

LAWS 2005, CONSTITUTIONAL AMENDMENT 1

A JOINT RESOLUTION

PROPOSING TO REPEAL ARTICLE 2, SECTION 22 OF THE CONSTITUTION OF NEW MEXICO, IN ORDER TO PROTECT THE RIGHT OF ALL PERSONS TO ACQUIRE AND POSSESS REAL PROPERTY.

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

Constitutional Amendment 1 Section 1 Laws 2005

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

Constitutional Amendment 1 Section 2 Laws 2005

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

LAWS 2005, CONSTITUTIONAL AMENDMENT 2

A JOINT RESOLUTION

PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO ALLOW THE STATE AND SCHOOL DISTRICTS, INCLUDING CHARTER SCHOOLS, TO ENTER INTO AGREEMENTS FOR THE LEASING OF BUILDINGS AND OTHER REAL PROPERTY WITH AN OPTION TO PURCHASE.

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

Constitutional Amendment 2 Section 1 Laws 2005

Section 1. It is proposed to amend Article 9, Section 8 of the constitution of New Mexico to read:

"A. No debt other than those specified in the preceding section shall be contracted by or on behalf of this state, unless authorized by law for some specified work or object; which law shall provide for an annual tax levy sufficient to pay the interest and to provide a sinking fund to pay the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall have been submitted to the qualified electors of the state and have received a majority of all the votes cast thereon at a general election; such law shall be published in full in at least one newspaper in each county of the state, if one be published therein, once each

week, for four successive weeks next preceding such election. No debt shall be so created if the total indebtedness of the state, exclusive of the debts of the territory, and the several counties thereof, assumed by the state, would thereby be made to exceed one percent of the assessed valuation of all the property subject to taxation in the state as shown by the preceding general assessment.

B. For the purposes of this section and Article 4, Section 29 of the constitution of New Mexico, a financing agreement entered into by the state for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the state pursuant to the financing agreement is not a debt if:

(1) there is no legal obligation for the state to continue the lease from year to year or to purchase the real property; and

(2) the agreement provides that the lease shall be terminated if sufficient appropriations are not available to meet the current lease payments."

Constitutional Amendment 2 Section 2 Laws 2005

Section 2. It is proposed to amend Article 9, Section 11 of the constitution of New Mexico to read:

"A. Except as provided in Subsection C of this section, no school district shall borrow money except for the purpose of erecting, remodeling, making additions to and furnishing school buildings or purchasing or improving school grounds or any combination of these purposes, and in such cases only when the proposition to create the debt has been submitted to a vote of such qualified electors of the district as are owners of real estate within the school district and a majority of those voting on the question has voted in favor of creating such debt.

B. No school district shall ever become indebted in an amount exceeding six percent on the assessed valuation of the taxable property within the school district as shown by the preceding general assessment.

C. A school district may create a debt by entering into a lease-purchase arrangement to acquire education technology equipment without submitting the proposition to a vote of the qualified electors of the district, but any debt created is subject to the limitation of Subsection B of this section.

D. For the purposes of this section, a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the school district or charter school pursuant to the financing agreement is not a debt if:

(1) there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and

(2) the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments."

Constitutional Amendment 2 Section 3 Laws 2005

Section 3. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

LAWS 2005, CHAPTER 1

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-SEVENTH LEGISLATURE, FIRST SESSION, 2005 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:

Chapter 1 Section 1 Laws 2005

Section 1. SESSION EXPENSES.--

A. There is appropriated for the expense of the legislative department of the state of New Mexico for the first session of the forty-seventh legislature for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, seven million one hundred twenty-four thousand two hundred eighty-nine dollars (\$7,124,289) or so much thereof as may be necessary for such purposes.

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

(1) per diem for senators ----- \$ 355,320;

(2) per diem for members of the house of representatives -----
----- \$ 592,200;

(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 -----
----- \$ 5,047;

(4) mileage traveled by members of the house of representatives going to and returning from the seat of government by the usually traveled route, one round trip ----- \$ 7,600;

(5) salaries and employee benefits of senate employees -----
----- \$ 2,227,500;

(6) salaries and employee benefits of house of representatives employees ----- \$ 1,861,622;

(7) for expense of the senate not itemized above, five hundred twenty-one thousand four hundred dollars (\$521,400). 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 eighty-two thousand nine hundred dollars (\$482,900). No part of this item may be transferred to salaries or employee benefits; and

(9) for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, one million seventy thousand seven hundred dollars (\$1,070,700) to be disbursed upon vouchers signed by the director of the legislative council service.

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

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

Chapter 1 Section 2 Laws 2005

Section 2. BILLS AND OTHER PRINTED MATERIALS.--

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

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

(2) one copy to each county clerk, district judge, radio or television station and newspaper and to the general library of each state-supported institution of higher learning;

(3) upon written request, one copy to each state department, commission, board, institution or agency, each elected state official, each incorporated municipality, each district attorney, each ex-governor, each member of the New Mexico congressional delegation and each public school district in the state; and

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

B. Any person not listed in Subsection A of this section may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of six hundred twenty-five dollars (\$625), which deposit shall be paid to the state treasurer to the credit of the legislative expense fund. Additional single copies of items of legislation shall be sold for two dollars (\$2.00) unless the director of the legislative council service shall, because of its length, assign a higher price not to exceed ten cents (\$.10) per page. Copies of a daily bill locator, other than those copies furnished each member of the respective houses, shall be supplied by the legislative council service at a charge of one hundred seventy-five dollars (\$175) for the entire session.

Chapter 1 Section 3 Laws 2005

Section 3. LEGISLATIVE COUNCIL SERVICE.--There is appropriated from the general fund to the legislative council service for fiscal year 2006 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:

A. Personal Services &
Employee Benefits

\$ 3,428,100

Contractual Services	187,000
Other Costs	955,200
Total	\$ 4,570,300;

B. for travel expenses of legislators other than New Mexico legislative council members, on legislative council business, for committee travel, studies, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for fiscal year 2006, one million thirty-six thousand dollars (\$1,036,000); provided that the New Mexico legislative council may transfer amounts from the appropriation in this subsection, during the fiscal year for which appropriated, to any other legislative appropriation where they may be needed;

C. for pre-session expenditures and for necessary contracts, furniture, equipment, supplies and personnel for interim session preparation, five hundred fifty-two thousand three hundred dollars (\$552,300); and

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

Chapter 1 Section 4 Laws 2005

Section 4. LEGISLATIVE FINANCE COMMITTEE.--There is appropriated from the general fund to the legislative finance committee for fiscal year 2006, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services & Employee Benefits	\$ 2,987,600
Contractual Services	149,300
Other Costs	324,400
Total	\$ 3,461,300.

Chapter 1 Section 5 Laws 2005

Section 5. LEGISLATIVE EDUCATION STUDY COMMITTEE.--There is appropriated from the general fund to the legislative education study committee for fiscal year 2006, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services & Employee Benefits	\$ 798,300
Contractual Services	25,000
Other Costs	151,000
Total	\$ 974,300.

Chapter 1 Section 6 Laws 2005

Section 6. SENATE RULES COMMITTEE.--There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee, twenty-one thousand six hundred dollars (\$21,600) for fiscal year 2006.

Chapter 1 Section 7 Laws 2005

Section 7. HOUSE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2006 for the operation of the house chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services & Employee Benefits	\$ 838,490
Contractual Services	66,550
Other Costs	55,620
Total	\$ 960,660.

Chapter 1 Section 8 Laws 2005

Section 8. SENATE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2006 for the operation of the senate chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services & Employee Benefits	\$ 829,370
Contractual Services	100,750
Other Costs	53,180
Total	\$ 983,300.

Chapter 1 Section 9 Laws 2005

Section 9. LEGISLATIVE INFORMATION SYSTEM.--There is appropriated from legislative cash balances to the legislative council service for the legislative information system four hundred fifty-two thousand three hundred dollars (\$452,300) for expenditure during fiscal years 2005 and 2006.

Chapter 1 Section 10 Laws 2005

Section 10. SECURITY AND LIFE SAFETY IMPROVEMENTS.--There is appropriated from legislative cash balances to the legislative council service for security and life safety improvements at the state capitol five hundred thousand dollars (\$500,000) for expenditure in fiscal years 2005 through 2007.

Chapter 1 Section 11 Laws 2005

Section 11. CATEGORY TRANSFER.--Amounts set out in Sections 3, 4, 5, 7 and 8 of this act are provided for informational purposes only and may be freely transferred among categories.

Chapter 1 Section 12 Laws 2005

Section 12. PERFORMANCE MEASURES.--Each legislative agency shall adhere to the performance measures specified in its strategic plan and shall make reports as required in that plan.

Chapter 1 Section 13 Laws 2005

Section 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1, WITH EMERGENCY CLAUSE

Signed January 21, 2005

LAWS 2005, CHAPTER 2

AN ACT

RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS; CREATING A FUND TO REIMBURSE GROUP LIFE INSURANCE PREMIUMS PAID BY MEMBERS OF THE NATIONAL GUARD; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 2 Section 1 Laws 2005

Section 1. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the New Mexico national guard has a proud tradition of military service with thousands of New Mexicans having answered the call of the nation and served in the national guard;

(2) there have been instances in which the dependents of members of the New Mexico national guard have been left without adequate financial resources when a national guard member has been killed while on active duty;

(3) members of the New Mexico national guard are now being asked to serve extended periods of active duty in combat areas;

(4) members of the New Mexico national guard are eligible for life insurance policies that are currently limited to two hundred fifty thousand dollars (\$250,000) through the federal servicemembers' group life insurance program; and

(5) members of the New Mexico national guard provide New Mexico and its citizens valuable benefits through their service inside this state and through their recently extended periods of active duty in combat areas outside of New Mexico, and in exchange for these extended periods of active duty they should receive assistance with their premiums for the federal servicemembers' group life insurance program.

B. The purpose of creating and funding the service members' life insurance reimbursement fund is to provide a benefit to members of the New Mexico national guard in exchange for and in recognition of their assumption of extended periods of active duty in combat areas, in addition to their increased contributions to the safety and welfare of the citizens of the state of New Mexico.

Chapter 2 Section 2 Laws 2005

Section 2. SERVICE MEMBERS' LIFE INSURANCE REIMBURSEMENT FUND CREATED--PURPOSE--APPROPRIATION.--

A. The "service members' life insurance reimbursement fund" is created in the state treasury. The fund shall consist of legislative appropriations to the fund; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration signed by the adjutant general of the department of military affairs or the adjutant general's authorized representative.

B. The fund shall be administered by the department of military affairs, and money in the fund is appropriated to the department of military affairs for the purpose of reimbursing eligible members of the New Mexico national guard for premiums paid for benefits under the servicemembers' group life insurance program pursuant to 38 U.S.C Section 1965 et seq., as amended.

C. The department of military affairs shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement fund and to implement a reimbursement program.

