonds pursuant to Section

7-27-12.2 NMSA 1978 and to guarantee redemption of such bonds by revenue derived from the receipts from taxes levied upon natural resource products severed and saved from the soil and such other money as the legislature may from time to time determine. It is intended that projects to be financed from the fund shall include the construction of public school buildings, other buildings for state institutions and water resource projects; and it is further intended that the income from water resource projects in excess of the amount required for operation and maintenance of the project shall be used to repay the severance tax bonding fund."

## Section 4. A new Section 22-20-4 NMSA 1978 is enacted to read:

"22-20-4. APPLICABILITY.--The provisions of Chapter 22, Article 20 NMSA 1978 do not apply to public school capital outlay projects subject to the oversight of the public school capital outlay council pursuant to the Public School Capital Outlay Act."

## Section 5. 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. 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 local school districts to the council in accordance with requirements of the council.

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."

## Section 6. A new section of the Public School Capital Outlay Act, Section 22-24-4.1 NMSA 1978, is enacted 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 local 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 funded pursuant to this section no later than June 30, 2004."

## Section 7. A new section of the Public School Capital Outlay Act, Section 22-24-4.2 NMSA 1978, is enacted to read:

"22-24-4.2. DEFICIENCIES CORRECTION UNIT.--

A. A "deficiencies correction unit" is created as part of the public school capital outlay council. The unit shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. Within budgetary constraints, the director shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director shall be exempt from the provisions of the Personnel Act.

B. The deficiencies correction unit shall:

(1) work with the local school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;

(2) work with the school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;

(3) oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;

(4) conduct on-site inspections while the deficiencies correction work is being done to assure that the construction specifications are being met and periodically inspect all of the documents relating to the projects;

(5) require the use of standardized construction documents as defined by the property control division of the general services department and the use of a standardized process for change orders; and

(6) have access to the premises of a project and any documentation relating to the project."

## Section 8. 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 fiscal year 2001 and fifty million dollars ($50,000,000) 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"; and

(2) 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) of this subsection, a project approved and ranked by the council shall be funded within available resources in accordance with the following formula:

(school district final prior year assessed valuation per MEM ÷ the state average final prior year assessed valuation per MEM) x 0.5. The product is subtracted from 1.0 and the difference is then multiplied by seventy-five percent. The product of that calculation added to (the percent of bonding capacity used x 0.25) equals the percentage of the cost of the approved project to be funded from the fund. "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 0.5. In those instances in which the formula provides less than 0.1, 0.1 shall be used as the state's share;

(6) in those instances in which a school district has used all of its local resources, the council may fund the total amount of a project; and

(7) 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 to

which the school adheres for 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) of this subsection established by law, 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, no later than September 1, 2002, the council shall develop 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 1 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 9. A new section of the Public School Capital Outlay Act, Section 22-24-5.1 NMSA 1978, is enacted to read:

"22-24-5.1. COUNCIL ASSISTANCE AND OVERSIGHT.--In providing grant assistance pursuant to Section 22-24-5 NMSA 1978, the council shall:

A. assist school districts in identifying critical capital outlay needs and in preparing grant applications;

B. take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation;

C. take such actions as are necessary to ensure cost savings and efficiencies for those school districts that are not large enough to maintain their own construction management staff; and

D. include such reporting requirements and conditions and take such actions as are necessary to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made. In order to ensure compliance with the intent of this subsection, the council may:

(1) access the premises of a project and review any documentation relating to a project;

(2) withhold all or part of the amount of grant assistance available for a project for grounds established by rule of the council; and

(3) if it determines that a project is repeatedly in substantial noncompliance with any reporting requirement or condition, take over the direct administration of the project until the project is completed."

## Section 10. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended by Laws 1988, Chapter 64, Section 44 and also by Laws 1988, Chapter 66, Section 2) 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. Notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, no school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall 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 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 11. Laws 1999 (1st S.S.), Chapter 6, Section 19 is amended to read:

"Section 19. SUPPLEMENTAL SEVERANCE TAX BONDS--PURPOSE FOR WHICH ISSUED--APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act in the following amounts for the following purposes upon the following certification:

(1) an amount not exceeding one hundred million dollars ($100,000,000) when the public school capital outlay council certifies by resolution the need for the issuance of the bonds for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act; and

(2) an amount not exceeding twenty-five million dollars ($25,000,000) when the commission on higher education certifies by resolution the need for the issuance of the bonds for infrastructure renovation and expansion at the state's public post-secondary educational institutions or other educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

B. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the projects have been developed sufficiently to justify the issuance and that the projects can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended.

C. The proceeds from the sale of the bonds pursuant to Paragraph (1) of Subsection A of this section are appropriated to the public school capital outlay fund to carry out the provisions of the Public School Capital Outlay Act. If the public school capital outlay council has not certified the need for the issuance of the bonds by

January 31, 2001, authorization provided in this section shall expire. Any unexpended or unencumbered balance remaining from the proceeds of bonds issued pursuant to

Paragraph (1) of Subsection A of this section at the end of fiscal year 2006 shall revert to the severance tax bonding fund.

D. The proceeds from the sale of the bonds in Paragraph (2) of Subsection A of this section are appropriated to the commission on higher education for distribution to the governing bodies of the educational institutions who have certified projects for funding with the bond proceeds. If the commission on higher education has not certified the need for the issuance of the bonds by the end of fiscal year 2004, authorization provided in this section shall expire. Any unexpended or unencumbered balance remaining from the proceeds of bonds issued pursuant to Paragraph (2) of Subsection A of this section at the end of fiscal year 2006 shall revert to the severance tax bonding fund."

## Section 12. PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE--CREATION--STAFF.--

A. The "public school capital outlay task force" is created. The task force consists of twenty-one members as follows:

(1) the dean of the university of New Mexico school of law, or his designee;

(2) the dean of the New Mexico state university college of engineering or his designee;

(3) the secretary of finance and administration or his designee;

(4) the state investment officer or his designee;

(5) the superintendent of public instruction or his designee;

(6) the chairmen of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;

(7) a minority party member of the house of representatives, appointed by the New Mexico legislative council;

(8) a minority party member of the senate, appointed by the New Mexico legislative council;

(9) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;

(10) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;

(11) three public members who have expertise in education and finance appointed by the governor; and

(12) three superintendents of school districts or their designees 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, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the task force shall be elected by the task force. The public school capital outlay task force shall meet at the call of the chair.

C. The public members of the public school capital outlay task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

D. The legislative council service, with assistance from the department of finance and administration, the investment office, the state department of public education, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay task force.

## Section 13. PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE--DUTIES.--The public school capital outlay task force shall:

A. study and evaluate the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;

B. evaluate the existing permanent revenue streams and other potential revenues as adequate long-term funding sources for public school capital outlay projects and recommend any changes that may be more cost-effective or appropriate;

C. evaluate the effectiveness and fairness of the formula used in determining the amount of grant assistance that an approved public school capital outlay project may receive from the public school capital outlay fund and recommended any proposed changes to the legislature;

D. monitor and assist the public school capital outlay council as it:

(1) defines outstanding public school capital outlay deficiencies pursuant to Section 22-24-4.1 NMSA 1978;

(2) works with school districts in conducting a self-assessment of the projects needed to correct the outstanding deficiencies and establishes criteria for addressing those needs;

(3) develops statewide adequacy standards that establish the minimum acceptable level for the physical condition and capacity of public school

buildings, the educational suitability of educational facilities and the need for technological infrastructure; and

(4) develops guidelines and procedures for reporting requirements and conditions to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made; and

E. no later than December 1 of each year, report the results of its analyses and its findings and recommendations to the governor and the legislature.

**Section 14. SEVERANCE TAX BONDS--PURPOSE--APPROPRIATION OF PROCEEDS.--The state board of finance may issue and sell severance tax bonds in fiscal years 2002 and 2003 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of one hundred million dollars ($100,000,000) when the public school capital outlay council certifies the need for the issuance of the bonds. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible. The proceeds from the sale of the bonds are appropriated to the public school capital outlay fund for the purpose of providing grant assistance for public school capital outlay projects that are needed to correct outstanding deficiencies pursuant to Sections 22-24-4.1 and 22-24-4.2 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the severance tax bonding fund. If the public school capital outlay council has not certified the need for the issuance of the bonds by the end of fiscal year 2003, the authorization provided in this section shall expire.**

## Section 15. APPROPRIATIONS.--

A. Two million three hundred thousand dollars ($2,300,000) is appropriated from the general fund to the state department of public education for expenditure in fiscal years 2001 through 2003 for the purpose of completing a statewide needs and cost assessment of all school districts in order to identify all needed public school capital outlay projects. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

B. Two hundred thousand dollars ($200,000) is appropriated from the general fund to the state department of public education for expenditure in fiscal year 2002 for the purpose of assisting the public school capital outlay council in performing

those duties required of it pursuant to the Public School Capital Outlay Act. The appropriation may be expended by the department in the manner deemed by the department and council to be the most expedient and cost effective, including expenditures for employees and for contractual services. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

C. One million one hundred thousand dollars ($1,100,000) is appropriated from the general fund to the deficiencies correction unit of the public school capital outlay council for expenditure in fiscal years 2001 and 2002 for the purpose of carrying out its duties pursuant to the Public School Capital Outlay Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

D. Fifty million dollars ($50,000,000) is appropriated from the general fund to the public school capital outlay fund for expenditure in fiscal years 2002 through 2004 for the purpose of correcting outstanding deficiencies pursuant to Sections 22-24-4.1 and 22-24-4.2 NMSA 1978. The appropriation is contingent upon the secretary of general services and the secretary of finance and administration certifying that the public school capital outlay council has, by rule, adopted a project management system to ensure that the projects will be constructed in the most cost-effective and efficient manner. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall not revert but shall be used for the purpose of providing grant assistance pursuant to Section 22-24-5 NMSA 1978.

[~~E. Twenty thousand dollars ($20,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2001 and 2002 for the purpose of paying per diem and mileage for public members of the public school capital outlay task force. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.~~]

## Section 16. KINDERGARTEN CAPITAL FUNDING.--

A. Five million dollars ($5,000,000) is appropriated from the general fund to the state department of public education for expenditure in fiscal years 2001 through 2003 to purchase portable classrooms or to build classrooms for full-day kindergarten throughout New Mexico. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

B. The state department of public education shall adopt an application process for school districts that wish to purchase portable classrooms or to build classrooms for full-day kindergarten. The school districts shall submit applications to the state department of public education by July 1, 2001. School districts shall provide the following information in the application to the state department of public education:

(1) district enrollment by school in half-day and full-day kindergarten for the 2000-2001 school year;

(2) the number of full-day kindergarten classrooms to be constructed or purchased at each elementary school in the district;

(3) whether the district is requesting brick and mortar or portable full-day kindergarten classrooms;

(4) the signature of the district superintendent approving the application; and

(5) verification from the superintendent of public instruction that the need exists for portable classrooms or built classrooms for full-day kindergarten.

C. When providing distributions to local school districts pursuant to Subsections A and B of this section, the state department of public education shall give priority to those school districts that serve children in schools with the highest proportion of students most in need based upon indicators in the at-risk factor and those that do not qualify for funding under the Public School Capital Outlay Act. The state department of public education shall also consider the local resources available to build full-day kindergarten classrooms and the possibility of converting existing classrooms to full-day kindergarten classrooms.

**Section 17. REPEAL.--Laws 2000, Chapter 95, Section 2 and Laws 2000 (2nd S.S.), Chapter 11, Section 3 are repealed.**

**Section 18. DELAYED REPEAL.--Sections 12 and 13 of this act are repealed effective January 1, 2004.**

**Section 19. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 167, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 339

**CHAPTER 339, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO CONSIDER WHETHER A SCHOOL DISTRICT HAS A PREVENTIVE MAINTENANCE PLAN FOR EACH SCHOOL WHEN CONSIDERING APPLICATIONS FOR FUNDING.

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

## Section 1. 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. 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 local school districts to the council in accordance with requirements of the council. The council shall require as a condition of application that a local 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."

## Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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SENATE BILL 345, AS AMENDED

# CHAPTER 340

**CHAPTER 340, LAWS 2001**

AN ACT

MAKING APPROPRIATIONS FOR SALARY INCREASES FOR EXECUTIVE, JUDICIAL AND LEGISLATIVE EMPLOYEES AND ELECTED OFFICIALS AND FACULTY AND STAFF OF INSTITUTIONS OF HIGHER EDUCATION.