D. Nothing in this section is intended to alter, amend or change the eligibility or applicability of the servicemembers' group life insurance program pursuant to 38 U.S.C. Section 1965 et seq., as amended, or any rights, responsibilities or benefits thereunder.

Chapter 2 Section 3 Laws 2005

Section 3. APPROPRIATION.--One million dollars (\$1,000,000) is appropriated from the general fund to the service members' life insurance reimbursement fund for expenditure in fiscal years 2005 and 2006 to pay premium reimbursements pursuant to the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

Chapter 2 Section 4 Laws 2005

Section 4. APPLICABILITY.--The provisions of this act apply to premiums paid on or after the effective date of this act.

Chapter 2 Section 5 Laws 2005

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 10, as amended

with emergency clause

Signed February 2, 2005

LAWS 2005, CHAPTER 3

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; DECLARING AN EMERGENCY.

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

Chapter 3 Section 1 Laws 2005

Section 1. Section 51-1-4 NMSA 1978 (being Laws 2003, Chapter 47, Section 8) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to fifty-two and one-half percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to the week, in accordance with rules prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times the individual's reduced weekly benefit amount. If payments referred to in this section are being received by an

individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. An individual otherwise eligible for benefits shall be paid for each week of unemployment, in addition to the amount payable under Subsection B of this section, the sum of fifteen dollars (\$15.00) for each unemancipated child, up to a maximum of four and subject to the maximum stated in Subsection D of this section, of the individual who is in fact dependent upon and wholly or mainly supported by the individual and is:

(1) under the age of eighteen;

(2) under the age of eighteen and in the individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction; or

(3) under the age of eighteen and for whom the individual is under a decree or order from a court of competent jurisdiction required to contribute to the child's support and for whom no other person is receiving allowances under the Unemployment Compensation Law if the child is domiciled within the United States or its territories or possessions, the payment to be withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

D. Dependency benefits shall not exceed fifty percent of the individual's weekly benefit rate. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of the benefit year, but this provision does not prevent the transfer of dependents' benefits from one spouse to another in accordance with this subsection. If both the husband and wife receive benefits with respect to a week of unemployment, only one of them is entitled to a dependency allowance with respect to a child. The division shall prescribe standards as

to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits. Dependency benefits shall not be paid unless the individual submits documentation satisfactory to the division establishing the existence of the claimed dependent. If the provisions of this subsection are satisfied, an otherwise eligible individual who has been appointed guardian of a dependent child by a court of competent jurisdiction shall be paid dependency benefits.

E. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount, plus any dependency benefit amount pursuant to Subsections C and D of this section, or sixty percent of the individual's wages for insured work paid during the individual's base period.

F. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

G. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

H. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Chapter 3 Section 2 Laws 2005

Section 2. Section 51-1-5 NMSA 1978 (being Laws 2003, Chapter 47, Section 9) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent full-time work or part-time work in accordance with Subsection I of Section 51-1-42 NMSA 1978 and in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this

subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training or attending school on a full-time basis with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Paragraph (3) of Subsection A of Section 51-1-7 NMSA 1978 with respect to any week in which the individual is in training or attending school on a full-time basis with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

I. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Chapter 3 Section 3 Laws 2005

Section 3. Section 51-1-7 NMSA 1978 (being Laws 2003, Chapter 47, Section 10) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for and shall not be eligible to receive benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment. No individual shall receive benefits until the division has contacted the former employer and determined whether the individual left the employment voluntarily; provided, however, that a person shall not be denied benefits under this paragraph:

(a) solely on the basis of pregnancy or the termination of pregnancy; or

(b) because of domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, approved training or full-time school attendance, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section:

(1) "domestic abuse" means that term as defined in Section 40-13-2 NMSA 1978; and

(2) "employment" means employment by the individual's last employer as defined by rules of the secretary."

Chapter 3 Section 4 Laws 2005

Section 4. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training or school on a full-time basis under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. The division shall not charge a contributing base-period employer's account with any portion of benefits paid to an individual for dependent allowance or because the individual to whom benefits are paid:

(1) separated from employment due to domestic abuse; or

(2) is enrolled in approved training or is attending school on a full-time basis.

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

F. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) beginning January 1, 2005, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two percent through December 31, 2004, shall be subject to the payment of contributions at the reduced rate of two percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months;

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection H of this section;

(4) an employer that, at the time of establishing an account, is in business in another state or states and that is not currently doing business in New Mexico may elect, pursuant to Paragraph (5) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

(a) the employer has been in operation in the other state or states for at least three years immediately preceding the date of becoming a liable employer in New Mexico, throughout which an individual in the employer's employ could have received benefits if eligible; and

(b) the employer provides the authenticated account history as defined by rule of the secretary from information accumulated from operations in the other state or all the other states to compute a current New Mexico rate; and

(5) the election authorized in Paragraph (4) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the New Mexico liable date, or the reduced rate of two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

G. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

H. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection G of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the

contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection I of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

I. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection F of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in Schedule 0 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and seven-tenths percent of the total payrolls;

(b) the corresponding rate in Schedule 1 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and seven-tenths percent and not less than three and four-tenths percent of the total payrolls;

(c) the corresponding rate in Schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent but not less than two and seven-tenths percent of the total payrolls;

(d) the corresponding rate in Schedule 3 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(e) the corresponding rate in Schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(f) the corresponding rate in Schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

(g) the corresponding rate in Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%

7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%.

J. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last

known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

L. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

M. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the

division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection J of this section.

N. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Chapter 3 Section 5 Laws 2005

Section 5. Section 51-1-42 NMSA 1978 (being Laws 2003, Chapter 47, Section 12) is amended to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that "base period" means for benefit years beginning on or after January 1, 2005 for an individual who does not have sufficient wages in the base period as defined to qualify for benefits pursuant to Section 51-1-5 NMSA 1978, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if that period qualifies the individual for benefits pursuant to Section 51-1-5 NMSA 1978; provided that:

(1) wages that fall within the base period of claims established pursuant to this subsection are not available for reuse in qualifying for a subsequent benefit year; and

(2) in the case of a combined-wage claim pursuant to the arrangement approved by the federal secretary of labor, the base period is that base period applicable under the unemployment compensation law of the paying state;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to the individual's weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for the employer;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government

entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. An individual performing services for an employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. An individual performing services for a contractor, subcontractor or agent that is performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars (\$450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit that at the time of the acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an employing unit not an employer by reason of any other paragraph of this subsection:

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(b) that, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not, under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit that has elected to become fully subject to the Unemployment Compensation Law;

(7) an employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) means an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(3) means services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) means services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of the election;

(5) means services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

(a) the individual has been and will continue to be free from control or direction over the performance of the services both under the individual's contract of service and in fact;

(b) the service is either outside the usual course of business for which the service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that: 1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of the crew leader: 1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the services are not, by written agreement or in fact, within the meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) means service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars (\$1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) means service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) means service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer, other than service that is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel provisions of another state's law, if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation organized under the laws of this state; or 3) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"American employer" for the purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) means, notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Unemployment Compensation Law;

(11) means service performed in the employ of an Indian tribe if:

(a) the service is excluded from "employment" as defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7); and

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) service performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of majority in the employ of his father or mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation

Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of

Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving that rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of the election;

(k) service performed, as part of an unemployment work-relief or work-training program assisted or financed in whole or part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution that combines academic instruction with work experience, if the service is an integral part of such program and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of a custodial or penal institution for any employer;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product demonstrator or product merchandiser if the service is performed pursuant to a written contract between that individual and a person or entity whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties, for demonstration and merchandising purposes and the individual: 1) is compensated for each job or the compensation is based on factors related to the work performed; 2) provides the equipment used to perform the service, unless special equipment is required and provided by the manufacturer through an agency; 3) is responsible for completion of a specific job and for any failure to complete the job; 4) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and 5) is responsible for operating costs, fuel, repairs and motor vehicle insurance. For the purpose of this subparagraph, "product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise employed directly by the manufacturer, distributor or retailer, and "product merchandiser" means an individual who, on a temporary, part-time basis builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor or retailer; or

(r) service performed for a private, for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual. For the purposes of this subparagraph, "landman" means a land professional who has been engaged primarily in: 1) negotiating for the acquisition or divestiture of mineral rights; 2) negotiating business agreements that provide for the exploration for or development of minerals; 3) determining ownership of minerals through the research of public and private records; and 4) reviewing the status of title, curing title defects and otherwise reducing title risk associated with ownership of minerals; managing rights or obligations derived from ownership of interests and minerals; or utilizing or pooling of interest in minerals; and

(13) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing the individual. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of such service is excepted by Subparagraph (f) of Paragraph (12) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits, but no individual who is otherwise eligible shall be deemed ineligible for benefits solely for the reason that the individual seeks, applies for or accepts only part-time work, instead of full-time work, if the part-time work is for at least twenty hours per week;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are covered under the Unemployment Compensation Law;

P. "benefit year" with respect to an individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of the individual's last preceding benefit year; provided that

at the time of filing such a claim the individual has been paid the wage required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of a person, in connection with cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of the farm and its tools and equipment, if the major part of the service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if the service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with rules prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each

calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty percent of the state's average annual earnings computed by the division by dividing total wages reported to the division by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported by contributing employers for the same period rounded to the next higher multiple of one hundred dollars (\$100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars (\$7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to or on behalf of an individual in the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to the employee or class of employees and does not include any payments that represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if the payments are received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death; provided the individual in its employ has not the option to receive, instead of provision for the death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums or contributions to premiums paid by the individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the employee's beneficiary under an arrangement to which Section 408(p) of the federal Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Chapter 3 Section 6 Laws 2005

Section 6. Section 51-1-4 NMSA 1978 (being Laws 2003, Chapter 47, Section 8, as amended by Section 1 of this act) is repealed and a new Section 51-1-4 NMSA 1978 is enacted to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to the week, in accordance with rules prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by an individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount or sixty percent of the individual's wages for insured work paid during the individual's base period.

D. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

E. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

F. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Chapter 3 Section 7 Laws 2005

Section 7. Section 51-1-5 NMSA 1978 (being Laws 2003, Chapter 47, Section 9, as amended by Section 2 of this act) is repealed and a new Section 51-1-5 NMSA 1978 is enacted to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust

regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Subsection C of Section 51-1-7 NMSA 1978 with respect to any week in which the individual is in training with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United

States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be eligible for unemployment benefits except as provided by regulations promulgated by the secretary.

I. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same

ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Chapter 3 Section 8 Laws 2005

Section 8. Section 51-1-7 NMSA 1978 (being Laws 2003, Chapter 47, Section 10, as amended by Section 3 of this act) is repealed and a new Section 51-1-7 NMSA 1978 is enacted to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for, and shall not be eligible to receive, benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment; provided, however, that a person shall not be denied benefits under this paragraph solely on the basis of pregnancy or the termination of pregnancy;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a

similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section, "employment" means employment by the individual's last employer as defined by rules of the secretary."

Chapter 3 Section 9 Laws 2005

Section 9. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended by Section 4 of this act) is repealed and a new Section 51-1-11 NMSA 1978 is enacted to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

E. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) subsequent to December 31, 1984, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two and seven-tenths percent through December 31, 1984 shall be subject to the payment of contributions at the reduced rate of two and seven-tenths percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months; and

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection G of this section.

F. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

G. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection F of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection H of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

H. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in Schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and four-tenths percent of the total payrolls;

(b) the corresponding rate in Schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent and not less than two and seven-tenths percent of the total payrolls;

(c) the corresponding rate in Schedule 3 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(d) the corresponding rate in Schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(e) the corresponding rate in Schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

(f) the corresponding rate in Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.05%	0.1%	0.6%
9.0%-9.9%	0.1%	0.2%	0.9%
8.0%-8.9%	0.2%	0.4%	1.2%
7.0%-7.9%	0.4%	0.6%	1.5%
6.0%-6.9%	0.6%	0.8%	1.8%
5.0%-5.9%	0.8%	1.1%	2.1%
4.0%-4.9%	1.1%	1.4%	2.4%
3.0%-3.9%	1.4%	1.7%	2.7%
2.0%-2.9%	1.7%	2.0%	3.0%
1.0%-1.9%	2.0%	2.4%	3.3%
0.9%-0.0%	2.4%	3.3%	3.6%
(-0.1%) - (-0.5%)	3.3%	3.6%	3.9%
(-0.5%) - (-1.0%)	4.2%	4.2%	4.2%

(-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%
Employer	Contribution	Contribution	Contribution
Reserve	Schedule 4	Schedule 5	Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%.

I. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the

delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

J. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may

be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

L. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection I of this section.

M. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Chapter 3 Section 10 Laws 2005

Section 10. Section 51-1-42 NMSA 1978 (being Laws 2003, Chapter 47, Section 12, as amended by Section 5 of this act) is repealed and a new Section 51-1-42 NMSA 1978 is enacted to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to the individual's weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for the employer;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government

entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. An individual performing services for an employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. An individual performing services for a contractor, subcontractor or agent that is performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars (\$450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit that at the time of the acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an employing unit not an employer by reason of any other paragraph of this subsection:

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(b) that, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not, under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit that has elected to become fully subject to the Unemployment Compensation Law;

(7) an employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) means an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(3) means services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) means services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of the election;

(5) means services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

(a) the individual has been and will continue to be free from control or direction over the performance of the services both under the individual's contract of service and in fact;

(b) the service is either outside the usual course of business for which the service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that: 1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of the crew leader: 1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the services are not, by written agreement or in fact, within the meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) means service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars (\$1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) means service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) means service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer, other than service that is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel provisions of another state's law, if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation organized under the laws of this state; or 3) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"American employer" for the purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) means, notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Unemployment Compensation Law;

(11) means service performed in the employ of an Indian tribe if:

(a) the service is excluded from "employment" as defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7); and

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) service performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of majority in the employ of his father or mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation

Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving that rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of the election;

(k) service performed, as part of an unemployment work-relief or work-training program assisted or financed in whole or part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution that combines academic instruction with work experience, if the service is an integral part of such program and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of a custodial or penal institution for any employer;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product demonstrator or product merchandiser if the service is performed pursuant to a written contract between that individual and a person or entity whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties, for demonstration and merchandising purposes and the individual: 1) is compensated for each job or the compensation is based on factors related to the work performed; 2) provides the equipment used to perform the service, unless special equipment is required and provided by the manufacturer through an agency; 3) is responsible for completion of a specific job and for any failure to complete the job; 4) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and 5) is responsible for operating costs, fuel, repairs and motor vehicle insurance. For the purpose of this subparagraph, "product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise employed directly by the manufacturer, distributor or retailer, and "product merchandiser" means an individual who, on a temporary, part-time basis builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor or retailer; or

(r) service performed for a private, for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual. For the purposes of this subparagraph, "landman" means a land professional who has been engaged primarily in: 1) negotiating for the acquisition or divestiture of mineral rights; 2) negotiating business agreements that provide for the exploration for or development of minerals; 3) determining ownership of minerals through the research of public and private records; and 4) reviewing the status of title, curing title defects and otherwise reducing title risk associated with ownership of minerals; managing rights or obligations derived from ownership of interests and minerals; or utilizing or pooling of interest in minerals; and

(13) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing the individual. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of such service is excepted by Subparagraph (f) of Paragraph (12) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are covered under the Unemployment Compensation Law;

P. "benefit year" with respect to an individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of the individual's last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wage required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of a person, in connection with cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of the farm and its tools and equipment, if the major part of the service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if the service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with rules prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty percent of the state's average annual earnings computed by the division by dividing total wages reported to the division by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported by contributing

employers for the same period rounded to the next higher multiple of one hundred dollars (\$100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars (\$7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to or on behalf of an individual in the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to the employee or class of employees and does not include any payments that represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if the payments are received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death; provided the individual in its employ has not the option to receive, instead of provision for the death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums or contributions to premiums paid by the individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the employee's beneficiary under an arrangement to which Section 408(p) of the federal Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Chapter 3 Section 11 Laws 2005

Section 11. A new section of the Unemployment Compensation Law is enacted to read:

"TEMPORARY EMPLOYERS' CONTRIBUTION RATE.--Notwithstanding the provisions of Paragraph (2) of Subsection I of Section 51-1-11 NMSA 1978, each employer's rate shall be the corresponding rate in Schedule 0 of the table provided in Paragraph (4) of that subsection for calendar year 2005 and each subsequent calendar year until the earliest of the following:

A. January 1, 2008; or

B. the January 1 following certification to the governor by the secretary of labor that the unemployment compensation fund is less than two and one-half percent of total payrolls pursuant to the computation provided in Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978."

Chapter 3 Section 12 Laws 2005

Section 12. APPLICABILITY.--The provisions of Sections 1 through 5 of this act apply to benefit calculations and eligibility determinations made on or after January 1, 2005.

Chapter 3 Section 13 Laws 2005

Section 13. EFFECTIVE DATE.--The effective date of the provisions of Sections 6 through 10 of this act is the earliest of the following:

A. January 1, 2008; or

B. the January 1 following certification to the governor by the secretary of labor that the unemployment compensation fund is less than two and one-half percent of total payrolls pursuant to the computation provided in Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

Chapter 3 Section 14 Laws 2005

Section 14. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 9, as amended

with emergency clause

Signed February 8, 2005

LAWS 2005, CHAPTER 4

AN ACT

RELATING TO THE STATE; ADOPTING THE HOT AIR BALLOON AS THE OFFICIAL STATE AIRCRAFT.

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

Chapter 4 Section 1 Laws 2005

Section 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended) is amended to read:

"12-3-4. STATE FLOWER--STATE BIRD--STATE TREE--STATE FISH--STATE ANIMAL--STATE VEGETABLES--STATE GEM--STATE GRASS--STATE FOSSIL--STATE COOKIE--STATE INSECT--STATE QUESTION--STATE NICKNAME--STATE BUTTERFLY--STATE REPTILE--STATE AMPHIBIAN--STATE AIRCRAFT.--

A. The yucca flower is adopted as the official flower of New Mexico.

B. The chaparral bird, commonly called roadrunner, is adopted as the official bird of New Mexico.

C. The nut pine or pinon tree, scientifically known as *Pinus edulis*, is adopted as the official tree of New Mexico.

D. The native New Mexico cutthroat trout is adopted as the official fish of New Mexico.

E. The native New Mexico black bear is adopted as the official animal of New Mexico.

F. The chile, the Spanish adaptation of the chilli, and the pinto bean, commonly known as the frijol, are adopted as the official vegetables of New Mexico.

G. The turquoise is adopted as the official gem of New Mexico.

H. The blue grama grass, scientifically known as *Bouteloua gracillis*, is adopted as the official grass of New Mexico.

I. The *Coelophysis* is adopted as the official fossil of New Mexico.

J. The bizcochito is adopted as the official cookie of New Mexico.

K. The tarantula hawk wasp, scientifically known as *Pepsis formosa*, is adopted as the official insect of New Mexico.

L. "Red or green?" is adopted as the official question of New Mexico.

M. "The Land of Enchantment" is adopted as the official nickname of New Mexico.

N. The Sandia hairstreak is adopted as the official butterfly of New Mexico.

O. The New Mexico whiptail lizard, scientifically known as *Cnemidophorus neomexicanus*, is adopted as the official reptile of New Mexico.

P. The New Mexico spadefoot toad, scientifically known as *Spea multiplicata*, is adopted as the official amphibian of New Mexico.

Q. The hot air balloon is adopted as the official aircraft of New Mexico."

LAWS 2005, CHAPTER 5

AN ACT

RELATING TO HEALTH; CREATING THE GOVERNOR'S HIV AND AIDS POLICY COMMISSION; ESTABLISHING MEMBERSHIP AND DUTIES; REQUIRING THE DEPARTMENT OF HEALTH TO PROVIDE ADMINISTRATIVE SERVICES TO THE COMMISSION.

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

Chapter 5 Section 1 Laws 2005

Section 1. COMMISSION CREATED--MEMBERS--DUTIES.--

A. There is created the "governor's HIV and AIDS policy commission", consisting of twenty-three members as follows:

- (1) the secretary of health or the secretary's designee;
- (2) the secretary of human services or the secretary's designee;
- (3) the secretary of public education or the secretary's designee;
- (4) the chief medical officer of the corrections department or the officer's designee;
- (5) the chair of the department of health's medical advisory committee;
- (6) the executive director of the New Mexico medical insurance pool or the director's designee;
- (7) a representative from each of the six health management alliance organizations, appointed by the governor;
- (8) six consumers reflecting the diversity of the HIV and AIDS populations in New Mexico, including Native Americans and other people of color, appointed by the governor; and
- (9) five public members who have expertise in HIV and AIDS services, prevention, program administration, financial management and other categories of expertise required under federal planning requirements, appointed by the governor.

B. The governor shall appoint the chair of the commission. Members appointed by the governor shall serve for terms of three years, except that the initial term of seven members shall be two years. Vacancies of the appointed members shall be filled by appointment by the governor for the remainder of the unexpired term. Appointed members shall receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance. The commission shall be administratively attached to the department, which shall provide administrative services to the commission.