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

## Section 1. APPROPRIATIONS.--

A. Seventeen million six hundred fifteen thousand two hundred dollars ($17,615,200) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 2002 to provide salary increases as follows:

(1) one million six hundred thirty-nine thousand three hundred dollars ($1,639,300) to provide:

(a) those judicial permanent employees whose salaries are not set by statute and whose salaries fall below the minimum salary range of the salary schedule, a salary increase sufficient to raise their salaries to the minimum of the assigned salary range of the salary schedule. The salary increase shall be effective the first full pay period after July 1, 2001; and

(b) all judicial permanent employees whose salaries are not set by statute, an anniversary date salary increase based on a variable pay-for-performance salary matrix that provides a minimum of two percent of the midpoint value of the employee's salary range; the increase is subject to a performance evaluation rating greater than "fails to meet expectations" in accordance with the judicial personnel and compensation plan. The salary increase shall be effective the first full pay period

after the employee's anniversary date. The performance-based salary increase is intended to address performance and market competitiveness and shall be implemented with consideration to the recommendations resulting from the Hay management consultants' review of the judicial branch classification and compensation plan during fiscal year 2001 and shall limit the percentage of employees who are eligible for the highest anniversary date increase. The administrative office of the courts is directed to provide a report to the legislature no later than January 15, 2002 on a plan to move employees to the appropriate position within a salary range;

(2) nine hundred thirty-seven thousand three hundred dollars ($937,300) to provide the justices of the supreme court a salary increase to ninety-six thousand two hundred eighty-three dollars ($96,283); and to provide 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, a salary increase pursuant to the provisions of Section 34-1-9 NMSA 1978. The salary increase shall be effective the first full pay period after July 1, 2001;

(3) one million two hundred sixty-one thousand seven hundred dollars ($1,261,700) to provide:

(a) district attorney permanent employees whose salaries fall below the minimum of the salary range a salary increase sufficient to raise their salaries up to the minimum of the assigned salary range of the salary schedule that becomes effective July 1, 2001. The salary schedule established shall be comparable to that established for the executive classified service. The salary increase shall be effective the first full pay period after July 1, 2001; and

(b) all district attorney permanent employees, other than elected district attorneys, with a salary increase based on a variable merit increase plan that provides a minimum of two percent of the midpoint value of the employee's salary range, with no more than thirty percent of all district attorney permanent employees being eligible for the highest increase. The increases shall be subject to satisfactory job performance and in accordance with the district attorney pay plan. The salary increase shall be effective the first full pay period after the employee's anniversary date;

(4) eighty-nine thousand seven hundred dollars ($89,700) 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-three thousand two hundred eighty-seven dollars ($83,287) and district attorneys who serve in a district that includes a class A county shall receive an annual salary of eighty-seven thousand six hundred seventy-two dollars ($87,672). The salary increase shall be effective the first full pay period after July 1, 2001;

(5) eleven million two hundred forty-five thousand five hundred dollars ($11,245,500) to provide:

(a) incumbents in agencies governed by the Personnel Act whose salaries fall below the minimum salary range a salary increase sufficient to raise their salaries to the minimum of the assigned salary range of the salary schedule that becomes effective July 1, 2001. The salary increase shall be effective the first full pay period after July 1, 2001; and

(b) incumbents in agencies governed by the Personnel Act an increase based on a compensation package approved by the personnel board that addresses both performance and market competitiveness and is based on a variable pay-for-performance salary matrix that provides a minimum two percent salary increase for all employees with a performance evaluation rating better than "unsatisfactory", with no more than thirty percent of state employees being provided with the highest increase. In granting this salary increase, any salary increases given pursuant to Subparagraph (a) of Paragraph (5) of Subsection A of this section may be taken into consideration. The salary increase shall be effective the first full pay period after the employee's anniversary date. The state personnel office shall provide a plan to the legislature no later than January 15, 2002 on how it intends to move employees to the appropriate position within a pay band;

(6) three hundred forty-eight thousand six hundred dollars ($348,600) to provide commissioned officers of the New Mexico state police division of the department of public safety with a salary step increase in accordance with the New Mexico state police career pay system and subject to satisfactory job performance;

(7) one million six thousand nine hundred dollars ($1,006,900) to provide executive exempt employees, including attorney general employees and workers' compensation judges, with an average six and one-half percent merit salary increase based on job performance. The salary increase shall be effective the first full pay period after the employee's anniversary date;

(8) five hundred seventy-nine thousand two hundred dollars ($579,200) to provide teachers in the children, youth and families department, the department of health and the corrections department with an eight percent salary increase. The salary increase shall be effective the first full pay period after the employee's anniversary date; and

(9) five hundred seven thousand dollars ($507,000) 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 of representatives and the senate and house and senate leadership staff with an average six and one-half percent merit salary increase based on job performance. The performance-based salary increase is intended to address performance and market competitiveness and shall be implemented with consideration to the recommendations resulting from the national conference of state legislatures' study. The salary increase shall be effective the first full pay period after the employee's anniversary date.

B. The following amounts are appropriated to the department of finance and administration for expenditure in fiscal year 2002 to provide salary increases as follows:

(1) one million five hundred thousand dollars ($1,500,000) to provide a five percent salary increase for the social worker series of the protective services division of the children, youth and families department. The salary increase shall be effective the first full pay period after July 1, 2001;

(2) two million four hundred ninety thousand four hundred dollars ($2,490,400) to provide adult correctional officers of the following ranks: correctional officer one, correctional officer sergeant, correctional officer two, correctional officer three, correctional officer four and the correctional officer specialists series of the corrections department a fifty cent ($.50) per hour salary increase effective the first full pay period following July 1, 2001 and a fifty cent ($.50) per hour salary increase effective the first full pay period following January 1, 2002; and

(3) three hundred twenty thousand dollars ($320,000) to provide the tax account auditor series of the taxation and revenue department with a compa-ratio to

compa-ratio that was in effect prior to July 1, 2001, a salary increase based on new salary grades adopted by the personnel board in 1999. The salary increase shall be effective the first full pay period following January 1, 2002.

C. Thirty-three million eight thousand five hundred dollars ($33,008,500) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 2002 to provide faculty of four- and two-year post-secondary educational institutions with a seven percent salary increase and other staff of four- and two-year post-secondary educational institutions with a six and one-half percent salary increase. The salary increase shall be effective the first full pay period after July 1, 2001.

D. 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. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

E. 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 2001, 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 2002. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the appropriate fund.

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SENATE FINANCE COMMITTEE

SUBSTITUTE FOR SENATE BILL 68

# CHAPTER 341

**CHAPTER 341, LAWS 2001**

AN ACT

RELATING TO LIVESTOCK; CLARIFYING THAT LIVESTOCK INSPECTORS HAVE JURISDICTION OVER CRIMES INVOLVING LIVESTOCK.

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

## Section 1. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"LIVESTOCK CRIMES--LIVESTOCK INSPECTORS TO ENFORCE.--Livestock inspectors who are certified peace officers shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock."

## Section 2. Section 77-2-1.1 NMSA 1978 (being Laws 1993, Chapter 248, Section 2, as amended) is amended to read:

"77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

A. "animals" or "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock";

B. "bill of sale" means an instrument in substantially the form specified in The Livestock Code by which the owner or his authorized agent transfers to the buyer the title to animals described in the bill of sale;

C. "bison" or "buffalo" means a bovine animal of the species bison;

D. "board" means the New Mexico livestock board;

E. "bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board;

F. "brand" means a symbol or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other livestock;

G. "brand inspector" means an inspector who is not certified as a peace officer;

H. "carcasses" means dead or dressed bodies of livestock or parts thereof;

I. "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock;

J. "dairy cattle" means animals of the genus bos raised not for consumption but for dairy products and distinguished from meat breed cattle;

K. "director" means the executive director of the board;

L. "disease" means a communicable, infectious or contagious disease;

M. "district" means a livestock inspection district;

N. "estray" means livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

O. "inspector" means a livestock or brand inspector;

P. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code and other criminal laws relating to livestock;

Q. "mark" means an ear tag or ownership mark that is not a brand;

R. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;

S. "mule" means a hybrid resulting from the cross of a horse and an ass; and

T. "person" means an individual, firm, partnership, association, corporation or similar legal entity."

## Section 3. Section 77-2-9 NMSA 1978 (being Laws 1967, Chapter 213, Section 8, as amended) is amended to read:

"77-2-9. REPORTS OF INSPECTORS--PROSECUTION OF VIOLATIONS OF LIVESTOCK LAWS.--

A. The board shall keep reports of its veterinarians and inspectors in accordance with the Public Records Act.

B. The board shall assist in the prosecution of persons charged with the violation of the livestock laws, including criminal laws relating to livestock, and may call upon a livestock inspector or other peace officer to execute its orders, and when it does, the peace officer shall obey the order of the board.

C. Livestock inspectors may arrest persons found in the act or whom they have probable cause to believe to be guilty of driving, holding or slaughtering stolen livestock; of violating the inspection laws of the state; or of violating any provision of Chapter 30, Article 18 NMSA 1978 relating to livestock or other criminal law relating to livestock."

## Section 4. Section 77-9-33 NMSA 1978 (being Laws 1891, Chapter 34, Section 7, as amended) is amended to read:

"77-9-33. INSPECTION OF EXPORTED LIVESTOCK--REPORT--INSPECTION OF SLAUGHTERHOUSES--PENALTY.--Every inspector shall be an inspector of brands and ear marks and also an inspector of hides and slaughterhouses, and it is the duty of the inspectors to inspect the brands and ear marks of all livestock transported or driven from a district or out of this state and to make a sworn report to the director of the result of such inspection at least once every thirty days and more often if, in the opinion of the board, it is necessary. Every slaughterhouse in this state shall be carefully inspected by the inspectors, and all hides found in slaughterhouses shall be carefully compared with the records of the slaughterhouses and a report in writing setting forth the number of livestock killed at the slaughterhouse since the last inspection, the names of the persons for whom each of the livestock were slaughtered, the brands and marks upon each hide and any information that may be obtained touching the violation by the owner of any slaughterhouse, or any other person, of any of the provisions of Sections 77-17-9 and 77-17-10 NMSA 1978. For the purpose of making an inspection, an inspector has the right to enter in the day or night any slaughterhouse or other place where livestock are killed in this state and to carefully examine the premises and all books and records required by law to be kept on the premises and to compare the hides found with the

records. A person who hinders or obstructs or attempts to hinder or obstruct an inspector in the performance of any of the duties required of him by law is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

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HOUSE BILL 284, AS AMENDED

# CHAPTER 342

**CHAPTER 342, LAWS 2001**

AN ACT

RELATING TO COUNTIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO ASSESSMENTS FOR IMPROVEMENT DISTRICTS AND ASSESSMENTS FOR THE MAINTENANCE OF LOCAL COUNTY ROADS.

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

## Section 1. Section 4-55A-7 NMSA 1978 (being Laws 1980, Chapter 91, Section 7, as amended) is amended to read:

"4-55A-7. IMPROVEMENT DISTRICT--PROVISIONAL ORDER METHOD--PROCEDURE--PRELIMINARY LIEN--NOTICE OF PENDENCY OF DISTRICT--EFFECT.--

A. Whenever the board determines that the creation of an improvement district is necessary by the provisional order method, the board shall by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed improvement district.

B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district; and

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in

the improvement district on an equitable basis, which shall be set forth in the resolution; provided, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole. As used in this subparagraph, "equitable basis" includes an assessment based on a front-foot, improved or unimproved property, zone or area basis or an assessed valuation basis where each tract or parcel bears the same percentage of total costs as the percentage that the tract's or parcel's assessed value bears to the total assessed value of the property included in the improvement district; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or waterline, the type of material and approximate diameter of any trunk lines, mains, laterals or house connections; or

(c) for each other type of project or other major component of the foregoing types of projects, a general description.

C. The engineer shall include in the total cost estimate for the improvement district all expenses, including but not limited to advertising, appraising, tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing, engineering and printing expenses, which the engineer deems necessary to pay the complete cost of the improvement.

D. The engineer shall submit to the county clerk the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimate of costs for the improvement.

E. After the board examines the assessment plat, preliminary plans and estimates of cost for the improvement district, the board may adopt a provisional order which:

(1) orders the improvement to be constructed;

(2) instructs the county clerk or engineer to give notice of a hearing on the provisional order; and

(3) orders, if deemed necessary by the board and with the consent of the owners of the tracts or parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 4-55A-18 and 4-55A-19 NMSA 1978. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the board, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the special assessment district and shall be constructive notice to the owner, purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to such special assessment proceedings.

G. This notice need not be acknowledged to entitle it to be recorded.

H. Nothing in this section shall be construed to affect the priority of special assessment liens."

## Section 2. Section 67-4-20 NMSA 1978 (being Laws 1969, Chapter 167, Section 1, as amended) is amended to read:

"67-4-20. LOCAL COUNTY ROADS--ASSESSMENT FOR MAINTENANCE--LIEN.--

A. Any board of county commissioners may adopt a resolution determining that any streets totally within a subdivided area approved by the county commission, outside the corporate limits of any municipality, and which the board determines to have such a prospective population density as to require extraordinary street maintenance shall be maintained in part at the expense of the owner of any property which abuts upon the streets. The resolution shall only be adopted after a public hearing, notice of which has been advertised in a newspaper of general circulation within the county for two consecutive weeks, the first such advertisement being at least ten days prior to the date of hearing. In the resolution, the board of county commissioners shall determine:

(1) the expense of maintaining the streets;

(2) the proportion of the expense to be borne by the property which abuts the streets;

(3) the charge to be assessed against each lineal foot of frontage of the abutting property which shall not exceed one-half of the average cost per lineal foot of county road maintenance for the prior fiscal year nor be less than one dollar ($1.00) for each assessment billing; and

(4) the assessment, on an equitable basis, of each parcel or tract within the subdivided area according to its proportionate share of the expense of maintaining the streets. As used in this paragraph, "equitable basis" includes an assessment based on a front-foot, improved or unimproved property, zone or area basis or an assessed valuation basis where each tract or parcel bears the same percentage of total costs as the percentage that the tract's or parcel's assessed value bears to the total assessed value of the property included in the improvement district.