C. The commission shall:

(1) review and make recommendations on department HIV and AIDS policies;

(2) study and make recommendations to the department on all factors affecting the availability, quality and accessibility of health services for persons with HIV and AIDS, including:

(a) review and consult with the department's medical advisory committee regarding the HIV and AIDS drug formulary and policies of selection, utilization and provision of those drugs; and

(b) review policies and practices of each state agency with responsibilities to persons with HIV and AIDS, including statutes and rules governing these responsibilities;

(3) serve as a planning and advisory group to the department's HIV and AIDS services program;

(4) annually provide its evaluation and recommendations to the department for inclusion in the department's annual report, including recommendations for administrative and legislative changes, for resource allocation by the department and for funding;

(5) provide information on HIV and AIDS programs and issues as requested by the executive and legislative branches of government;

(6) advocate for improved and expanded services for persons living with HIV and AIDS; and

(7) establish task forces as it deems necessary.

D. For purposes of this section:

(1) "commission" means the governor's HIV and AIDS policy commission;

(2) "department" means the department of health;

(3) "HIV and AIDS" means human immunodeficiency virus and acquired immune deficiency syndrome; and

(4) "consumers" means people living with HIV and AIDS.

SENATE BILL 313

LAWS 2005, CHAPTER 6

AN ACT

RELATING TO HEALTH; ESTABLISHING CERTAIN DEPARTMENT OF HEALTH DUTIES PERTAINING TO PERSONS LIVING WITH THE HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME; CREATING A MEDICAL ADVISORY COMMITTEE; CREATING AN INDEPENDENT CONSTITUENT SERVICES PROGRAM.

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

Chapter 6 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Billy Griego HIV and AIDS Act".

Chapter 6 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the Billy Griego HIV and AIDS Act is to ensure that consumers are the focus of the funding and services provided and their consideration is to be the determining factor in all the state's human immunodeficiency virus and acquired immune deficiency syndrome programs.

Chapter 6 Section 3 Laws 2005

Section 3. DEPARTMENT OF HEALTH--DUTIES.--The department of health shall serve as the state's human immunodeficiency virus and acquired immune deficiency syndrome service coordinator among all state agencies, providing direct and contract education and prevention and treatment services for eligible persons, subject to the availability of funds. The department shall serve as the state contract administrator for federal Ryan White services funding as well as for all federal centers for disease control and prevention human immunodeficiency virus and acquired immune deficiency syndrome programs. Services shall include prevention, clinical services, a drug

assistance and insurance assistance program to eligible individuals and programs appropriate for Native Americans, including traditional medicine services. Services shall be delivered in a consumer-oriented model. The department of health shall include a quality assurance component in all services and shall ensure that all clients are educated about their rights and responsibilities and the department's grievance procedures.

Chapter 6 Section 4 Laws 2005

Section 4. MEDICAL ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES.--

A. There is created at the department of health a "medical advisory committee" to consist of seven members, chaired by the department's chief medical officer or the officer's designee. Committee membership shall consist of four physicians and two consumers with current experience in the treatment of human immunodeficiency virus and acquired immune deficiency syndrome.

B. The committee shall review the department of health's human immunodeficiency virus and acquired immune deficiency syndrome drug formulary and policies regarding selection, utilization and provision of those drugs and recommend changes as appropriate to the department of health and report its recommendations to the governor's HIV and AIDS policy commission.

Chapter 6 Section 5 Laws 2005

Section 5. INDEPENDENT CONSTITUENT SERVICE PROGRAM--DUTIES.-

-An independent "constituent services program" is created. The program shall review all fiscal matters and record and review all complaints and requests for services that come to its attention about public programs and services for persons living with the human immunodeficiency virus and acquired immune deficiency syndrome statewide. The program shall make an annual report to the department of health by November 1 of each year on its activities and recommendations.

Chapter 6 Section 6 Laws 2005

Section 6. ANNUAL REPORT--POLICIES AND PROCEDURES.--

A. The department of health shall provide an annual report on activities and expenditures conducted pursuant to the Billy Griego HIV and AIDS Act. The report shall be submitted no later than December 15 to the legislature and the governor.

B. The department of health shall develop and annually review policies and procedures pertaining to the Billy Griego HIV and AIDS Act.

SENATE BILL 314, as amended

LAWS 2005, CHAPTER 7

AN ACT

RELATING TO BEHAVIORAL HEALTH; PROVIDING FOR A NATIVE AMERICAN SUBCOMMITTEE; AMENDING A SECTION OF NMSA 1978.

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

Chapter 7 Section 1 Laws 2005

Section 1. Section 24-1-28 NMSA 1978 (being Laws 2004, Chapter 46, Section 2) is amended to read:

"24-1-28. BEHAVIORAL HEALTH PLANNING COUNCIL CREATED--

POWERS AND DUTIES--MEMBERSHIP.--There is created the "behavioral health planning council".

A. The council shall consist of the following members, all of whom shall be appointed by and serve at the pleasure of the governor:

(1) consumers of behavioral health services and consumers of substance abuse services, as follows:

(a) adults with serious mental illness;

(b) seniors;

(c) family members of adults with serious mental illness and of children with serious emotional or neurobiological disorders; and

(d) persons with co-occurring disorders;

(2) Native American representatives from a pueblo, an Apache tribe, the Navajo Nation and an urban Native American population;

(3) providers;

(4) state agency representation from agencies responsible for:

- (a) adult mental health and substance abuse;
- (b) children's mental health and substance abuse;
- (c) education;
- (d) vocational rehabilitation;
- (e) criminal justice;
- (f) juvenile justice;
- (g) housing;
- (h) medicaid and social services;
- (i) health policy planning;
- (j) developmental disabilities planning; and
- (k) disabilities issues and advocacy;

(5) such other members as the governor may appoint to ensure appropriate cultural and geographic representation; and

(6) advocates.

B. Providers and state agency representatives together may not constitute more than forty-nine percent of the council membership.

C. The council shall:

(1) advocate for adults, children and adolescents with serious mental illness or severe emotional, neurobiological and behavioral disorders, as well as those with mental illness or emotional problems, including substance abuse and co-occurring disorders;

(2) report annually to the governor and the legislature on the adequacy and allocation of mental health services throughout the state;

(3) encourage and support the development of a comprehensive, integrated, community-based behavioral health system of care, including mental health and substance abuse services, and services for persons with co-occurring disorders;

(4) advise state agencies responsible for behavioral health services for children and adults, as those agencies are charged in Section 9-7-6.4 NMSA 1978;

(5) meet regularly and at the call of the chair, who shall be selected by the council membership from among its members;

(6) establish subcommittees, to meet at least quarterly, as follows:

(a) a medicaid subcommittee, chaired by the secretary of human services or a designee, which may also serve as a subcommittee of the medicaid advisory committee;

(b) a child and adolescent subcommittee, chaired by the secretary of children, youth and families or a designee;

(c) an adult subcommittee, chaired by the secretary of health or a designee;

(d) a substance abuse subcommittee, chaired by the secretary of health or a designee, which shall include DWI issues and shall include representation from local DWI councils;

(e) a Native American subcommittee, chaired by the secretary of Indian affairs or a designee; and

(f) other subcommittees as may be established by the chair of the council to address specific issues. All subcommittees may include nonvoting members appointed by the chair for purposes of providing expertise necessary to the charge of the respective subcommittee;

(7) review and make recommendations for the comprehensive mental health state block grant and the substance abuse block grant applications, the state plan for medicaid services and any other plan or application for federal or foundation funding for behavioral health services; and

(8) replace the governor's mental health planning council and act in accordance with Public Law 102-321 of the federal Public Health Service Act."

HOUSE BILL 259

LAWS 2005, CHAPTER 8

AN ACT

RELATING TO STATE AGENCIES; INCREASING THE MEMBERSHIP OF THE MILITARY BASE PLANNING COMMISSION.

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

Chapter 8 Section 1 Laws 2005

Section 1. Section 9-15-49 NMSA 1978 (being Laws 2003, Chapter 166, Section 2 and Laws 2003, Chapter 170, Section 2, as amended) is amended to read:

"9-15-49. MILITARY BASE PLANNING COMMISSION CREATED--

COMPOSITION.--

A. The "military base planning commission" is created, which is administratively attached to the economic development department. The department shall provide administrative services to the commission.

B. The commission consists of seventeen members, fifteen of which are appointed by the governor with the advice and consent of the senate. The commission shall include the lieutenant governor, the governor's homeland security adviser and appropriate representatives from the counties, or adjoining counties, in which military bases are located.

C. The governor shall appoint a chair from among the members of the commission. The commission shall meet at the call of the chair and shall meet not less than quarterly. Members of the commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

D. Notwithstanding the provisions of the Open Meetings Act, meetings of the commission shall be closed to the public when proprietary alternative New Mexico military base realignment or closure strategies or any information regarding relocation of military units is discussed.

E. Information developed or obtained by the commission that pertains to proprietary commission strategies or related to the relocation of military units shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act."

HOUSE BILL 307

LAWS 2005, CHAPTER 9

AN ACT

RELATING TO INDUSTRIAL REVENUE BONDS; ADDING TO THE DEFINITION OF "PROJECT" PURSUANT TO THE INDUSTRIAL REVENUE BOND ACT; DECLARING AN EMERGENCY.

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

Chapter 9 Section 1 Laws 2005

Section 1. Section 3-32-3 NMSA 1978 (being Laws 1967, Chapter 84, Section 2, as amended) is amended to read:

"3-32-3. ADDITION TO DEFINITIONS.--As used in the Industrial Revenue Bond Act, "project" also means:

A. any land and buildings or other improvements thereon and all real and personal property deemed necessary in connection therewith whether or not now in existence which shall be suitable for use by any private institution of higher education or any nonprofit corporation engaged in health care services, including nursing homes, and, for any small municipality only, office facilities for physicians, any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research and development facility; or

B. urban transit buses, whether or not already in existence, that are:

- (1) manufactured or assembled in New Mexico;
- (2) equipped to hold at least thirty passengers; and
- (3) suitable for use by a commercial enterprise for leasing."

Chapter 9 Section 2 Laws 2005

Section 2. Section 3-32-6 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-31-3, as amended by Laws 2002, Chapter 25, Section 3 and by Laws 2002, Chapter 37, Section 3) is amended to read:

"3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--In addition to any other powers that it may now have, a municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality; provided that:

(1) urban transit buses qualifying as a project pursuant to Subsection B of Section 3-32-3 NMSA 1978 need not be continuously located within this state but the commercial enterprise using the urban transit buses for leasing shall meet the location requirement of this subsection; and

(2) a municipality 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 governing body, 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 municipality 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 governing body may deem advisable and as shall not conflict with the provisions of the Industrial Revenue Bond Act;

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 Industrial Revenue Bond Act. No municipality shall have the power to operate any project as a business or in any manner except as lessor;

D. to refinance one or more hospital or 501(c)(3) corporation projects and to acquire any such hospital or 501 (c)(3) corporation project whether by construction, purchase, gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. A municipality shall not have the power to operate a hospital or 501(c)(3) corporation project as a business or in any manner except as lessor; and

E. to refinance one or more projects of any private institution of higher education and to acquire any such project, whether by construction, purchase, gift or lease; provided that the project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but the project shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire any project of any private institution of higher education and to secure the payment of such bonds. A municipality shall not have the power to operate a project of a private institution of higher education as a business or in any manner except as lessor."

Chapter 9 Section 3 Laws 2005

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

HOUSE BILL 322, with emergency clause

Signed March 11, 2005

LAWS 2005, CHAPTER 10

AN ACT

RELATING TO TRAFFIC SAFETY; REQUIRING MOTORISTS TO MOVE OVER WHEN APPROACHING STATIONARY EMERGENCY VEHICLES; PROVIDING A PENALTY.

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

Chapter 10 Section 1 Laws 2005

Section 1. Section 66-7-332 NMSA 1978 (being Laws 1978, Chapter 35, Section 436, as amended) 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 displaying flashing emergency lights or 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. Upon approaching a stationary authorized emergency vehicle displaying flashing emergency lights, unless otherwise directed, the driver of a vehicle shall:

(1) if reasonably safe to do so, drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or

(2) if it is not reasonably safe to drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle

to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop.

C. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive and park with due regard for the safety of all persons using the highway."

Chapter 10 Section 2 Laws 2005

Section 2. Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116. PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in the Motor Vehicle Code, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsection D of this section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
ASSESSMENT		
Permitting unlicensed		
minor to drive	66-5-40	\$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including		
ten miles an hour		
over the speed limit		15.00
(2) from eleven up to		
and including fifteen		
miles an hour		

over the speed limit		30.00
(3) from sixteen up to and including twenty miles an hour over the speed limit		65.00
(4) from twenty-one up to and including twenty-five miles an hour over the speed limit		100.00
(5) from twenty-six up to and including thirty miles an hour over the speed limit		125.00
(6) from thirty-one up to and including thirty-five miles an hour over the speed limit		150.00
(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device or seat belt	66-7-369	25.00

Minimum speed	66-7-305	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access violation	66-7-320	10.00
Controlled access violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-331	10.00
Failure to yield	66-7-332	50.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00

Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344 through 66-7-346	10.00
Railroad-highway grade crossing violation	66-7-341 and 66-7-343	10.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize- overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency signal	66-3-853 through 66-3-857	10.00
Operation interference	66-7-357	5.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353	5.00
Improper parking	66-7-352.5	50.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing occupied house trailer	66-7-366	5.00

Improper opening of doors	66-7-367	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	5.00
Open container - first violation	66-8-138	25.00.

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

D. The penalty assessment for speeding in violation of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit."

HOUSE BILL 71, as amended

LAWS 2005, CHAPTER 11

AN ACT

RELATING TO VETERANS; AUTHORIZING THE ISSUANCE OF HIGH SCHOOL DIPLOMAS FOR CERTAIN KOREAN CONFLICT VETERANS.

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

Chapter 11 Section 1 Laws 2005

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

"HIGH SCHOOL DIPLOMAS--KOREAN CONFLICT VETERANS.--

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a Korean conflict veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after June 27, 1950 and before January 31, 1955;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in the Korean conflict.

B. A local school board may issue a high school diploma to a qualifying Korean conflict veteran regardless of whether the veteran holds a high school equivalency diploma or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted to the local school board by the Korean conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma."

SENATE BILL 198

LAWS 2005, CHAPTER 12

AN ACT

RELATING TO TAXATION; ELIMINATING NONTAXABLE TRANSACTION CERTIFICATE REISSUANCE REQUIREMENTS; DECLARING AN EMERGENCY.

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

Chapter 12 Section 1 Laws 2005

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.--

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. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates, except with respect to documents issued by other states or the multistate tax commission that the department has deemed to be nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to approve the application of the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to issue nontaxable transaction certificates to the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require a seller or lessor engaged in business in New Mexico to report to the department the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates."

Chapter 12 Section 2 Laws 2005

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

HOUSE BILL 234, with emergency clause

Signed March 15, 2005

LAWS 2005, CHAPTER 13

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR OPTIONAL COUNTY NAME STICKERS TO BE PLACED ON REGISTRATION PLATES.

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

Chapter 13 Section 1 Laws 2005

Section 1. A new section of Chapter 66, Article 3 NMSA 1978 is enacted to read:

"COUNTY NAME STICKERS.--The department shall make available, upon request, county name stickers or decals for purchase at a reasonable charge to be set by the secretary. The stickers or decals shall be designed and prescribed by the department to fit on a registration plate without obscuring the registration number or validating sticker."

HOUSE BILL 272

LAWS 2005, CHAPTER 14

AN ACT

RELATING TO AGRICULTURE; AMENDING THE COTTON BOLL WEEVIL CONTROL ACT TO PROVIDE FOR MONITORING BY THE DISTRICTS.

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

Chapter 14 Section 1 Laws 2005

Section 1. Section 76-6A-3 NMSA 1978 (being Laws 1996, Chapter 77, Section 3, as amended) is amended to read:

"76-6A-3. DEFINITIONS.--As used in the Cotton Boll Weevil Control Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "cotton boll weevil" means any life stage of the cotton insect *Anthonomus grandis* Boheman;
- C. "cotton boll weevil control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers voting in a designated cotton boll weevil control district;
- D. "cotton boll weevil control district" means a designated area duly established under the Cotton Boll Weevil Control Act wherein a program to monitor, suppress or eradicate the cotton boll weevil is administered;
- E. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Cotton Boll Weevil Control Act, only one person

from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a cotton boll weevil control district;

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

G. "director" means the director of the New Mexico department of agriculture; and

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

Chapter 14 Section 2 Laws 2005

Section 2. Section 76-6A-4 NMSA 1978 (being Laws 1996, Chapter 77, Section 4) is amended to read:

"76-6A-4. DUTIES AND POWERS.--The director shall determine any critically infested or threatened agricultural areas within New Mexico, hold public hearings within the proposed cotton boll weevil control district determined to be critically infested or at risk and provide technical support and advice in the formulation of plans for the monitoring, control or eradication of such infestation."

Chapter 14 Section 3 Laws 2005

Section 3. Section 76-6A-11 NMSA 1978 (being Laws 1996, Chapter 77, Section 11, as amended) is amended to read:

"76-6A-11. COTTON BOLL WEEVIL CONTROL COMMITTEES--ADDITIONAL DUTIES AND POWERS.--

A. Cotton boll weevil control committees may:

(1) conduct programs to monitor, suppress or eradicate cotton boll weevils within their cotton boll weevil control districts;

(2) cooperate in the administration of the Cotton Boll Weevil Control Act through the use of state or federal personnel and facilities or both;

(3) contract for services or enter into cooperative agreements;

(4) publish information and conduct seminars on the distribution and control of the cotton boll weevil;

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

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

B. Cotton boll weevil control committees shall provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the cotton boll weevil control districts.

C. The cotton boll weevil control committee shall send notice of the establishment of a cotton boll weevil control district and its defined boundaries to the organic commodity commission within fourteen days of its establishment.

D. If the cotton boll weevil control district includes certified organic acreage, the cotton boll weevil control committee shall select an organic cotton producer operating within the district, who shall have all the powers of a committee member, to serve on the cotton boll weevil control committee."

HOUSE BILL 751

LAWS 2005, CHAPTER 15

AN ACT

RELATING TO RECREATIONAL VEHICLES; AUTHORIZING SPECIAL EVENT LICENSES UNDER CERTAIN CONDITIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 15 Section 1 Laws 2005

Section 1. Section 66-4-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 215, as amended) is amended to read:

"66-4-2. DEPARTMENT TO ISSUE LICENSE.--

A. Except for recreational vehicle dealers, the department, upon receiving application accompanied by the required fee and when satisfied that the applicant is of good character and complies with the laws of this state with reference to the registration of vehicles and certificates of title and the provisions of the Motor Vehicle Code, shall issue to the applicant a license that entitles the licensee to conduct the business of a

dealer, wrecker of vehicles or title service company. The license may be renewed upon application and payment of the fee required by law.

B. A dealer or wrecker of vehicles licensee, before moving any one or more of the licensee's places of business or opening any additional place of business, shall apply to the department for and obtain a supplemental license for which no fee shall be charged. No supplemental license shall be issued to a dealer, other than a dealer in motorcycles, for an additional place of business unless:

(1) the place of business is an established place of business; or

(2) the majority of dealers, other than dealers in motorcycles, in the county in which the proposed additional place of business would be located have been offered the opportunity, in documentation acceptable to the department, to offer vehicles for sale at the proposed additional place of business by the applicant; provided that the offer shall be for sale of vehicles at all times at which the applicant proposes to sell vehicles and shall not be conditioned upon the payment of any fee by any dealer to whom it is addressed greater than a fair share of the actual expenses incurred.

C. Any person to whom the department has issued a license to conduct the business of a dealer in motorcycles is also deemed a wrecker of motorcycles without additional license.

D. The department is authorized to establish a staggered system for licensing of dealers, wholesalers, distributors and wreckers of vehicles and of title service companies, provided that any license issued shall expire on the last day of a month. Licenses issued shall be issued for a period of twelve months."

Chapter 15 Section 2 Laws 2005

Section 2. A new section of the Motor Vehicle Code, Section 66-4-2.1 NMSA 1978, is enacted to read:

"66-4-2.1. RECREATIONAL VEHICLE DEALERS--LICENSURE--SPECIAL EVENTS.--

A. A dealer, as defined in Section 66-1-4.4 NMSA 1978, shall apply to and be issued by the department a license to deal in recreational vehicles if the department finds the applicant is in compliance with department rules regarding registration of vehicles, certificates of title and all provisions of the Motor Vehicle Code. Renewal of a license shall be according to rules of the department for a period of twelve months.

B. The department shall issue a "special event" license to a licensed New Mexico recreational vehicle dealer to conduct business at a location other than the dealer's listed primary place of business, upon forms issued by the department, provided:

(1) the special event is focused on the business of recreational vehicles as conducted at the applicant's primary place of business;

(2) the location of the special event is an established place of business; and

(3) the majority of recreational vehicle dealers in the county where the special event is to be held are notified, in a manner approved by the department, of the special event and offered the opportunity to participate and offer vehicles for sale under identical conditions established by and for the applicant and approved by the department. The applicant may charge other recreational vehicle dealers a participation fee sufficient to defray the actual expenses of the special event; or

(4) if the special event is sponsored by a national recreational vehicle organization and the applicant is not licensed to do business in New Mexico, the application is accompanied by an application and a certified letter from that New Mexico licensed dealer committing to serve as host dealer to the out-of-state applicant."

SENATE BILL 282, as amended

LAWS 2005, CHAPTER 16

AN ACT

RELATING TO MOTOR VEHICLES; MODIFYING REQUIREMENTS FOR DISPLAY OF TEMPORARY DEMONSTRATION PLATES; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 16 Section 1 Laws 2005

Section 1. Section 66-3-18 NMSA 1978 (being Laws 1978, Chapter 35, Section 38, as amended) is amended to read:

"66-3-18. DISPLAY OF REGISTRATION PLATES AND TEMPORARY PERMITS AND PLATES--DISPLAYS PROHIBITED AND ALLOWED.--

A. The registration plate shall be attached to the rear of the vehicle for which it is issued; however, the registration plate shall be attached to the front of a road tractor or truck tractor. The plate shall be securely fastened at all times in a fixed horizontal position at a height of not less than twelve inches from the ground, measuring from the bottom of the plate. It shall be in a place and position so as to be clearly visible,

and it shall be maintained free from foreign material and in a condition to be clearly legible.