B. The assessment for the expense of maintaining the streets shall be billed and collected by the county treasurer at the same time as the property taxes and shall become delinquent thirty days after the date of billing. All delinquent assessments shall be a lien against the tract or parcel of property abutting the street, and the lien shall be enforced as provided in Section 67-4-21 NMSA 1978.

C. As used in this section, the term "streets" shall include both improved and unimproved streets, roads, thoroughfares, curbs, divider strips and median strips or any combination of the foregoing."

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HOUSE BILL 708

# CHAPTER 343

**CHAPTER 343, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO DEFINE "CONSTRUCTION MATERIAL"; PROVIDING THAT RECEIPTS FROM THE SALES OF CONSTRUCTION MATERIAL ARE NOT DEDUCTIBLE UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR THE SUSPENSION OF THE RIGHT TO EXECUTE NONTAXABLE TRANSACTION CERTIFICATES; PRECLUDING CERTAIN DEPARTMENT ACTIONS IN CERTAIN CIRCUMSTANCES.

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

## Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2000, Chapter 84, Section 1 and also by Laws 2000, Chapter 101, Section 1) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating 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. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility;

(13) retaining wall, wall, fence gate or similar structure; or

(14) similar work;

"construction" also means:

(15) leveling or clearing land;

(16) excavating earth;

(17) drilling wells of any type, including seismograph shot holes or core drilling; or

(18) similar work;

D. "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;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

(1) "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

(2) "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;

F. "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.

(1) "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 leasing, 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; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "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; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) 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;

G. "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;

H. "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;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "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;

K. "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;

L. "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;

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

N. "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;

O. "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;

P. "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) the development of 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) the development of 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) 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) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "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;

R. "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; and

S. "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 2. Section 7-9-14 NMSA 1978 (being Laws 1969, Chapter 144, Section 7, as amended) is amended to read:

"7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL AGENCIES--INDIANS.--

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code; or

(2) the use of construction material.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants."

## Section 3. Section 7-9-44 NMSA 1978 (being Laws 1969, Chapter 144, Section 34, as amended) is amended to read:

"7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE.--

A. The secretary may suspend for not more than one year the privilege of a person to execute nontaxable transaction certificates if that person:

(1) fails to pay, within one year of the date the tax is due, the compensating tax on the subsequent use of property or services purchased through the execution of a nontaxable transaction certificate; or

(2) executes with the seller or lessor a nontaxable transaction certificate inapplicable to the transaction when no compensating tax is due on that buyer's or lessee's use of the property or service.

B. The secretary may suspend for not more than six months the privilege of a person to execute nontaxable transaction certificates, to claim deductions on the basis of nontaxable transaction certificates accepted by that person or both if that person fails to account in the manner and time required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.

C. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of the privilege, the person whose privilege to execute nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978.

D. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege to execute nontaxable transaction certificates."

## Section 4. Section 7-9-51 NMSA 1978 (being Laws 1969, Chapter 144, Section 41, as amended by Laws 2000, Chapter 84, Section 3 and also by Laws 2000, Chapter 98, Section 1) is amended to read:

"7-9-51. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION MATERIAL TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling construction material may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction

certificate must incorporate the construction material as:

(1) an ingredient or component part of a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo."

## Section 5. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended by Laws 2000, Chapter 84, Section 5 and also by Laws 2000, Chapter 98, Section 3) 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", as defined in Subsection K of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service.

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 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 6. Section 7-9-60 NMSA 1978 (being Laws 1970, Chapter 12, Section 4, as amended) is amended to read:**

"7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered, may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling construction material or from selling metalliferous mineral ore."

**Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.**

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HOUSE BILL 743, AS AMENDED

# CHAPTER 344

**CHAPTER 344, LAWS 2001**

**WITH LINE-ITEM VETO**

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. FISCAL YEAR 2002 APPROPRIATIONS.--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified. Unless otherwise indicated,**

**the appropriations may be expended in fiscal year 2002. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2002 shall revert to the appropriate fund:**

A. eighty-four thousand three hundred dollars ($84,300) is appropriated from the general fund to the second judicial district court for a hearing officer;

B. one hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the state agency on aging for one full-time equivalent position and associated costs for prescription drug assistance outreach;

[~~C. one million dollars ($1,000,000) is appropriated from the general fund to the human services department to establish a prescription drug-only medicaid waiver program for persons sixty-five years of age and older with incomes of no more than one hundred percent of the federal poverty level and to obtain any waiver necessary pursuant to Section 1115 of the federal Social Security Act;~~]

D. four hundred thousand dollars ($400,000) is appropriated from the general fund to the human services department for contracting with a statewide food bank program to gather, pack, transport, distribute and prepare unsaleable and surplus fresh produce to feed hungry and homeless New Mexicans;

E. seven hundred thousand dollars ($700,000) is appropriated from the general fund to the labor department for at-risk youth programs;

F. six hundred thousand dollars ($600,000) is appropriated from the general fund to the department of health for emergency medical services for expenditure in fiscal year 2002 and subsequent fiscal years, contingent on Senate Bill 302 or similar legislation of the first session of the forty-fifth legislature becoming law;

G. seven hundred thousand dollars ($700,000) is appropriated from the general fund to the department of health for operations of the Las Vegas medical center, Fort Bayard medical center and southern New Mexico rehabilitation center;

H. seven hundred fifty thousand dollars ($750,000) is appropriated from the general fund to the children, youth and families department for services and programs for victims of domestic violence and their families;

I. two hundred thousand dollars ($200,000) is appropriated from the general fund to the department of public safety for at-risk youth services;

J. nine hundred fifty thousand dollars ($950,000) is appropriated from the general fund to the university of New Mexico for the college of nursing expansion; and

K. four million three hundred thousand dollars ($4,300,000) is appropriated from the general fund to the state equalization guarantee distribution for full-day kindergarten programs.

**[Section 2. CONDITIONS OF MEDICAID WAIVER APPROPRIATIONS.--Unexpended or unencumbered balances remaining at the end of fiscal year 2002 from appropriations made in Subsection E of Section 5 of Chapter 64 of Laws 2001 to the medicaid waivers activity of the long-term care program of the department of health shall be expended to increase provider rates in the developmental disabilities medicaid waiver activity and developmental disabilities general fund activity as allowed by the federal health care financing administration.]**

**Section 3. SPECIAL APPROPRIATIONS.--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified. Unless otherwise indicated, the appropriations may be expended in fiscal years 2001 and 2002. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2002 shall revert to the appropriate fund:**

[~~A. fifty thousand dollars ($50,000) is appropriated from the general fund to the legislative council service for staffing, per diem and mileage expenses associated with a joint interim legislative redistricting committee;~~

~~B. one hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the legislative council service to contract for a study of impact aid funding of public schools and the state equalization guarantee funding formula and to pay per diem and mileage expenses of a legislative council committee to have oversight over any rapid response intervention program pilot if such a committee is appointed. The appropriation is contingent on House Appropriations and Finance Committee Substitute for House Bill 949 or similar legislation of the first session of the forty-fifth legislature becoming law;~~]

C. five million dollars ($5,000,000) is appropriated from the general fund to the energy, minerals and natural resources department to compensate landowners for the petroglyph national monument;

[~~D. four million dollars ($4,000,000) is appropriated from the general fund for the state equalization guarantee distribution for enrollment growth. The appropriation is contingent on House Bill 23 or similar legislation of the first session of the forty-fifth legislature becoming law;~~

~~E. two million dollars ($2,000,000) is appropriated from the general fund to the tourism department for general and cooperative advertising costs and Native American tourism;~~

~~F. two million dollars ($2,000,000) is appropriated from the general fund to the office of cultural affairs for the state library for grants to public libraries throughout the state, to conserve New Mexico depression-era public art, for a statewide library database for public schools, for development of cross-cultural educational documentaries and electronic field trips in north central and northwestern New Mexico and for relocating the items in the repository collections of the museum of Indian arts and culture and the palace of the governors;~~]

G. one million five hundred thousand dollars ($1,500,000) is appropriated from the general fund to the office of the state engineer for regional water planning;

[~~H. three million seven hundred thousand dollars ($3,700,000) is appropriated from the general fund to the human services department to assist with prescription drug costs for people under two hundred percent of the federal poverty level;~~]

I. one million two hundred thousand dollars ($1,200,000) is appropriated from the general fund to the state department of public education to retire Animas independent school district bonds; and

[~~J. ten million dollars ($10,000,000) is appropriated from the general fund to the water and wastewater project grant fund for administration by the New Mexico finance authority, contingent on Senate Bill 169 or similar legislation of the first session of the forty-fifth legislature becoming law. Any appropriation remaining at the end of a fiscal year shall not revert.~~]

**[Section 4. SUPPLEMENTAL APPROPRIATIONS.--The following amounts are appropriated from the general fund, or other funds as indicated, for expenditure in fiscal year 2001 for the purposes specified. Disbursement of these amounts shall be subject to the following conditions: certification by the agency to the department of finance and administration and the legislative finance committee that no other funds are available in fiscal year 2001 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 2001 shall revert to the appropriate fund:**

~~A. nine hundred fifty-one thousand two hundred dollars ($951,200) is appropriated from the general fund to the university of New Mexico for utility costs;~~

~~B. five hundred one thousand two hundred dollars ($501,200) is appropriated from the general fund to New Mexico state university for utility costs;~~

~~C. one hundred two thousand nine hundred dollars ($102,900) is appropriated from the general fund to New Mexico highlands university for utility costs;~~

~~D. fifty-five thousand six hundred dollars ($55,600) is appropriated from the general fund to western New Mexico university for utility costs;~~

~~E. one hundred twenty-one thousand five hundred dollars ($121,500) is appropriated from the general fund to eastern New Mexico university for utility costs;~~

~~F. one hundred fifty-nine thousand nine hundred dollars ($159,900) is appropriated from the general fund to New Mexico institute of mining and technology for utility costs;~~

~~G. thirty-six thousand five hundred dollars ($36,500) is appropriated from the general fund to northern New Mexico community college for utility costs;~~

~~H. eighty thousand eight hundred dollars ($80,800) is appropriated from the general fund to Santa Fe community college for utility costs;~~

~~I. one hundred eighty-six thousand one hundred dollars ($186,100) is appropriated from the general fund to the technical-vocational institute for utility costs;~~

~~J. thirty thousand dollars ($30,000) is appropriated from the general fund to Luna vocational technical institute for utility costs;~~

~~K. eight thousand dollars ($8,000) is appropriated from the general fund to Mesa technical college for utility costs;~~

~~L. twenty-nine thousand three hundred dollars ($29,300) is appropriated from the general fund to New Mexico junior college for utility costs;~~

~~M. eighty-eight thousand dollars ($88,000) is appropriated from the general fund to San Juan college for utility costs;~~

~~N. sixteen thousand eight hundred dollars ($16,800) is appropriated from the general fund to Clovis community college for utility costs; and~~

~~O. four million five hundred seventy-one thousand dollars ($4,571,000) is appropriated from the general fund to the state equalization guarantee for energy fuel costs.~~]

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HOUSE BILL 997, AS AMENDED

# CHAPTER 345

**CHAPTER 345, LAWS 2001**

AN ACT

RELATING TO FINANCE; PROVIDING LEGISLATIVE AUTHORIZATION FOR THE NEW MEXICO FINANCE AUTHORITY TO MAKE GRANTS FOR PUBLIC PROJECTS FROM THE WATER AND WASTEWATER PROJECT GRANT FUND; MAKING AN APPROPRIATION TO THE WATER AND WASTEWATER PROJECT GRANT 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 Subsection C of Section 6-21-6.3 NMSA 1978, the legislature authorizes the New Mexico finance authority to make grants from the water and wastewater project grant fund in the following amounts to the following qualified entities for the following public projects on terms and conditions established by the authority:**

A. three hundred ninety-five thousand eight hundred sixty-one dollars ($395,861) to the Canyon mutual domestic water consumers association for a water project;

B. seventy-three thousand eight hundred dollars ($73,800) to the Cerro East mutual domestic water consumers association for a water project;

C. seven hundred twenty thousand dollars ($720,000) to the Cundiyo mutual domestic water consumers association for two water projects;

D. four hundred fifty thousand dollars ($450,000) to the city of Deming for a water project;

E. three hundred sixty-four thousand five hundred dollars ($364,500) to the El Prado water and sanitation district for a wastewater project;