B. Temporary demonstration plates and temporary permits shall be firmly affixed to the inside left rear window of the vehicle to which it is issued, unless such display presents a safety hazard or the temporary permit is not visible or readable from that position, in which case, the temporary permit shall be displayed in such a manner that it is clearly visible from the rear or left side of the vehicle.

C. No vehicle while being operated on the highways of this state shall have displayed either on the front or the rear of the vehicle any registration plate, including tab or sticker, other than one issued or validated for the current registration period by the department or any other licensing authority having jurisdiction over the vehicle. No expired registration plate, tab or sticker shall be displayed on the vehicle other than an expired special registration plate which may be exhibited on the front of the vehicle.

D. Nothing contained in this section shall be construed as prohibiting the use of a promotional or advertising plate on the front of the vehicle."

SENATE BILL 439

LAWS 2005, CHAPTER 17

AN ACT

RELATING TO DOMESTIC VIOLENCE; CREATING DOMESTIC VIOLENCE SPECIAL COMMISSIONERS; PROVIDING POWERS AND DUTIES; ELIMINATING THE DOMESTIC VIOLENCE PILOT PROGRAM IN THE ELEVENTH JUDICIAL DISTRICT.

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

Chapter 17 Section 1 Laws 2005

Section 1. A new section of the Family Violence Protection Act is enacted to read:

"DOMESTIC VIOLENCE SPECIAL COMMISSIONERS--APPOINTMENT--QUALIFICATIONS.--

A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.

B. A domestic violence special commissioner shall:

(1) be an attorney licensed to practice law in New Mexico;

(2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and

(3) conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner."

Chapter 17 Section 2 Laws 2005

Section 2. A new section of the Family Violence Protection Act is enacted to read:

"SPECIAL COMMISSIONERS--POWERS--DUTIES.--

A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act:

(1) review petitions for orders of protection and motions to enforce, modify or terminate orders of protection;

(2) if deemed necessary, interview petitioners. Any interview shall be on the record;

(3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection; and

(4) prepare recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection.

B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective."

Chapter 17 Section 3 Laws 2005

Section 3. REPEAL.--Section 40-13-8 NMSA 1978 (being Laws 1992, Chapter 107, Section 1) is repealed.

Chapter 17 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 457

LAWS 2005, CHAPTER 18

AN ACT

RELATING TO AGRICULTURE; AMENDING THE COTTON BOLL WEEVIL CONTROL ACT TO PROVIDE FOR MONITORING BY THE DISTRICTS.

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

Chapter 18 Section 1 Laws 2005

Section 1. Section 76-6A-3 NMSA 1978 (being Laws 1996, Chapter 77, Section 3, as amended) is amended to read:

"76-6A-3. DEFINITIONS.--As used in the Cotton Boll Weevil Control Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "cotton boll weevil" means any life stage of the cotton insect *Anthonomus grandis* Boheman;
- C. "cotton boll weevil control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers voting in a designated cotton boll weevil control district;
- D. "cotton boll weevil control district" means a designated area duly established under the Cotton Boll Weevil Control Act wherein a program to monitor, suppress or eradicate the cotton boll weevil is administered;
- E. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Cotton Boll Weevil Control Act, only one person from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a cotton boll weevil control district;
- F. "department" means the New Mexico department of agriculture;
- G. "director" means the director of the New Mexico department of agriculture; and

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

Chapter 18 Section 2 Laws 2005

Section 2. Section 76-6A-4 NMSA 1978 (being Laws 1996, Chapter 77, Section 4) is amended to read:

"7-6A-4. DUTIES AND POWERS.--The director shall determine any critically infested or threatened agricultural areas within New Mexico, hold public hearings within the proposed cotton boll weevil control district determined to be critically infested or at risk and provide technical support and advice in the formulation of plans for the monitoring, control or eradication of such infestation."

Chapter 18 Section 3 Laws 2005

Section 3. Section 76-6A-11 NMSA 1978 (being Laws 1996, Chapter 77, Section 11, as amended) is amended to read:

"76-6A-11. COTTON BOLL WEEVIL CONTROL COMMITTEES--ADDITIONAL DUTIES AND POWERS.--

A. Cotton boll weevil control committees may:

(1) conduct programs to monitor, suppress or eradicate cotton boll weevils within their cotton boll weevil control districts;

(2) cooperate in the administration of the Cotton Boll Weevil Control Act through the use of state or federal personnel and facilities or both;

(3) contract for services or enter into cooperative agreements;

(4) publish information and conduct seminars on the distribution and control of the cotton boll weevil;

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

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

B. Cotton boll weevil control committees shall provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the cotton boll weevil control districts.

C. The cotton boll weevil control committee shall send notice of the establishment of a cotton boll weevil control district and its defined boundaries to the organic commodity commission within fourteen days of its establishment.

D. If the cotton boll weevil control district includes certified organic acreage, the cotton boll weevil control committee shall select an organic cotton producer operating within the district, who shall have all the powers of a committee member, to serve on the cotton boll weevil control committee."

SENATE BILL 671

LAWS 2005, CHAPTER 19

AN ACT

RELATING TO SEX OFFENDERS; ADDING THE SECRETARY OF PUBLIC SAFETY AS A MEMBER OF THE SEX OFFENDER MANAGEMENT BOARD AUTHORIZING DESIGNEES FOR CERTAIN BOARD MEMBERS.

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

Chapter 19 Section 1 Laws 2005

Section 1. Section 9-3-13 NMSA 1978 (being Laws 2003 (1st S.S.), Chapter 1, Section 1) is amended to read:

"9-3-13. SEX OFFENDER MANAGEMENT BOARD--CREATION--MEMBERSHIP--DUTIES.--

A. There is created within the New Mexico sentencing commission the "sex offender management board". Members of the sex offender management board who are not members of the New Mexico sentencing commission, whose membership is set forth in Section 9-3-10 NMSA 1978, shall not be voting members of the New Mexico sentencing commission.

B. The sex offender management board shall be composed of the following members:

- (1) the attorney general or designee;
- (2) a district attorney appointed by the district attorneys association of New Mexico;
- (3) the chief public defender or designee;

(4) a district court judge appointed by the district court judge's association of New Mexico;

(5) the secretary of corrections or designee;

(6) the secretary of health or designee;

(7) the secretary of children, youth and families or designee;

(8) the secretary of public safety or designee;

(9) one public member appointed by the governor who is a board member of a New Mexico victims organization;

(10) two representatives appointed by the governor who are mental health professionals licensed to practice in New Mexico. One of the mental health professionals shall be a member of the association for the treatment of sexual abusers and one shall be a juvenile sex offender treatment specialist;

(11) a representative appointed by the governor from the adult probation and parole division of the corrections department who has expertise in the supervision of sex offenders;

(12) a representative appointed by the governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring;

(13) a representative appointed by the governor who is affiliated with a civil liberties organization; and

(14) a representative appointed by the governor who is affiliated with a faith-based organization.

C. The sex offender management board shall report its findings and recommendations to the New Mexico sentencing commission on a quarterly basis. The New Mexico sentencing commission shall vote to approve, disapprove or revise the recommendations of the board.

D. The sex offender management board shall:

(1) hold meetings at times and for periods as the board deems necessary to accomplish its objectives, but shall meet at least eight times a year;

(2) develop and prescribe a standard procedure for the identification and evaluation of convicted sex offenders. The procedure shall include

behavior management, monitoring, treatment and program compliance for sex offenders. The board shall develop and recommend measures of success;

(3) develop and recommend guidelines and standards for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the corrections department, placed on parole or placed in a community corrections program. The guidelines and standards shall include a monitoring process and a plan for developing treatment programs for sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(4) create a risk assessment screening tool and program to assist sentencing of sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(5) develop guidelines and standards for monitoring sex offenders who are undergoing evaluation or treatment, including behavioral monitoring;

(6) develop criteria for measuring a sex offender's progress in treatment programs. The parole board shall use the criteria approved by the New Mexico sentencing commission to determine whether a sex offender may appropriately be discharged from parole;

(7) develop a standardized procedure for the identification and evaluation of juvenile sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for juvenile sex offenders. The board shall develop and implement measures of success;

(8) develop and recommend guidelines and standards for the treatment of juvenile sex offenders who are placed on probation, committed to a state agency, placed on parole or placed in a community corrections program;

(9) research and analyze safety issues raised when sex offenders live in a community;

(10) study and consider the viability and legality of a civil commitment program for sex offenders;

(11) research and determine the feasibility and legality of implementing indeterminate sentencing for sex offenders;

(12) study the use of clinical polygraph testing as a means to evaluate sex offenders;

(13) evaluate sex offender treatment programs administered by state agencies and recommend changes, if needed, in those treatment programs; and

(14) review the provisions of the Sex Offender Notification and Registration Act and recommend changes, if needed, to that act.

E. The members of the sex offender management board shall be paid pursuant to the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance."

HOUSE BILL 103, as amended

LAWS 2005, CHAPTER 20

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING ADMINISTRATIVE SERVICE FEES; MAKING A DISTRIBUTION TO THE MOTOR VEHICLE SUSPENSE FUND; ADJUSTING CERTAIN DISTRIBUTIONS FROM THE MOTOR VEHICLE SUSPENSE FUND; MAKING AN APPROPRIATION.

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

Chapter 20 Section 1 Laws 2005

Section 1. Section 66-2-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 20, as amended) is amended to read:

"66-2-16. ADMINISTRATIVE SERVICE FEES--COLLECTION--
REMITTANCE--PAYMENT--OPTIONAL SERVICE FEES--APPROPRIATION.--

A. The secretary is authorized to establish by regulation a schedule of administrative service fees to be collected by the agents or department to defray the costs of operation of the agents' or department's offices and of rendering service to the public. Fees shall be two dollars (\$2.00) for each transaction performed by the agent or department for the secretary and shall be collected in addition to all other fees and taxes imposed.

B. All sums collected by an agent or the department as administrative service fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative service fees remitted by department employees shall be deposited by the state treasurer into the motor vehicle suspense fund and distributed in accordance with Section 66-6-23 NMSA 1978.

D. Notwithstanding the provisions of Subsections A through C of this section, a class A county with a population exceeding three hundred thousand or

municipality with a population exceeding three hundred thousand within a class A county designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 shall not be paid an administrative service fee.

E. The secretary is authorized to establish by regulation fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted pursuant to this subsection shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service.

F. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and identify each office exceeding ten thousand aggregate transactions per year."