F. three hundred sixty thousand dollars ($360,000) to the village of Encino for a water project;

G. two million two hundred seventy-seven thousand dollars ($2,277,000) to the city of Las Vegas for a wastewater project;

H. eighty-one thousand dollars ($81,000) to the Los Sisneros mutual domestic water consumers association for a water project;

I. three hundred ninety-six thousand dollars ($396,000) to the city of Moriarty for a wastewater project;

J. thirteen thousand seven hundred ninety-six dollars ($13,796) to the Pecos independent schools for a wastewater project;

K. one hundred fifty-three thousand nine hundred fifty-two dollars ($153,952) to the village of Pecos for a water project;

L. one hundred seventeen thousand eighty-six dollars ($117,086) to the village of Pecos for a wastewater project;

M. twenty-six thousand one hundred dollars ($26,100) to the Pineywoods Estates water association for a water project;

N. two hundred six thousand one hundred dollars ($206,100) to the Puerto de Luna mutual domestic water consumers and sewerage works association for a water project;

O. nine hundred thousand dollars ($900,000) to the village of San Jon for a water project;

P. three hundred sixty thousand dollars ($360,000) to the San Rafael water and sanitation district for a water and wastewater project;

Q. fifty-four thousand dollars ($54,000) to the Sile water system for a water project;

R. three hundred fifty-five thousand five hundred seventy dollars ($355,570) to the South Ojo Caliente mutual domestic water consumers association for a water project;

S. one hundred fifty-seven thousand eight hundred sixty-one dollars ($157,861) to the city of Tucumcari for a water project;

T. one hundred eighty-three thousand seven hundred fifty-six dollars ($183,756) to the city of Tucumcari for a wastewater project;

U. twenty-six thousand six hundred eighty-nine dollars ($26,689) to the pueblo of Zia for a preliminary engineering report;

V. one hundred sixty-three thousand two hundred sixty dollars ($163,260) to the Abiquiu mutual domestic water consumers association for a water project;

W. four million three hundred seven thousand three hundred forty-four dollars ($4,307,344) to the Alcalde mutual domestic water consumers association for a water project;

X. three hundred twelve thousand thirty dollars ($312,030) to the Barranco mutual domestic water consumers association for a water project;

Y. seven hundred sixty-five thousand dollars ($765,000) to the Blanco water users association for a water project;

Z. twenty-seven thousand dollars ($27,000) to the city of Bloomfield for a water feasibility study;

AA. three hundred forty-two thousand dollars ($342,000) to the city of Bloomfield for a wastewater project;

BB. twenty-two thousand five hundred dollars ($22,500) to the Chamberino mutual domestic water consumers association for a water project;

CC. nine hundred thousand dollars ($900,000) to the city of Deming and Luna county for a water project;

DD. three hundred thousand six hundred dollars ($300,600) to the Dixon mutual domestic water consumers association for a water project;

EE. two hundred twenty-five thousand dollars ($225,000) to the village of Floyd for a water project;

FF. sixty-three thousand dollars ($63,000) to the village of Grady for a water project;

GG. one hundred eighty thousand dollars ($180,000) to the La Luz mutual domestic water consumers association for a water and wastewater project;

HH. nine hundred thousand dollars ($900,000) to the city of Las Vegas for a water project;

II. ninety thousand dollars ($90,000) to the village of Logan for a wastewater project;

JJ. one hundred fifty-four thousand three hundred fifty dollars ($154,350) to the Los Ojos mutual domestic water consumers association for a water project;

KK. one hundred seventy-eight thousand two hundred dollars ($178,200) to the Miami mutual domestic water consumers association for a water project;

LL. three million seven hundred thirty-five thousand dollars ($3,735,000) to the pueblo of Santo Domingo for a water and wastewater project;

MM. one hundred thirty-one thousand seven hundred sixty dollars ($131,760) to the Truchas mutual domestic water consumers association for a water project;

NN. three hundred sixty thousand dollars ($360,000) to the Chimayo mutual domestic water consumers association for a water project;

OO. one hundred fourteen thousand seven hundred fifty dollars ($114,750) to the Chupadero mutual domestic water consumers association for a water project;

PP. seven hundred eighty-seven thousand five hundred dollars ($787,500) to the Cuatro Villas mutual domestic water consumers association for a water project;

QQ. forty-five thousand dollars ($45,000) to La Union mutual domestic water consumers association for a water project;

RR. three hundred twenty-six thousand seven hundred dollars ($326,700) to the Ojo Sarco mutual domestic water consumers association for a water project;

SS. two hundred seventy thousand dollars ($270,000) to the Cottonwood mutual domestic water consumers association for a water project;

TT. three million five hundred ten thousand dollars ($3,510,000) to the city of Belen for water and wastewater projects;

UU. seventy-two thousand dollars ($72,000) to the El Vadito de Los Cerrillos mutual domestic water consumers association for a water project;

VV. one hundred thirty-five thousand dollars ($135,000) to the La Cienega mutual domestic water consumers association for a water project;

WW. ninety thousand dollars ($90,000) to the San Jose community water system for a water project;

XX. four hundred twenty-eight thousand four hundred ninety dollars ($428,490) to the Gonzales Ranch community water system for a water project;

YY. eighty thousand one hundred dollars ($80,100) to the Sacatosa community water system for a water project;

ZZ. eighty-one thousand nine hundred dollars ($81,900) to the Aurora community water system for a water project;

AAA. one hundred seventeen thousand dollars ($117,000) to the Tecolote community water system for a water project;

BBB. ninety thousand dollars ($90,000) to the Tajique community water system in Rio Arriba county for a water project;

CCC. eighty-three thousand seven hundred dollars ($83,700) to the Manzano community water system for a water project;

DDD. ninety-one thousand eight hundred dollars ($91,800) to the San Ysidro community water system for a water project;

EEE. eighty-seven thousand three hundred dollars ($87,300) to the La Bajada community water system for a water project;

FFF. ninety-seven thousand two hundred dollars ($97,200) to the Cerrillos community water system for a water project;

GGG. ninety thousand dollars ($90,000) to the Willard community water system for a water project;

HHH. ninety-two thousand seven hundred dollars ($92,700) to the Mountainair community water system for a water project;

III. ninety thousand dollars ($90,000) to the Villanueva community water system for a water project;

JJJ. sixty-seven thousand five hundred dollars ($67,500) to the village of Canada de Los Alamos for water projects;

KKK. seven hundred eleven thousand dollars ($711,000) to the Tierra Amarilla mutual domestic water consumers association for a water project;

LLL. six hundred fifty-seven thousand dollars ($657,000) to the Quemado mutual domestic water consumers association for a water project;

MMM. one million five hundred sixty-eight thousand seven hundred dollars ($1,568,700) to the city of Grants for a water project;

NNN. three hundred fourteen thousand four hundred sixty-nine dollars ($314,469) to the Butterfield Park mutual domestic water consumers association for a water project;

OOO. eighty-one thousand dollars ($81,000) to Desert Sands mutual domestic water consumers association for a water project;

PPP. two million five hundred twenty thousand dollars ($2,520,000) to the La Mesa mutual domestic water consumers association in Dona Ana county for a water project;

QQQ. two million five hundred twenty thousand dollars ($2,520,000) to the city of Sunland Park for a wastewater project;

RRR. two hundred fifty-two thousand seven hundred twenty dollars ($252,720) to the village of Chama for a water project;

SSS. two hundred seventy thousand dollars ($270,000) to the Upper Canoncito mutual domestic water consumers association for a water project;

TTT. eight hundred twenty-one thousand nine hundred nineteen dollars ($821,919) to the Northstar mutual domestic water consumers association and sewerage works association for a water project;

UUU. seven hundred twenty-nine thousand dollars ($729,000) to the village of Jemez Springs for a wastewater project;

VVV. six hundred seventy-five thousand dollars ($675,000) to the city of Truth or Consequences for a wastewater project;

WWW. one hundred eight thousand dollars ($108,000) to Picuris Pueblo for a wastewater project; and

XXX. seven hundred forty-seven thousand dollars ($747,000) to the Tajique mutual domestic water consumers association in Torrance county for a water project.

**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 2004 its desire to continue to pursue a grant from the water and wastewater project grant fund for a public project listed in Section 1 of this act, the legislative authorization granted to the New Mexico finance authority by Section 1 of this act to make a grant from the water and wastewater project grant fund to that qualified entity for that public project shall be void.**

**Section 3. APPROPRIATION.--Forty million nine hundred ten thousand dollars ($40,910,000) is appropriated from the general fund to the water and wastewater project grant fund for expenditure in fiscal year 2001 and subsequent fiscal years to carry out the provisions of Section 6-21-6.3 NMSA 1978. Included in this appropriation is one million two hundred fifty-five thousand four hundred thirty-three dollars ($1,255,433) as a set-aside for emergency projects. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.**

**Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.**

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HOUSE BILL 160, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 5, 2001

# CHAPTER 346

**CHAPTER 346, LAWS 2001**

AN ACT

RELATING TO PATENTS AND COPYRIGHTS; PROVIDING FOR STATE OWNERSHIPOF PATENTS OR COPYRIGHTS FOR MATERIALS OR WORKS DEVELOPED BY STATE EMPLOYEES; REQUIRING THE ECONOMIC DEVELOPMENT DEPARTMENT TO PROMULGATE RULES; ENACTING SECTIONS OF THE NMSA 1978; CREATING A FUND.

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

## Section 1. A new Section 57-3C-1 NMSA 1978 is enacted to read:

"57-3C-1. SHORT TITLE.--This act may be cited as the "Patent and Copyright Act"."

## Section 2. A new Section 57-3C-2 NMSA 1978 is enacted to read:

"57-3C-2. DEFINITIONS.--As used in the Patent and Copyright Act:

A. "department" means the economic development department;

B. "patent" means the grant of certain property rights in an invention, as defined in federal patent laws, to an inventor that includes the right to exclude others from making, using, offering for sale, selling or importing the invention; and

C. "copyright" means the property rights, as defined in federal copyright laws, in original works of authorship."

## Section 3. A new Section 57-3C-3 NMSA 1978 is enacted to read:

"57-3C-3. PATENTS AND COPYRIGHTS AS STATE PROPERTY EXCEPTION.--

A. Inventions, innovations, works of authorship and their associated materials that are developed by a state employee, except an employee of a state educational institution, within the scope of his employment or when using state-owned or state-controlled facilities or equipment are the property of the state.

B. The provisions of Subsection A of this section do not apply to a state employee employed by a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico."

## Section 4. A new Section 57-3C-4 NMSA 1978 is enacted to read:

"57-3C-4. ADMINISTRATION OF ACT.--The department shall:

A. be responsible for the administration of the Patent and Copyright Act;

B. promulgate rules pursuant to the Patent and Copyright Act;

C. apply, on behalf of the state, for the patent protection or registration of copyright and pay the associated expenses;

D. share with the inventor, after expenses, fifty percent of the income collected on the invention or work; and

E. determine, after a cost-benefit analysis, whether to retain the patent or copyright for the state."

## Section 5. A new Section 57-3C-5 NMSA 1978 is enacted to read:

"57-3C-5. FUND CREATED.--The "patent and copyright fund" is created in the state treasury. Income received by the state pursuant to the Patent and Copyright Act

shall be deposited in the patent and copyright fund. Money in the patent and copyright fund is appropriated to the economic development department to carry out the provisions of the Patent and Copyright Act. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund."

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HOUSE BILL 775, AS AMENDED

# CHAPTER 347

**CHAPTER 347, LAWS 2001**

AN ACT

RELATING TO HUMAN RIGHTS; ADDING SPOUSAL AFFILIATION TO THE HUMAN RIGHTS ACT AS A PROTECTED CATEGORY.

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

## Section 1. Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification 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, 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 an individual or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex, 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 individual in any program established to provide an apprenticeship or other training or retraining because of race, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, 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, 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 an individual for employment in a known available job, for which the individual is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, 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, 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 individual because of race, religion, color, national origin, ancestry, sex, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

G. any person to:

(1) refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any housing accommodation or real property to any individual or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation or real property to any individual because of race, religion, color, national origin, ancestry, sex, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

(2) discriminate against any individual in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of the race, religion, color, national origin, ancestry, sex, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation; or

(3) print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation or real property or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing accommodation or real property that expresses any preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit, including financial assistance for the acquisition of any consumer good as defined by Section 55-9-109 NMSA 1978, to:

(1) consider the race, religion, color, national origin, ancestry, sex, 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, 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 to an individual's physical or mental handicap or serious medical condition, unless such accommodation is unreasonable or an undue hardship."

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SENATE BILL 369, AS AMENDED

# CHAPTER 348

**CHAPTER 348, LAWS 2001**

AN ACT

RELATING TO CHARTER SCHOOLS; CREATING A TEN-MILE LIMIT ON TRANSPORTATION PROVIDED TO AND FROM CHARTER SCHOOLS; AMENDING A SECTION OF THE NMSA 1978.

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

## Section 1. 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 local 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 local school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The local 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 local school district boundary.