Chapter 20 Section 2 Laws 2005

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

"ROYALTIES--COMMERCIAL USERS OF MOTOR VEHICLE-RELATED DATABASES--DISTRIBUTION TO MOTOR VEHICLE SUSPENSE FUND.--The department shall remit royalties and other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 to the motor vehicle suspense fund to be distributed in accordance with Section 66-6-23 NMSA 1978."

Chapter 20 Section 3 Laws 2005

Section 3. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

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

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

(1) to each municipality, county or fee agent operating a motor vehicle field office:

(a) an amount equal to six dollars (\$6.00) per driver's license and five dollars (\$5.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal to one dollar fifty cents (\$1.50) 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 Sections 66-7-413 and 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

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

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department for the manufacture and issuance of a special registration plate collected pursuant to the section of law authorizing the issuance of the specialty plate;

(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; and after those purposes are met, the balance of the registration fees shall be distributed to the department to defray the costs of operating the division;

(f) an amount equal to fifty cents (\$.50) for each administrative fee remitted to the department by a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978;

(g) an amount equal to one dollar twenty-five cents (\$1.25) for each administrative fee collected by the department or any of its agents other than a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978; and

(h) an amount equal to the royalties or other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 for the purpose of defraying the costs of maintaining databases of motor vehicle-related records of the department; and after that purpose is met, the balance of the royalties and other consideration shall be distributed to the department to defray the costs of operating the division;

(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 department of transportation, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

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

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the tire recycling fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) fifty cents (\$.50) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(13) to the highway infrastructure fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) one dollar (\$1.00) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state;

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978; and

(16) to the local government division of the department of finance and administration, an amount equal to the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for distribution to each county to support animal control spaying and neutering programs in an amount proportionate to the number of residents of that county who have purchased pet care special registration plates pursuant to Section 66-3-424.3 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Chapter 20 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 201, as amended

LAWS 2005, CHAPTER 21

AN ACT

RELATING TO INSURANCE; PROVIDING FOR NONPROFIT REPRESENTATION ON THE BOARD OF DIRECTORS OF THE HEALTH INSURANCE ALLIANCE; CHANGING THE HEALTH PLAN PREMIUM RATE STRUCTURE; PROVIDING FOR OUTREACH ACTIVITIES RELATED TO INSURANCE COVERAGE.

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

Chapter 21 Section 1 Laws 2005

Section 1. Section 59A-56-4 NMSA 1978 (being Laws 1994, Chapter 75, Section 4, as amended) is amended to read:

"59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

A. The "New Mexico health insurance alliance" is created as a nonprofit public corporation for the purpose of providing increased access to health insurance in the state. All insurance companies authorized to transact health insurance business in this state, nonprofit health care plans, health maintenance organizations and self-insurers not subject to federal preemption shall organize and be members of the alliance as a condition of their authority to offer health insurance in this state, except for an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is licensed under a provision of the Insurance Code.

B. The alliance shall be governed by a board of directors constituted pursuant to the provisions of this section. The board is a governmental entity for purposes of the Tort Claims Act, but neither the board nor the alliance shall be considered a governmental entity for any other purpose.

C. Each member shall be entitled to one vote in person or by proxy at each meeting.

D. The alliance shall operate subject to the supervision and approval of the board. The board shall consist of:

(1) five directors, elected by the members, who shall be officers or employees of members and shall consist of two representatives of health maintenance organizations and three representatives of other types of members;

(2) five directors, appointed by the governor, who shall be officers, general partners or proprietors of small employers, one director of which shall represent nonprofit corporations;

(3) four directors, appointed by the governor, who shall be employees of small employers; and

(4) the superintendent or the superintendent's designee, who shall be a nonvoting member, except when the superintendent's vote is necessary to break a tie.

E. The superintendent shall serve as chairman of the board unless the superintendent declines, in which event the superintendent shall appoint the chairman.

F. The directors elected by the members shall be elected for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. The directors appointed by the governor shall be appointed for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. Following the initial terms, directors shall be elected or appointed for terms of three years. A director whose term has expired shall continue to serve until a successor is elected or appointed and qualified.

G. Whenever a vacancy on the board occurs, the electing or appointing authority of the position that is vacant shall fill the vacancy by electing or appointing an individual to serve the balance of the unexpired term; provided, when a vacancy occurs in one of the director's positions elected by the members, the superintendent is authorized to appoint a temporary replacement director until the next scheduled election of directors elected by the members is held. The individual elected or appointed to fill a vacancy shall meet the requirements for initial election or appointment to that position.

H. Directors may be reimbursed by the alliance as provided in the Per Diem and Mileage Act for nonsalaried public officers, but shall receive no other compensation, perquisite or allowance from the alliance."

Chapter 21 Section 2 Laws 2005

Section 2. Section 59A-56-8 NMSA 1978 (being Laws 1994, Chapter 75, Section 8, as amended) is amended to read:

"59A-56-8. APPROVED HEALTH PLAN.--

A. An approved health plan shall conform to the alliance's approved health plan design criteria. The board may allow more than one plan design for approved health plans. A member may provide one approved health plan for each plan design approved by the board.

B. The board shall designate plan designs for approved health plans. The board may designate plan designs for an approved health plan that provides catastrophic coverage or other benefit plan designs.

C. Each approved health plan shall offer a premium that is no greater than the average of the standard rate index for plans with the same characteristics.

D. Any member that provides or offers to renew a group health insurance contract providing health insurance benefits to employees of the state, a county, a municipality or a school district for which public funds are contributed shall offer at least one approved health plan to small employers and eligible individuals; provided, however, if a member does not offer anywhere in the United States a plan that meets substantially the design criteria of an approved health plan, the member shall not be required to offer an approved health plan.

E. If a plan design approved by the board is not offered by any member already offering an approved health plan, but a member offers a substantially similar plan design outside the alliance, the board may require the member to offer that plan design as an approved health plan through the alliance.

F. A member required to offer, and offering, an approved health plan pursuant to the requirement of Subsection D of this section shall continue to offer that plan for five consecutive years after the date the member was last required to offer the plan. A member offering an approved health plan but not required to offer it pursuant to the cited subsection may withdraw the plan but shall continue to offer it for five consecutive years after the date notice of future withdrawal is given to the board unless:

(1) the member substitutes another approved health plan for the plan withdrawn; or

(2) the board allows the plan to be withdrawn because it imposes a serious hardship upon the member.

G. No member shall be required to offer an approved health plan if the member notifies the superintendent in writing that it will no longer offer health insurance, life insurance or annuities in the state, except for renewal of existing contracts, provided that:

(1) the member does not offer or provide health insurance, life insurance or annuities for a period of five years from the date of notification to the superintendent to any person in the state who is not covered by the member through a health insurance policy in effect on the date of the notification; and

(2) with respect to health or life insurance policies or annuities in effect on the date of notification to the superintendent, the member continues to comply with all applicable laws and regulations governing the provision of insurance in this state, including the payment of applicable taxes, fees and assessments."

Chapter 21 Section 3 Laws 2005

Section 3. Section 59A-56-23 NMSA 1978 (being Laws 1994, Chapter 75, Section 23, as amended) is amended to read:

"59A-56-23. RATES--STANDARD RISK RATE--EXPERIENCE RATING PROHIBITED.--

A. The alliance shall determine a standard risk rate index by actuarially calculating the average index rates that the insurer has filed under the requirements of the Small Group Rate and Renewability Act with the benefits similar to the alliance's standard approved health plan. A standard risk rate based on age and other appropriate demographic characteristics may be used. In determining the standard risk rate, the alliance shall consider the benefits provided by the approved health plan.

B. Experience rating is not allowed other than for reinsurance purposes.

C. All rates and rate schedules shall be submitted to the superintendent for approval prior to use."

Chapter 21 Section 4 Laws 2005

Section 4. Section 59A-56-25 NMSA 1978 (being Laws 1994, Chapter 75, Section 25) is amended to read:

"59A-56-25. EXPANDED SERVICE DEVELOPMENT.--The insurance division of the commission, in cooperation with the alliance, shall develop a plan to provide health insurance coverage for uninsured children, individuals and other employers, including

outreach and technical assistance activities conducted by the alliance to increase employer, employee and public awareness of available health insurance coverage options and to assist employers in securing or retaining health insurance coverage for employees and their dependents."

Chapter 21 Section 5 Laws 2005

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 394

LAWS 2005, CHAPTER 22

AN ACT

RELATING TO EMERGENCY MANAGEMENT; ENACTING THE EMERGENCY POWERS CODE; ENACTING THE EMERGENCY LICENSING ACT; RECOMPILING SECTIONS OF THE NMSA 1978 REGARDING DISASTER RELIEF AND EMERGENCY MANAGEMENT.

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

Chapter 22 Section 1 Laws 2005

Section 1. A new section of Chapter 12 NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 12, Articles 10, 10A, 11 and 12 NMSA 1978 may be cited as the "Emergency Powers Code"."

Chapter 22 Section 2 Laws 2005

Section 2. A new section of Chapter 12 NMSA 1978 is enacted to read:

"SHORT TITLE.--Sections 12-10-11 through 12-10-13 NMSA 1978 may be cited as the "Emergency Licensing Act"."

Chapter 22 Section 3 Laws 2005

Section 3. Section 12-10A-19 NMSA 1978 (being Laws 2003, Chapter 218, Section 19) is amended to read:

"12-10A-19. ENFORCEMENT--CIVIL PENALTIES.--

A. The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 12-10-17 NMSA 1978.

B. The provisions of the Public Health Emergency Response Act shall not be construed to limit specific enforcement powers enumerated in that act.

C. The enforcement authority provided pursuant to the provisions of the Public Health Emergency Response Act is in addition to other remedies available against the same conduct under the common law or other statutes of this state."

Chapter 22 Section 4 Laws 2005

Section 4. TEMPORARY PROVISION--RECOMPILATION.--

A. Sections 6-7-1 through 6-7-3 NMSA 1978 (being Laws 1955, Chapter 185, Sections 1 through 3, as amended) are recompiled as part of Chapter 12, Article 11 NMSA 1978.

B. Sections 11-15-1 and 11-15-2 NMSA 1978 (being Laws 1999, Chapter 87, Sections 1 and 2) are recompiled as part of Chapter 12, Article 10 NMSA 1978.

C. Sections 30-20-4 through 30-20-9 NMSA 1978 (being Laws 1969, Chapter 281, Sections 1 through 6) are recompiled as part of Chapter 12, Article 10 NMSA 1978.

D. Sections 70-8-1 through 70-8-6 NMSA 1978 (being Laws 1974, Chapter 22, Sections 1 through 5, Laws 1979, Chapter 174, Section 3 and Laws 1974, Chapter 22, Section 6, as amended) are recompiled as part of Chapter 12, Article 12 NMSA 1978.