G. A charter school may negotiate with a local school district for capital expenditures.

H. A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a public 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 Sections 22-1-6 and 22-2-8 NMSA 1978.

K. A charter school may acquire, pledge 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."

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HOUSE BILL 753, AS AMENDED

# CHAPTER 349

**CHAPTER 349, LAWS 2001**

AN ACT

RELATING TO TAXATION; AMENDING THE EDUCATION TECHNOLOGY EQUIPMENT ACT PROVISIONS ON TAX LEVIES FOR PAYMENT OF EDUCATION TECHNOLOGY LEASE-PURCHASE ARRANGEMENTS.

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

## Section 1. Section 6-15A-6 NMSA 1978 (being Laws 1997, Chapter 193, Section 6) is amended to read:

"6-15A-6. TAX LEVY FOR PAYMENT OF LEASE-PURCHASE AGREEMENT.--The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Annual payments due on lease-purchase arrangements may be combined with other school district general obligation debt when determining the annual debt service tax levy pursuant to Sections 7-37-8 and 22-18-12 NMSA 1978. Nothing in the Education Technology Equipment Act shall be so construed as to prevent a school district from applying any other legally available funds, including funds that may be in its general fund or investment income actually received from investments, to the payments due on or any prepayment premium payable in connection with such lease-purchase arrangements as the same become due, and upon such payments, the levy or levies provided for in this section may, to that extent, be reduced."

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HOUSE BILL 825

# CHAPTER 350

**CHAPTER 350, LAWS 2001**

AN ACT

RELATING TO PUBLIC SCHOOL TRANSPORTATION; CHANGING DATES AND PERCENTAGES ON THE TRANSPORTATION ALLOCATION CALCULATION; REPEALING THE DELAYED REPEAL ON THE SECTION OF LAW PERTAINING TO TRANSPORTATION DISTRIBUTIONS.

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

## Section 1. Section 22-8-29.1 NMSA 1978 (being Laws 1995, Chapter 208, Section 10, as amended) is amended to read:

"22-8-29.1. CALCULATION OF TRANSPORTATION ALLOCATION.--

A. As used in this section:

(1) "annual variables" means the coefficients calculated by regressing the total operational expenditures from two years prior to the current school year for each school district using the number of students transported and the numerical value of site characteristics;

(2) "base amount" means the fixed amount that is the same for all school districts;

(3) "total operational expenditures" means the sum of all to-and-from school transportation expenditures, excluding expenditures incurred in accordance with the provisions of Section 22-8-27 NMSA 1978; and

(4) "variable amount" means the sum of the product of the annual variables multiplied by each school district's numerical value of the school district's site characteristics multiplied by the number of days of operation for each school district.

B. The department shall calculate the transportation allocation for each school district.

C. The base amount is designated as product A. Product A is the constant calculated by regressing the total operations expenditures from the two years prior to the current school year for school district operations using the numerical value of site characteristics approved by the state board. The legislative education study committee and the legislative finance committee may review the site characteristics developed by the state transportation director prior to approval by the state board.

D. The variable amount is designated as product B. Product B is the predicted additional expenditures for each school district based on the regression analysis using the site characteristics as predictor variables multiplied by the number of days.

E. The allocation to each school district shall be equal to product A plus product B.

F. For the 2001-2002, 2002-2003 and 2003-2004 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred five percent of the prior school year's transportation expenditure.

G. The adjustment factor shall be applied to the allocation amount determined pursuant to Subsections E and F of this section."

## Section 2. REPEAL.--Laws 1999 (1st S.S.), Chapter 11, Section 7 is repealed.

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HOUSE BILL 9, AS AMENDED

# CHAPTER 351

**CHAPTER 351, LAWS 2001**

AN ACT

RELATING TO PUBLICLY FUNDED HEALTH CARE PROGRAMS; PROVIDING EXPANSION TO OTHER POLITICAL SUBDIVISIONS TO USE THE CONSOLIDATED PURCHASING SINGLE PROCESS; PROVIDING FOR APPLICABILITY OF CERTAIN PROVISIONS OF THE NEW MEXICO INSURANCE CODE; 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 Health Care Purchasing Act is enacted to read:

"CONSOLIDATED PURCHASING FOR OTHER PERSONS.--

A. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process for the procurement of health care benefits shall create or enter into an existing association, cooperative or other mutual alliance to create larger pools of eligible participants.

B. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process shall, through their respective association, cooperative or mutual alliance, participate in the subsequent consolidated purchasing single process with the publicly funded health care agencies."

## Section 2. A new section of the Health Care Purchasing Act is enacted to read:

"USE OF SOCIAL SECURITY NUMBERS.--The publicly funded health care agencies, political subdivisions and other persons providing health care benefits through the consolidated purchasing single process, in compliance with state and federal law, shall not require the use of participants' social security numbers as health care benefit plan identification numbers."

## Section 3. A new section of the Health Care Purchasing Act is enacted to read:

"CONSOLIDATED ADMINISTRATIVE FUNCTIONS.--

A. By December 1, 2001, the publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall cooperatively study and provide a status report on the consolidation of administrative functions to the legislative health and human services committee and the governor.

B. By December 31, 2003, the publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall consolidate, standardize and administer the administrative functions that those entities can effectively and efficiently administer as reflected in the study.

C. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act with the publicly funded health care agencies and political subdivisions to determine assessments or provisions of resources to consolidate, standardize and administer the consolidated purchasing single process and subsequent activities pursuant to the Health Care Purchasing Act. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter into contracts with nonpublic persons to provide the service of determining assessments or provision of resources for consolidation, standardization and administrative activities.

D. Each agency will retain its responsibility to determine policy direction of the benefit plans, plan development, training and coordination with respect to participants and its benefits staff, as well as to respond to benefits eligibility inquiries and establish and enforce eligibility rules."

## Section 4. Section 59A-1-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 16, as amended) is amended to read:

"59A-1-16. EXEMPTED FROM CODE.--In addition to organizations and businesses otherwise exempt, the Insurance Code shall not apply to:

A. a labor organization that, incidental only to operations as a labor organization, issues benefit certificates to members or maintains funds to assist members and their families in times of illness, injury or need, and is not for profit;

B. the credit union share insurance corporation, as identified in Chapter 58, Article 12 NMSA 1978, and similar corporations and funds for protection of depositors, shareholders or creditors of financial institutions and businesses other than insurers; or

C. the risk management division of the general services department, the public school insurance authority, the retiree health care authority and any public school district or to insurance of public property or public risks by any agency of government not otherwise engaged in the business of insurance, except the provisions of the Patient Protection Act and Sections 59A-2-9.2 and 59A-23E-18 NMSA 1978 shall apply to any entity required or authorized to purchase health care benefits pursuant to the Health Care Purchasing Act."

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HOUSE GOVERNMENT AND URBAN AFFAIRS

COMMITTEE SUBSTITUTE FOR HOUSE BILL 878

# CHAPTER 352

**CHAPTER 352, LAWS 2001**

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING CERTAIN SECTIONS OF THE COMPREHENSIVE HEALTH INSURANCE POOL ACT; DEFINING CERTAIN ACTIONS AS UNFAIR TRADE PRACTICES.

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

## Section 1. Section 59A-54-1 NMSA 1978 (being Laws 1987, Chapter 154, Section 1) is amended to read:

"59A-54-1. SHORT TITLE.--Chapter 59A, Article 54 NMSA 1978 may be cited as the "Medical Insurance Pool Act". Any reference in any law, rule, division bulletin or other legal document to the Comprehensive Health Insurance Pool Act shall be deemed to refer to the Medical Insurance Pool Act."

## Section 2. Section 59A-54-2 NMSA 1978 (being Laws 1987, Chapter 154, Section 2) is amended to read:

"59A-54-2. PURPOSE.--The purpose of the Medical Insurance Pool Act is to provide access to health insurance coverage to all residents of New Mexico who are denied adequate health insurance and are considered uninsurable."

## Section 3. 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. "health care facility" means any entity providing health care services that is licensed by the department of health;

D. "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;

E. "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;

F. "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;

G. "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;

H. "insured" means an individual resident of this state who is eligible to receive benefits from any insurer or other health plan;

I. "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;

J. "medicare" means coverage under Part A or Part B of Title 18 of the Social Security Act, as amended;

K. "pool" means the New Mexico medical insurance pool; and

L. "therapist" means a licensed physical, occupational, speech or respiratory therapist."

## Section 4. 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 five members appointed by the superintendent. The members appointed by the members of the pool shall consist of one representative of a nonprofit health care plan, one representative of a health maintenance organization and two representatives of other types of members of the pool. 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.

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 5. Section 59A-54-7 NMSA 1978 (being Laws 1987, Chapter 154, Section 7, as amended) is amended to read:

"59A-54-7. BOARD--POWERS AND DUTIES.--The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact health insurance business. In addition, the board shall have the specific authority to:

A. enter into contracts as are necessary or proper to carry out the provisions and purposes of the Medical Insurance Pool Act, including the authority, with the approval of the superintendent, to enter into contracts with similar pools of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions. The pool shall comply with the Procurement Code except as otherwise provided in the Medical Insurance Pool Act;

B. sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

C. establish appropriate rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices;

D. assess members of the pool in accordance with the provisions of the Medical Insurance Pool Act and make initial and interim assessments as may be reasonable and necessary for the organizational or interim operating expenses of the pool. Interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year. Interim assessments may include anticipated expenses of the next year that the board determines are reasonable and necessary for the operating expenses of the pool;

E. issue policies of insurance in accordance with the requirements of the Medical Insurance Pool Act;

F. appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design and any other function within the authority of the pool; and

G. conduct periodic audits to assure the general accuracy of the financial data submitted to the pool. The board shall cause the pool to have an annual audit of its operations by an independent certified public accountant."

## Section 6. 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 l876 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.

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 7. Section 59A-54-12 NMSA 1978 (being Laws 1987, Chapter 154, Section 12, as amended) is amended to read:

"59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

A. Except as provided in Subsection B of this section, a person is eligible for a pool policy only if on the effective date of coverage or renewal of coverage the person is a New Mexico resident, and:

(1) is not eligible as an insured or covered dependent for any health plan that provides coverage for comprehensive major medical or comprehensive physician and hospital services;

(2) is only eligible for a health plan that is offered at a rate higher than that available from the pool;

(3) has been rejected for coverage for comprehensive major medical or comprehensive physician and hospital services;

(4) is only eligible for a health plan with a rider, waiver or restrictive provision for that particular individual based on a specific condition;

(5) has as of the date the individual seeks coverage from the pool an aggregate of eighteen or more months of creditable coverage, the most recent of which was under a group health plan, governmental plan or church plan as defined in Subsections 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

(6) 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 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 pool policy shall provide that coverage of a dependent unmarried person terminates when the person becomes nineteen years of age or, if the person is enrolled full time in an accredited educational institution, when he becomes twenty-five years of age. The policy shall also provide in substance that attainment of the limiting age does not operate to terminate coverage when the person is and continues to be:

(1) incapable of self-sustaining employment by reason of developmental disability or physical handicap; and

(2) primarily dependent for support and maintenance upon the person in whose name the contract is issued.

Proof of incapacity and dependency shall be furnished to the insurer within one hundred twenty days of attainment of the limiting age and subsequently as required by the insurer but not more frequently than annually after the two-year period following attainment of the limiting age.

E. A pool policy that provides coverage for a family member of the person in whose name the contract is issued shall, as to the coverage of the family member or the individual in whose name the contract was issued, provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the family member or the person in whose name the contract is issued from the moment of coverage of injury or illness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the contract may require that notification of the birth of a child and payment of the required premium shall be furnished to the carrier within thirty-one days after the date of birth in order to have the coverage continued beyond the thirty-one day period.

F. Except for a person eligible as provided in Paragraph (5) of Subsection A of this section, a pool policy may contain provisions under which coverage is excluded during a six-month period following the effective date of coverage as to a given individual for preexisting conditions, as long as either of the following exists:

(1) the condition has manifested itself within a period of six months before the effective date of coverage in such a manner as would cause an ordinarily prudent person to seek diagnoses or treatment; or

(2) medical advice or treatment was recommended or received within a period of six months before the effective date of coverage.

G. The preexisting condition exclusions described in Subsection F of this section shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance coverage that was involuntarily terminated, if the application for pool coverage is made not later than thirty-one days following the involuntary termination. In that case, coverage in the pool shall be effective from the date on which the prior coverage was terminated. This subsection does not prohibit preexisting conditions coverage in a pool policy that is more favorable to the insured than that specified in this subsection.

H. An individual is not eligible for coverage by the pool if:

(1) except as provided in Subsection J of this section the individual is, at the time of application, eligible for medicare or medicaid which would provide coverage for amounts in excess of limited policies such as dread disease, cancer policies or hospital indemnity policies;

(2) the individual has voluntarily terminated coverage by the pool within the past twelve months;

(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 (5) 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.

I. Any person whose health insurance coverage from a qualified state health policy with similar coverage is terminated because of nonresidency in another state may apply for coverage under the pool. If the coverage is applied for within thirty-one days after that termination and if premiums are paid for the entire coverage period, the effective date of the coverage shall be the date of termination of the previous coverage.

J. 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."

## Section 8. Section 59A-54-13 NMSA 1978 (being Laws 1987, Chapter 154, Section 13, as amended) is amended to read:

"59A-54-13. BENEFITS.--

A. The health insurance policy issued by the pool shall pay for medically necessary eligible health care services rendered or furnished for the diagnoses or treatment of illness or injury that exceed the deductible and coinsurance amounts applicable under Section 59A-54-14 NMSA 1978 and are not otherwise limited or excluded. Eligible expenses are the charges for the health care services and items for which benefits are extended under the pool policy. The coverage to be issued by the pool and its schedule of benefits, exclusions and other limitations shall be established by the board and shall, at a minimum, reflect the levels of health insurance coverage generally available in New Mexico for small group policies. The superintendent shall approve the benefit package developed by the board to ensure its compliance with the Medical Insurance Pool Act. The benefit package shall include therapy services and hearing aids.

B. The Medical Insurance Pool Act shall not be construed to prohibit the pool from issuing additional types of health insurance policies with different types of benefits which in the opinion of the board may be of benefit to the citizens of New Mexico.

C. The board may design and employ cost containment measures and requirements, including preadmission certification and concurrent inpatient review, for the purpose of making the pool more cost effective."

## Section 9. Section 59A-54-14 NMSA 1978 (being Laws 1987, Chapter 154, Section 14, as amended) is amended to read:

"59A-54-14. DEDUCTIBLES--COINSURANCE--MAXIMUM OUT-OF-POCKET PAYMENTS.--

A. Subject to the limitation provided in Subsection C of this section, a pool policy offered in accordance with the Medical Insurance Pool Act shall impose a deductible on a per-person calendar-year basis. Deductible plans of five hundred dollars ($500) and one thousand dollars ($1,000) shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars ($500) or one thousand dollars ($1,000) of eligible expenses incurred by the covered person.

B. Subject to the limitations provided in Subsection C of this section, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

C. The maximum aggregate out-of-pocket payments for eligible expenses by the insured shall be determined by the board."

## Section 10. Section 59A-54-16 NMSA 1978 (being Laws 1987, Chapter 154, Section 16) is amended to read:

"59A-54-16. POOL POLICY.--

A. A pool policy offered under the Medical Insurance Pool Act shall contain provisions under which the pool is obligated to renew the contract until the day on which the individual in whose name the contract is issued first becomes eligible for medicare coverage, except that in a family policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting the durational requirement of this subsection.

B. The pool shall not change the rates for pool policies except on a class basis with a clear disclosure in the policy of the right of the pool to do so.

C. A pool policy offered under the Medical Insurance Pool Act shall provide covered family members the right to continue the policy as the named insured or through a conversion policy upon the death of the named insured or upon the divorce, annulment or dissolution of marriage or legal separation of the spouse from the named insured by election to do so within a period of time specified in the contract subject to the requirements of Section 59A-54-l6 NMSA 1978."

## Section 11. Section 59A-54-17 NMSA 1978 (being Laws 1987, Chapter 154, Section 17) is amended to read:

"59A-54-17. RULES.--The superintendent shall:

A. adopt rules that provide for disclosure by members of the pool of the availability of insurance coverage from the pool;

B. adopt rules that implement the provisions of the Medical Insurance Pool Act; and

C. adopt any other rules deemed necessary in order to carry out the provisions of the Medical Insurance Pool Act."

## Section 12. Section 59A-54-18 NMSA 1978 (being Laws 1987, Chapter 154, Section 18) is amended to read:

"59A-54-18. COLLECTIVE ACTION.--Neither the participation by insurers in the pool, the establishment of rates, forms or procedures for coverages issued by the pool nor any other joint or collective action required by the Medical Insurance Pool Act shall be the basis of any legal action, civil or criminal liability or penalty against the members of the pool either jointly or separately."

## Section 13. Section 59A-54-19 NMSA 1978 (being Laws 1987, Chapter 154, Section 19, as amended) is amended to read:

"59A-54-19. RATES--STANDARD RISK RATE.--

A. The pool shall determine a standard risk rate by actuarially calculating the individual rate that an insurer would charge for an individual policy with the pool benefits issued to a person who was a standard risk. Separate schedules of standard risk rates based on age and other appropriate demographic characteristics may be used. In determining the standard risk rate, the pool shall consider the benefits provided, the standard risk experience and the anticipated expenses for a standard risk for the coverage provided. The rates charged for pool coverage shall be no more than one hundred fifty percent of the standard risk rate for each class of insureds.

B. The board shall adopt a low-income premium schedule that provides coverage at lower rates for those persons with an income less than an amount to be determined by the board. The board shall adopt as many income categories as it finds practical and shall determine income based on the preceding taxable year. No person shall be eligible for a low-income premium reduction if that person's premium is paid by a third party who is not a family member.

C. All rates and rate schedules shall be submitted to the superintendent for approval."

**Section 14. A new section of Chapter 59A, Article 16 NMSA 1978 is enacted to read:**

"MEDICAL INSURANCE POOL ACT--UNFAIR REFERRAL.--It is an unfair trade practice for an insurer or other person to refer an individual employee or an employee's eligible dependent to the plan offered pursuant to the Medical Insurance Pool Act or to arrange for an individual employee or an employee's eligible dependent to apply to the plan, for the purpose of separating that employee or dependent from group health insurance coverage provided in connection with the employee's employment."

**Section 15. TEMPORARY PROVISION--INTENT.--The intent of the amendment by this act to Subsection A of Section 59A-54-10 NMSA 1978 is to clarify that the calculation of assessments pursuant to Section 59A-54-10 NMSA 1978 includes medicaid managed care premiums. The specific inclusion of medicaid managed care premiums by this act shall not be interpreted to mean that medicaid managed care premiums were intended to be excluded from the calculation of assessments before the effective date of this act.**

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SENATE BILL 375, AS AMENDED

# SENATE JOINT RESOLUTION 4

**SENATE JOINT RESOLUTION 4, LAWS 2001**

A JOINT RESOLUTION
APPROVING A PROPOSAL BY THE STATE PARKS DIVISION TO PURCHASE LANDS ADJACENT TO THE EXTERIOR BOUNDARIES OF COYOTE CREEK STATE PARK, OLIVER LEE MEMORIAL STATE PARK AND PANCHO VILLA STATE PARK WITH FUNDS MADE AVAILABLE BY THE FEDERAL GOVERNMENT OR OTHER SOURCES.

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

WHEREAS, Section 16-2-11 NMSA 1978 authorizes the state to purchase land for state parks, where those lands are adjacent to existing parks or recreational areas and are necessary for successful park or recreation area protection and development; help meet recreation and open space demands of metropolitan area residents by emphasizing park or recreational areas within easy access of population centers; preserve the most significant examples of New Mexico natural scenic landscape; and meet the pressure on primary

vacation regions not adequately supplied with public recreation opportunities; and

WHEREAS, Section 16-2-11 NMSA 1978 provides that the legislature must approve any acquisition of land for state park purposes prior to the execution of a written agreement binding the state to the expenditure of funds for such acquisition; and

WHEREAS, acquiring lands from willing sellers that are adjacent to the exterior boundaries of parks that are owned by the state will provide the greatest benefit to the state and its residents; and

WHEREAS, the state owns Coyote Creek state park, Oliver Lee memorial state park and Pancho Villa state park; and

WHEREAS, the state parks division of the energy, minerals and natural resources department developed management plans with the assistance and input of the public that identified specific tracts of land adjacent to the exterior boundaries of Coyote Creek state park, Oliver Lee memorial state park and Pancho Villa state park that meet the statutory criteria for acquiring lands for parks; and

WHEREAS, the federal government has made available to the state parks division four hundred thirty-three thousand one hundred forty-eight dollars ($433,148) that can be used to acquire lands for park purposes, and the division may be able to secure additional funds from other public and private sources, including private individuals and nonprofit groups, to use for the same purpose and to serve as matching funds for the federal funds; and

WHEREAS, acquiring these lands will enhance the recreational and educational benefits provided by the parks, establish park boundaries in more appropriate locations and aid in managing the resources already contained within the parks;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state parks division of the energy, minerals and natural resources department be authorized to purchase from willing sellers lands adjacent to the exterior boundaries of Coyote Creek state park, Oliver Lee memorial state park and Pancho Villa state park that have been identified in the park management plans previously adopted by the division, using funds made available to it by the federal government and other public or private sources to the extent such funds may permit; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the state parks division of the energy, minerals and natural resources department.

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SENATE JOINT RESOLUTION 4

# SENATE JOINT RESOLUTION 12

**SENATE JOINT RESOLUTION 12, LAWS 2001**

A JOINT RESOLUTION PROPOSING SALE OF THE TRI-SERVICES BUILDING ON THE UNIVERSITY OF NEW MEXICO CAMPUS TO THE UNIVERSITY OF NEW MEXICO IN ALBUQUERQUE IN BERNALILLO COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease of state property for a period exceeding twenty-five years or of over one hundred thousand dollars ($100,000) in value; and

WHEREAS, the property control division of the general services department owns the building known as the tri-services building at the health sciences center located at 2201 Camino de Salud NE on the campus of the university of New Mexico in Albuquerque, which was built in the early 1970s; and

WHEREAS, the building houses the New Mexico department of agriculture veterinary diagnostics services, the department of health scientific laboratory division and the office of the state medical investigator; and

WHEREAS, the condition of the current facility has hindered the pursuit of each agency's mission and goals, and the increasing complexity of the programs and environmental standards requires a specialized facility; and

WHEREAS, it is advantageous to house these programs at the university of New Mexico health sciences center; and

WHEREAS, the university of New Mexico has agreed to enter into negotiations to make land available at the health sciences center for construction of a replacement facility; and

WHEREAS, the university of New Mexico has agreed to

enter into negotiations to purchase the existing building; and

WHEREAS, partial funding for a replacement facility is being considered during this legislative session; and

WHEREAS, proceeds from the sale of the facility would be deposited into the property control reserve fund pursuant to Section 15-3-24.2 NMSA 1978 and

could be appropriated from that fund to help finance the design, construction and purchase of equipment and furnishings for the replacement facility;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed sale of the tri-services building at 2201 Camino de Salud NE on the campus of the university of New Mexico in Bernalillo county be hereby ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that the purchase price be negotiated between the parties and approved by the secretary of general services, the board of regents of the university of New Mexico and the state board of finance; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department and the university of New Mexico.

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SENATE JOINT RESOLUTION 12, AS AMENDED

# HOUSE JOINT RESOLUTION 17

**HOUSE JOINT RESOLUTION 17, LAWS 2001**

A JOINT RESOLUTION

PROPOSING AN EXCHANGE OF LAND AT THE YALE BUSINESS PARK IN ALBUQUERQUE IN BERNALILLO COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease for a period exceeding twenty-five years of state property of over one hundred thousand dollars ($100,000) in value; and

WHEREAS, the property control division of the general services department owns four and three hundred fifty-six thousandths acres of land known as tract 9A at the Yale business park in Albuquerque; and

WHEREAS, the Yale business park is located at the northeast corner of Yale boulevard and Gibson boulevard in Bernalillo county approximately one mile from the Albuquerque international airport; and

WHEREAS, the property was purchased pursuant to Laws 1993, Chapter 367, Section 73, as amended by Laws 1994, Chapter 91; and

WHEREAS, the workers' compensation administration building is located on tract 10A at the Yale business park; and

WHEREAS, the Fairfield inn is adjacent to the west of tract 9A in the Yale business park and desires to expand its facilities; and

WHEREAS, the owners of the Fairfield inn desire to exchange tract 11A consisting of two and eight thousand five hundred eighteen ten-thousandths acres and tract 13A consisting of three and four thousand two hundred thirty-five ten-thousandths acres for the western two and one-fourth acres of tract 9A adjacent to the Fairfield inn; and

WHEREAS, the owners of the Fairfield inn will pay all the costs of the exchange, including surveys and appraisals for the three parcels of land, subdivision costs, title insurance as required by the state and all other closing costs; and

WHEREAS, the proposed exchange would result in a net increase of land to the state of approximately four and two hundred fifty-three ten-thousandths acres at the Yale business park; and

WHEREAS, the legislature finds that locating state agencies in campus settings provides improved access to state services; and

WHEREAS, the use of tract 9A for expansion of the Fairfield inn and the use of tracts 11A and 13A for expansion of the state agency office building campus are appropriate uses for these tracts of land; and

WHEREAS, the legislature finds that it is economically advantageous for the state to own office space;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed exchange of land at the Yale business park in Bernalillo county be hereby ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978, provided that none of the tracts of land involved in this exchange be used for a correctional facility or a halfway house for persons on probation or parole; and

BE IT FURTHER RESOLVED that any development placed upon these tracts must conform to city zoning ordinances and protect and enhance surrounding business and residential uses.

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department.

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HOUSE JOINT RESOLUTION 17, AS AMENDED

# SENATE JOINT RESOLUTION 29

SENATE JOINT RESOLUTION 29, LAWS 2001

A JOINT RESOLUTION GRANTING PRIOR APPROVAL TO THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT FOR THE SALE, TRADE OR LEASE OF REAL PROPERTY IN DONA ANA COUNTY OWNED BY THE STATE ON BEHALF OF THE EMPLOYMENT SECURITY DIVISION OF THE LABOR DEPARTMENT.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to a state agency if the sale, trade or lease is for a consideration of one hundred thousand dollars ($100,000) or more; and

WHEREAS, the property control division of the general services department holds legal title for the state on behalf of the employment security division of the labor department of the following described real property located in Dona Ana county, New Mexico: a tract of land situate in the city of Las Cruces, New Mexico, being shown as U.S.R.S. 9A-67E on the property maps of the federal bureau of reclamation and more particularly described as follows: beginning at an iron rod set near the edge of the sidewalk on the west side of Alameda Boulevard, the same being on the north boundary of the tract of land formerly of John Lemon, from which point the original corner at the northwest intersection of Amador Avenue and Alameda Boulevard bears S. 13° 44' 30" E. a distance of 471.40 feet; thence S. 78° 07' W. 211.00 feet to an iron pipe marking the southwest corner of this tract; thence N. 9° 28' W. 97.75 feet to an iron pipe marking the northwest corner of this tract; thence along a wooden fence, N. 78° 11' E. 211.00 feet to the northeast corner of this tract marked by a cross in the sidewalk; thence S. 9° 28' E. 97.50 feet to the place of beginning, containing 0.473 acre of land, more or less; and

WHEREAS, the employment security division of the labor department has requested the property control division of the general services department to offer the described property for sale, trade or lease for a term of more than twenty-five years, and it is expected that the consideration for the transaction will exceed one hundred thousand dollars ($100,000) thus implicating the requirement for legislative ratification and approval; and

WHEREAS, pursuant to Section 15-3-2 NMSA 1978 and applicable federal laws, the property is not under control of the property control division of the general services department and, therefore, proceeds from the sale of this property are exempt from provisions of Section 15-3-24.2 NMSA 1978;

NOW, THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed sale, trade or lease for more than twenty-five years of the described property for a consideration in excess of one hundred thousand dollars ($100,000) is hereby ratified and approved; and

BE IT FURTHER RESOLVED that the proceeds of the proposed sale, trade or lease of the property be used only for the acquisition of real property to be held by the state on behalf of the employment security division of the labor department; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the property control division of the general services department and the employment security division of the labor department.

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SENATE JOINT RESOLUTION 29, AS AMENDED

# HOUSE JOINT RESOLUTION 30

**HOUSE JOINT RESOLUTION 30, LAWS 2001**

A JOINT RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY IN RIO ARRIBA COUNTY; ALLOWING FOR A CASH EQUIVALENT IN LIEU OF CASH FOR THE SALE.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of the state legislature of any sale of real property of the state over one hundred thousand dollars ($100,000); and

WHEREAS, in November 1977, the state leased property in Rio Arriba county consisting of approximately three and nine hundred fifty-seven thousandths acres to Santa Maria el Mirador for twenty-two years with an option to purchase the property; and

WHEREAS, Santa Maria el Mirador exercised the option to purchase one and seventeen one hundredths acres, which was approved by the state board of finance in June 1983; and

WHEREAS, Santa Maria el Mirador now wishes to purchase the remaining two and seven hundred eighty-seven thousandths acres; and

WHEREAS, the property, including the portion already sold to Santa Maria el Mirador is legally described as:

A tract of land situated in the Sebastian Martin Grant and the San Juan Pueblo Grant, Village of Alcalde, Rio Arriba County, New Mexico, formerly being a portion of El Mirador Ranch, and herein more particularly described as follows:

Beginning at a government iron pipe and brass cap set for angle point 3 of P.C. 53 P. 1 of the San Juan Pueblo Grant and running thence N. 10° 15' E., 97.00 feet to an iron pipe; thence N. 80° 12' W., 64.35 feet to an iron pipe; thence S. 12° 26' W., 84.20 feet to an iron pipe; thence N. 68° 25' W., 19.70 feet to an iron pipe; thence N. 12° 41' E., 51.65 feet to an iron pipe; thence N. 80° 41' W., 17.90 feet to an iron pipe; thence N. 11° 11' E., 53.55 feet to an iron pipe; thence S. 37° 48' W., 39.20 feet to an iron pipe; thence N. 78° 12' W., 63.70 feet to an iron pipe; thence N. 10° 10' E., 36.50 feet to an iron pipe; thence N. 48° 33'W., 78.50 feet to an ½ inch galvanized iron pipe; thence N. 40° 20' E., 305.45 feet; thence S. 59° 38' E., 430.00 feet; thence S. 22° 48' W., 215.10 feet to an iron pipe; thence N. 82° 30' W., 20.40 feet to an iron pipe; thence S. 26° 28' W. 115.90 feet to an iron pipe; thence N. 75° 01' W., 125.30 feet to government iron

pipe and brass cap set for angle point 1, P.C. 52 P. 1. thence N. 43° 37' W., 45.90 feet to an iron pipe, thence N. 75° 38' W., 47.50 feet to the point of beginning, containing therein 3.66 acres more or less.

Together with a Tract of land situate in the San Juan Pueblo Grant. Village of Alcalde, Rio Arriba County, New Mexico and herein more particularly described as follows:

Beginning at a government iron pipe and brass cap set for angle point 3, P.C. 53, P.1. and running thence S. 50° 25' W., 20.46 feet to a point; thence S. 22° 20' W. 73.92 feet to a point; thence N. 74° 54' W., 34.32 feet to a point and the true point of beginning for this tract; thence S. 86° 10' W., 46.86 feet to a point; thence S. 85° 25' W., 24.35 feet to a point; thence S. 82° 35' W., 64.68 feet to a point; and the southwest corner of this tract; thence N. 5° 00' W., 76.76 feet to a point; thence N. 16° 40' E., 41.58 feet to a point and the northwest corner of this tract; thence S. 71° 19' E. 157.14 feet to a point and the northeast corner of this tract; thence S. 18° 46' W., 59.80 feet to the southeast corner of this tract to the point of beginning, containing .297 acres, more or less; and

WHEREAS, the property shall not be sold for less than the fair market value of the property established by the taxation and revenue department using generally acceptable appraisal techniques for this type of property; and

WHEREAS, Santa Maria el Mirador wishes to offer cash equivalent in the form of necessary services to the state that are not paid for with state money for all or part of the purchase price;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the sale of the described property be hereby ratified and approved pursuant to Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that the state board of finance and the attorney general shall approve the sale, including the offer of cash equivalent; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the general services department, the state board of finance and the attorney general.

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HOUSE JOINT RESOLUTION 30

# OFFICIAL ROSTER OF THE STATE OF NEW MEXICO

## UNITED STATES SENATORS

Jeff Bingaman, Democrat, Santa Fe

Pete V. Domenici, Republican, Albuquerque

## UNITED STATES REPRESENTATIVES

Heather A. Wilson, Republican, District No. 1, Albuquerque

Joseph R. Skeen, Republican, District No. 2, Picacho

Tom Udall, Democrat, District No. 3, Santa Fe

## STATE OFFICIALS

| | |
|---|---|
| Gary Johnson, Republican | Governor |
| Walter D. Bradley, Republican | Lieutenant Governor |
| Rebecca Vigil-Giron, Democrat | Secretary of State |
| Domingo P. Martinez, Democrat | State Auditor |
| Michael A. Montoya, Democrat | State Treasurer |
| Patricia A. Madrid, Democrat | Attorney General |
| Ray Powell, Jr., Democrat | Commissioner of Public Lands |
| Herb Hughes, Republican | Public Regulation Commissioner, District 1 |
| Bill Pope, Republican | Public Regulation Commissioner, District 2 |
| Jerome D. Block, Democrat | Public Regulation Commissioner, District 3 |
| Lynda M. Lovejoy, Democrat | Public Regulation Commissioner, District 4 |
| Tony Schaefer, Republican | Public Regulation Commissioner, District 5 |

## JUSTICES OF THE SUPREME COURT

Patricio M. Serna, Chief Justice

Joseph F. Baca

Gene Franchini

Pamela B. Minzner

Petra J. Maes

## JUDGES OF THE COURT OF APPEALS

Richard C. Bosson, Chief Judge

A. Joseph Alarid

Lynn Pickard

James J. Wechsler

Michael D. Bustamante

M. Christina Armijo

Jonathan B. Sutin

Cynthia A. Fry

Ira Robinson

Celia Foy Castillo

**DISTRICT COURTS**

**DISTRICT JUDGES**

***FIRST JUDICIAL DISTRICT***

***SANTA FE, RIO ARRIBA, LOS ALAMOS COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Barbara J. Vigil | Santa Fe |
| Division | II | James A. Hall | Santa Fe |
| Division | III | Carol J. Vigil | Santa Fe |
| Division | IV | Michael Vigil | Santa Fe |
| Division | V | Art Encinias | Santa Fe |
| Division | VI | Stephen D. Pfeffer | Santa Fe |
| Division | VII | Daniel Sanchez | Santa Fe |

***SECOND JUDICIAL DISTRICT***

***BERNALILLO COUNTY***

| | | | |
|---|---|---|---|
| Division | I | Michael E. Martinez | Albuquerque |

| | | | |
|---|---|---|---|
| Division | II | James F. Blackmer | Albuquerque |
| Division | III | Tommy Jewell | Albuquerque |
| Division | IV | Frank Allen, Jr. | Albuquerque |
| Division | V | Ted C. Baca | Albuquerque |
| Division | VI | Neil C. Candelaria | Albuquerque |
| Division | VII | W. Daniel Schneider | Albuquerque |
| Division | VIII | Ross C. Sanchez | Albuquerque |
| Division | IX | Mark A. Macaron | Albuquerque |
| Division | X | Theresa Baca | Albuquerque |
| Division | XI | James Loughren | Albuquerque |
| Division | XII | Wendy E. York | Albuquerque |
| Division | XIII | Robert Hayes Scott | Albuquerque |
| Division | XIV | W. John Brennan | Albuquerque |
| Division | XV | Richard J. Knowles | Albuquerque |
| Division | XVI | Robert L. Thompson | Albuquerque |
| Division | XVII | Anne M. Kass | Albuquerque |
| Division | XVIII | Susan M. Conway | Albuquerque |
| Division | XIX | Albert S. Murdoch | Albuquerque |
| Division | XX | William F. Lang | Albuquerque |
| Division | XXI | Angela J. Jewell | Albuquerque |
| Division | XXII | Deborah Davis Walker | Albuquerque |
| Division | XXIII | Geraldine E. Rivera | Albuquerque |

***THIRD JUDICIAL DISTRICT***

***DONA ANA COUNTY***

| | | | |
|---|---|---|---|
| Division | I | Robert E. Robles | Las Cruces |

| | | | |
|---|---|---|---|
| Division | II | Stephen Bridgforth | Las Cruces |
| Division | III | Lourdes Martinez | Las Cruces |
| Division | IV | Jerald A. Valentine | Las Cruces |
| Division | V | Thomas G. Cornish, Jr. | Las Cruces |
| Division | VI | Grace Duran | Las Cruces |

***FOURTH JUDICIAL DISTRICT***

***GUADALUPE, MORA, SAN MIGUEL COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Eugenio S. Mathis | Las Vegas |
| Division | II | Jay Gwynne Harris | Las Vegas |

***FIFTH JUDICIAL DISTRICT***

***CHAVES, EDDY, LEA COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Jay W. Forbes | Carlsbad |
| Division | II | Alvin F. Jones | Roswell |
| Division | III | Ralph W. Gallini | Lovington |
| Division | IV | Don Maddox | Lovington |
| Division | V | James L. Shuler | Carlsbad |
| Division | VI | William Patrick Lynch | Roswell |
| Division | VII | Gary Linn Clingman | Lovington |
| Division | VIII | William P. "Chip" Johnson | Roswell |

***SIXTH JUDICIAL DISTRICT***

***GRANT, HIDALGO, LUNA COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | V. Lee Vesely | Silver City |
| Division | II | Gary Jeffreys | Deming |

***SEVENTH JUDICIAL DISTRICT***

CATRON, SIERRA, TORRANCE, SOCORRO COUNTIES

| | | | |
|---|---|---|---|
| Division | I | Edmund H. Kase III | Socorro |
| Division | II | Thomas G. Fitch | Socorro |
| Division | III | Vacant | Socorro |

***EIGHTH JUDICIAL DISTRICT***

***COLFAX, UNION, TAOS COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Peggy Jean Nelson | Taos |
| Division | II | Sam B. Sanchez | Raton |

***NINTH JUDICIAL DISTRICT***

***CURRY & ROOSEVELT COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Stephen Quinn | Clovis |
| Division | II | Robert C. Brack | Clovis |
| Division | III | David W. Bonem | Clovis, Portales |

***TENTH JUDICIAL DISTRICT***

***QUAY, DEBACA, HARDING COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Ricky D. Purcell | Tucumcari |

***ELEVENTH JUDICIAL DISTRICT***

***MCKINLEY, SAN JUAN COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | William C. Birdsall | Aztec |
| Division | II | Joseph L. Rich | Gallup |
| Division | III | Wilfred Byron Caton | Aztec |
| Division | IV | Paul R. Onuska | Farmington |
| Division | V | Grant Foutz | Gallup |
| Division | VI | George A. Harrison | Aztec |

***TWELFTH JUDICIAL DISTRICT***

***LINCOLN, OTERO COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | Jerry H. Ritter, Jr. | Alamogordo |
| Division | II | James Waylon Counts | Alamogordo |
| Division | III | Karen L. Parsons | Carrizozo |
| Division | IV | Frank K. Wilson | Alamogordo |

***THIRTEENTH JUDICIAL DISTRICT***

***SANDOVAL, VALENCIA, CIBOLA COUNTIES***

| | | | |
|---|---|---|---|
| Division | I | John W. Pope | Los Lunas |
| Division | II | Kenneth G. Brown | Bernalillo |
| Division | III | William (Bill) Sanchez | Los Lunas |
| Division | IV | R. Lar Thomas | Grants |
| Division | V | Louis P. McDonald | Bernalillo |

## DISTRICT ATTORNEYS

| | | |
|---|---|---|
| First Judicial District | Henry R. Valdez | Santa Fe |
| Second Judicial District | Kari E. Brandenberg | Albuquerque |
| Third Judicial District | Susana Martinez | Las Cruces |
| Fourth Judicial District | Matthew J. Sandoval | Las Vegas |
| Fifth Judicial District | Thomas A. Rutledge | Carlsbad |
| Sixth Judicial District | Jim Foy | Silver City |
| Seventh Judicial District | Clint Wellborn | Socorro |
| Eighth Judicial District | Donald A. Gallegos | Taos |
| Ninth Judicial District | Randall M. Harris | Clovis |
| Tenth Judicial District | Ronald W. Reeves | Tucumcari |

Eleventh Judicial District

| | | |
|---|---|---|
| Division I | Gregory M. Tucker | Farmington |
| Division II | Karl Gillson | Gallup |

Twelfth Judicial District Scot D. Key Alamogordo

Thirteenth Judicial District Lemuel L. Martinez Los Lunas

**STATE SENATORS SERVING IN THE FORTY-FIFTH LEGISLATURE**

**STATE OF NEW MEXICO**

**FIRST SESSION**

**CONVENED JANUARY 16, 2001**

| *COUNTY* | *DISTRICT* | *NAME* | *CITY* |
|---|---|---|---|
| San Juan | 1 | William E. Sharer (R) | Farmington |
| San Juan | 2 | Allen V. Hurt (R) | Waterflow |
| McKinley & San Juan | 3 | John Pinto (D) | Tohatchi |
| Cibola & McKinley | 4 | Lidio G. Rainaldi (D) | Gallup |
| Los Alamos, Rio Arriba & Sandoval | 5 | Richard C. Martinez (D) | Española |
| Mora, Santa Fe & Taos | 6 | Carlos R. Cisneros (D) | Questa |
| Colfax, Curry, Harding, Quay, San Miguel & Union | 7 | Patrick H. Lyons (R) | Cuervo |
| DeBaca, Guadalupe, Lincoln, & San Miguel | 8 | Pete Campos (D) | Las Vegas |
| Bernalillo & Sandoval | 9 | Steve Komadina (R) | Corrales |
| Bernalillo | 10 | Ramsay L. Gorham (R) | Albuquerque |
| Bernalillo | 11 | Linda M. Lopez (D) | Albuquerque |
| Bernalillo | 12 | Richard M. Romero (D) | Albuquerque |
| Bernalillo | 13 | Dede Feldman (D) | Albuquerque |
| Bernalillo & Valencia | 14 | Manny M. Aragon (D) | Albuquerque |
| Bernalillo | 15 | H. Diane Snyder (R) | Albuquerque |
| Bernalillo | 16 | Cisco McSorley (D) | Albuquerque |

| | | | |
|---|---|---|---|
| Bernalillo | 17 | Shannon Robinson (D) | Albuquerque |
| Bernalillo | 18 | Mark L. Boitano (R) | Albuquerque |
| Bernalillo, Santa Fe & Torrance | 19 | Sue F. Wilson (R) | Albuquerque |
| Bernalillo | 20 | Kent L. Cravens (R) | Albuquerque |
| Bernalillo, Los Alamos, McKinley | 22 | Leonard Tsosie (D) | Crownpoint |
| Rio Arriba & Sandoval | | | |
| Bernalillo & Sandoval | 23 | Joseph J. Carraro (R) | Albuquerque |
| Santa Fe | 24 | Nancy Rodriguez (D) | Santa Fe |
| Santa Fe | 25 | Roman M. Maes III (D) | Santa Fe |
| Bernalillo | 26 | Bernadette M. Sanchez (D) | Albuquerque |
| Chaves, Curry & Roosevelt | 27 | Stuart Ingle (R) | Portales |
| Catron, Grant & Socorro | 28 | Ben D. Altamirano (D) | Silver City |
| Valencia | 29 | Michael S. Sanchez (D) | Belen |
| Cibola, Socorro & Valencia | 30 | Joseph A. Fidel (D) | Grants |
| Dona Ana | 31 | Cynthia Nava (D) | Las Cruces |
| Chaves, Eddy & Otero | 32 | Timothy Z. Jennings (D) | Roswell |
| Chaves & Eddy | 33 | Rod Adair (R) | Roswell |
| Eddy, Lea & Otero | 34 | Don Kidd (R) | Carlsbad |
| Doña Ana, Hidalgo, Luna & Sierra | 35 | John Arthur Smith (D) | Deming |
| Doña Ana | 36 | Mary Jane M. Garcia (D) | Doña Ana |
| Doña Ana, Otero & Sierra | 37 | Leonard Lee Rawson (R) | Las Cruces |
| Doña Ana | 38 | Mary Kay Papen (D) | Las Cruces |
| Bernalillo, Los Alamos, Sandoval, | 39 | Phil A. Griego (D) | San Jose |
| San Miguel, Santa Fe & Torrance | | | |
| Otero | 40 | Dianna J. Duran (R) | Tularosa |

| | | | |
|---|---|---|---|
| Eddy & Lea | 41 | Carroll H. Leavell (R) | Jal |
| Curry, Lea & Roosevelt | 42 | Shirley M. Bailey (R) | Hobbs |

**STATE REPRESENTATIVES SERVING IN THE FORTY-FIFTH LEGISLATURE**

**STATE OF NEW MEXICO**

**FIRST SESSION**

**CONVENED JANUARY 16, 2001**

| *COUNTY* | *DISTRICT* | *NAME* | *CITY* |
|---|---|---|---|
| San Juan | 1 | Nick Tinnin (D) | Farmington |
| San Juan | 2 | Thomas C. Taylor (R) | Farmington |
| Rio Arriba & San Juan | 3 | Sandra L. Townsend (R) | Aztec |
| San Juan | 4 | Ray Begaye (D) | Shiprock |
| McKinley | 5 | Patricia A. Lundstrom (D) | Gallup |
| Cibola & McKinley | 6 | George J. Hanosh (D) | Grants |
| Valencia | 7 | Kandy Cordova (D) | Belen |
| Valencia | 8 | Fred Luna (D) | Los Lunas |
| McKinley & San Juan | 9 | Leo C. Watchman, Jr. (D) | Navajo |
| Bernalillo & Valencia | 10 | Henry "Kiki" Saavedra (D) | Albuquerque |
| Bernalillo | 11 | Rick Miera (D) | Albuquerque |
| Bernalillo | 12 | James G. Taylor (D) | Albuquerque |
| Bernalillo | 13 | Daniel P. Silva (D) | Albuquerque |
| Bernalillo | 14 | Miguel P. Garcia (D) | Albuquerque |
| Bernalillo | 15 | John A. Sanchez (R) | Albuquerque |
| Bernalillo | 16 | Raymond M. Ruiz (D) | Albuquerque |
| Bernalillo | 17 | Edward C. Sandoval (D) | Albuquerque |
| Bernalillo | 18 | Gail C. Beam (D) | Albuquerque |

| | | | |
|---|---|---|---|
| Bernalillo | 19 | Sheryl M. Williams-Stapleton (D) | Albuquerque |
| Bernalillo | 20 | Ted Hobbs (R) | Albuquerque |
| Bernalillo | 21 | Mimi Stewart (D) | Albuquerque |
| Bernalillo | 22 | Ron Godbey (R) | Albuquerque |
| Bernalillo | 23 | Robert Burpo (R) | Albuquerque |
| Bernalillo | 24 | George D. Buffett (R) | Albuquerque |
| Bernalillo | 25 | Danice R. Picraux (D) | Albuquerque |
| Bernalillo | 26 | Al Park (D) | Albuquerque |
| Bernalillo | 27 | Larry A. Larrañaga (R) | Albuquerque |
| Bernalillo | 28 | Joseph P. Mohorovic (R) | Albuquerque |
| Bernalillo | 29 | William W. Fuller (R) | Albuquerque |
| Bernalillo | 30 | Pauline K. Gubbels (R) | Albuquerque |
| Bernalillo | 31 | Joseph M. Thompson (R) | Albuquerque |
| Doña Ana, Luna & Sierra | 32 | Dona G. Irwin (D) | Deming |
| Doña Ana | 33 | J. Paul Taylor (D) | Mesilla |
| Doña Ana | 34 | Mary Helen Garcia (D) | Las Cruces |
| Doña Ana | 35 | Benjamin B. Rios (D) | Las Cruces |
| Doña Ana | 36 | Andy Nuñez (D) | Hatch |
| Doña Ana | 37 | William "Ed" Boykin (R) | Las Cruces |
| Grant, Luna & Sierra | 38 | Dianne Miller Hamilton (R) | Silver City |
| Hidalgo & Grant | 39 | Manuel G. Herrera (D) | Bayard |
| Mora, Rio Arriba, San Miguel, Santa Fe & Taos | 40 | Nick L. Salazar (D) | San Juan Pueblo |
| Rio Arriba, Sandoval & Taos | 41 | Debbie A. Rodella (D) | San Juan Pueblo |
| Taos | 42 | Roberto "Bobby" J. Gonzales (D) | Taos |

| | | | |
|---|---|---|---|
| Los Alamos & Sandoval | 43 | Jeannette Wallace (R) | Los Alamos |
| Sandoval | 44 | Judy Vanderstar Russell (R) | Rio Rancho |
| Santa Fe | 45 | Patsy G. Trujillo-Knauer (D) | Santa Fe |
| Santa Fe | 46 | Ben Lujan (D) | Santa Fe |
| Santa Fe | 47 | Max Coll (D) | Santa Fe |
| Santa Fe | 48 | Luciano "Lucky" Varela (D) | Santa Fe |
| Catron, Socorro, Sierra & Valencia | 49 | Don Tripp (R) | Socorro |
| Torrance, Bernalillo, & Santa Fe | 50 | Rhonda S. King (D) | Stanley |
| Otero | 51 | Gloria C. Vaughn (R) | Alamogordo |
| Doña Ana | 52 | Joseph Cervantes (D) | Las Cruces |
| Otero | 53 | Terry T. Marquardt (R) | Alamogordo |
| Eddy | 54 | Joe M. Stell (D) | Carlsbad |
| Eddy | 55 | John A. Heaton (D) | Carlsbad |
| Lincoln, Chaves & Otero | 56 | W.C. "Dub" Williams (R) | Glencoe |
| Chaves, Eddy, Lea & Roosevelt | 57 | Daniel R. Foley (R) | Roswell |
| Chaves & Eddy | 58 | Pauline J. Ponce (D) | Roswell |
| Chaves | 59 | Avon W. Wilson (R) | Roswell |
| Sandoval | 60 | Marsha C. Atkin (R) | Rio Rancho |
| Lea | 61 | Donald L. Whitaker (D) | Eunice |
| Lea | 62 | Donald E. Bratton (R) | Hobbs |
| Curry & Roosevelt | 63 | Mario Urioste (D) | Clovis |
| Curry | 64 | Anna Marie Crook (R) | Clovis |
| Bernalillo, Cibola, & Sandoval | 65 | James Roger Madalena (D) | Jemez Pueblo |
| Curry, Lea & Roosevelt | 66 | Earlene Roberts (R) | Lovington |
| DeBaca, Harding, Quay, Union, | 67 | Brian K. Moore (R) | Clayton |

| | | | |
|---|---|---|---|
| Curry & Roosevelt | | | |
| Colfax, Guadalupe, Mora | 68 | Bengie Regensberg (D) | Cleveland |
| & San Miguel | | | |
| Cibola, McKinley, & Sandoval | 69 | W. Ken Martinez (D) | Grants |
| San Miguel | 70 | Richard D. Vigil (D) | Ribera |