E. Sections 74-4B-1 through 74-4B-14 NMSA 1978 (being Laws 1983, Chapter 80, Sections 1 through 6, Laws 1984, Chapter 41, Section 6, Laws 1983, Chapter 80, Sections 7 through 10, Laws 1984, Chapter 41, Section 9 and Laws 1992, Chapter 5, Sections 2 and 3, as amended) are recompiled as part of Chapter 12, Article 12 NMSA 1978.

Chapter 22 Section 5 Laws 2005

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 467

LAWS 2005, CHAPTER 23

AN ACT

RELATING TO CORRECTIONS; CHANGING THE NAME AND COMPOSITION OF THE CORRECTIONS COMMISSION; LIMITING THE ADVISORY AUTHORITY OF THE CORRECTIONS INDUSTRIES COMMISSION TO THE CORRECTIONS INDUSTRIES DIVISION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 23 Section 1 Laws 2005

Section 1. A new section of the Corrections Industries Act is enacted to read:

"CORRECTIONS INDUSTRIES COMMISSION.--The "corrections industries commission" is created. The commission consists of seven members appointed by the governor with the advice and consent of the senate for staggered terms of four years or less in a manner that the terms of one or two members expire as the case may be on June 30 each year. Four members of the commission constitute a quorum for the transaction of business. Not more than four members shall be of the same political party. Any member who fails to attend three consecutive meetings of the commission without being excused by the commission shall be automatically removed. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Members of the commission shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Chapter 23 Section 2 Laws 2005

Section 2. 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 industries 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 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;

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;

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;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or 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, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department; and

X. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000)."

Chapter 23 Section 3 Laws 2005

Section 3. Section 33-1-2 NMSA 1978 (being Laws 1978, Chapter 4, Section 1, as amended) is amended to read:

"33-1-2. DEFINITIONS.--As used in the Corrections Act:

A. "division" or "department" means the corrections department;

B. "director" or "secretary" means the secretary of corrections;

C. "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including but not limited to:

(1) the "penitentiary of New Mexico", which consists of the penitentiary at Santa Fe and other places in the state designated by the secretary; and

(2) the parole board to the extent delegated by the Parole Board Act;

D. "commission" means the corrections industries commission; and

E. "warden" or "superintendent" means the administrative director of a correctional facility."

Chapter 23 Section 4 Laws 2005

Section 4. Section 33-8-2 NMSA 1978 (being Laws 1981, Chapter 127, Section 2, as amended) is amended to read:

"33-8-2. DEFINITIONS.--As used in the Corrections Industries Act:

A. "commission" means the corrections industries commission;

B. "department" means the corrections department;

C. "enterprise" means a manufacturing, agricultural or service operation or group of closely related operations within the bounds of a facility but does not include standard facility maintenance activities and services;

D. "facility" means a place under the jurisdiction of the department at which individuals are confined pursuant to court order;

E. "fund" means the corrections industries revolving fund;

F. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions supported wholly or in part by funds derived from public taxation; and

G. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions supported wholly or in part by funds derived from public taxation."

Chapter 23 Section 5 Laws 2005

Section 5. Section 33-8-6 NMSA 1978 (being Laws 1981, Chapter 127, Section 6, as amended) is amended to read:

"33-8-6. COMMISSION--POWERS AND DUTIES.--The commission has the following powers and duties to:

A. determine those enterprises to be conducted in facilities in such volume, kind and place as to eliminate unnecessary inmate idleness at all facilities and to provide diversified work activities that will serve as a means of enhancing vocational skills;

B. determine whether any enterprise should be established, expanded, diminished or discontinued;

C. establish policy with respect to the conduct of all enterprises;

D. approve the prices at which all services and products provided, manufactured, produced or harvested by enterprises shall be furnished; provided that the prices shall be as near the prevailing market price as possible. As used in this subsection, "prevailing market price" means the prevailing price that an equivalent product or service would have if purchased by a state agency or local public body from community sources. The commission shall include data provided by the purchasing division of the general services department in the price determination process. Compensation paid to inmates shall be included as an item of the cost in fixing prices;

E. consult regularly and continuously with state agencies and local public bodies in order to develop new enterprise products, adapt existing enterprise products and establish new service functions to meet their needs;

F. act as liaison with private industry, organized labor, the legislature and the general public;

G. obtain and provide technical assistance for enterprise programs;

H. hold meetings at such times and for such periods as it deems essential, but not less than quarterly;

I. recommend to the department the adoption of rules necessary to carry out the provisions of the Corrections Industries Act;

J. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of raw materials involving the expenditure of twelve thousand dollars (\$12,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials from the same or different suppliers at the same time or about the same time where each purchase does not exceed twelve thousand dollars (\$12,000), but the aggregate of such purchases exceeds twelve thousand dollars (\$12,000), shall be considered a single purchase involving more than twelve thousand dollars (\$12,000);

K. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of a product or service other than raw materials involving the expenditure of two thousand dollars (\$2,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product or service. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed two thousand dollars (\$2,000), but the aggregate of such purchases exceeds two thousand dollars (\$2,000), shall be considered a single purchase involving more than two thousand dollars (\$2,000);

L. review, approve, adopt and monitor an annual budget for all enterprises. The budget process shall include a projected profit analysis, sales forecast and anticipated year-end financial forecast;

M. submit and recommend the names of one or more qualified individuals to the secretary of corrections for appointment as director of the corrections industries division;

N. advise the director of the corrections industries division in the management and control of the corrections industries division;

O. assist in the process of inmate occupational placement upon release from confinement by coordination with the parole board and the field services division; and

P. prepare an annual report to the governor and the legislature that contains:

(1) a detailed financial statement for each enterprise in each facility;

- (2) a detailed financial statement of the fund;
- (3) reasons for establishing or terminating enterprises;
- (4) a summary of plans to develop additional enterprises;
- (5) the number of inmates employed in each enterprise;
- (6) the number of idle inmates available for work at each facility;

and

(7) any further information requested by the governor or the legislature."

Chapter 23 Section 6 Laws 2005

Section 6. TEMPORARY PROVISION--CONTINUATION OF APPOINTMENT TERMS.--Corrections commission members serving on the effective date of this act shall continue to serve as corrections industries commission members until their terms expire and their replacements are appointed and qualified.

Chapter 23 Section 7 Laws 2005

Section 7. REPEAL.--Section 33-1-4 NMSA 1978 (being Laws 1969, Chapter 226, Section 4, as amended) is repealed.

Chapter 23 Section 8 Laws 2005

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 68, as amended

LAWS 2005, CHAPTER 24

AN ACT

RELATING TO TAXATION; AMENDING SECTION 7-38-12.1 NMSA 1978 (BEING LAWS 2003, CHAPTER 118, SECTION 2) TO PROVIDE FOR RECORDING WITH A COUNTY CLERK A TRANSFER OF INTEREST IN REAL PROPERTY.

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

Chapter 24 Section 1 Laws 2005

Section 1. Section 7-38-12.1 NMSA 1978 (being Laws 2003, Chapter 118, Section 2) is amended to read:

"7-38-12.1. RESIDENTIAL PROPERTY TRANSFERS--AFFIDAVIT TO BE FILED WITH ASSESSOR.--

A. After January 1, 2004, a transferor or the transferor's authorized agent or a transferee or the transferee's authorized agent presenting for recording with a county clerk a deed, real estate contract or memorandum of real estate contract transferring an interest in real property classified as residential property for property taxation purposes shall also file with the county assessor within thirty days of the date of filing with the county clerk an affidavit signed and completed in accordance with the provisions of Subsection B of this section.

B. The affidavit required for submission shall be in a form approved by the department and signed by the transferors or their authorized agents or the transferees or their authorized agents of any interest in residential real property transferred by deed or real estate contract. The affidavit shall contain only the following information to be used only for analytical and statistical purposes in the application of appraisal methods:

- (1) the complete names of all transferors and transferees;
- (2) the current mailing addresses of all transferors and transferees;
- (3) the legal description of the real property interest transferred as it appears in the document of transfer;
- (4) the full consideration, including money or any other thing of value, paid or exchanged for the transfer and the terms of the sale including any amount of seller incentives; and
- (5) the value and a description of personal property that is included in the sale price.

C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit and on a copy of the affidavit. The county assessor shall retain the original affidavit as a confidential record and as proof of compliance and shall return the copy marked with the date of receipt to the person presenting the affidavit. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not

part of the valuation record of the assessor.

D. The affidavit required by Subsection A of this section shall not be required for:

- (1) a deed transferring nonresidential property;
- (2) a deed that results from the payment in full or forfeiture by a transferee under a recorded real estate contract or recorded memorandum of real estate contract;
- (3) a lease of or easement on real property, regardless of the length of term;
- (4) a deed, patent or contract for sale or transfer of real property in which an agency or representative of the United States, New Mexico or any political subdivision of the state is the named grantor or grantee and authorized transferor or transferee;
- (5) a quitclaim deed to quiet title or clear boundary disputes;
- (6) a conveyance of real property executed pursuant to court order;
- (7) a deed to an unpatented mining claim;
- (8) an instrument solely to provide or release security for a debt or obligation;
- (9) an instrument that confirms or corrects a deed previously recorded;
- (10) an instrument between husband and wife or parent and child with only nominal actual consideration therefor;
- (11) an instrument arising out of a sale for delinquent taxes or assessments;
- (12) an instrument accomplishing a court-ordered partition;
- (13) an instrument arising out of a merger or incorporation;
- (14) an instrument by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock;
- (15) an instrument from a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration therefor;

(16) an instrument to or from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership; or

(17) an instrument delivered to establish a gift or a distribution from an estate of a decedent or trust.

E. The affidavit required by Subsection A of this section shall not be construed to be a valuation record pursuant to Section 7-38-19 NMSA 1978.

F. Prior to November 1, 2003, the department shall print and distribute to each county assessor affidavit forms for distribution to the public upon request."

SENATE BILL 175

LAWS 2005, CHAPTER 25

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING EACH SCHOOL DISTRICT TO DETERMINE THE NUMBER OF ITS GIFTED EDUCATION PROGRAM ADVISORY COMMITTEES.

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

Chapter 25 Section 1 Laws 2005

Section 1. Section 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2) is amended to read:

"22-13-6.1. GIFTED CHILDREN--DETERMINATION.--

A. The department shall adopt standards pertaining to the determination of who is a gifted child and shall publish those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:

- (1) creativity or divergent-thinking ability;
- (2) critical-thinking or problem-solving ability;
- (3) intelligence; and
- (4) achievement."

SENATE BILL 185

LAWS 2005, CHAPTER 26

AN ACT

RELATING TO HEALTH AND SAFETY; CLARIFYING PROVISIONS OF THE SAFE HAVEN FOR INFANTS ACT.

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

Chapter 26 Section 1 Laws 2005

Section 1. Section 24-22-1 NMSA 1978 (being Laws 2001, Chapter 31, Section 1 and Laws 2001, Chapter 132, Section 1) is amended to read:

"24-22-1. SHORT TITLE.-- Chapter 24, Article 22 NMSA 1978 may be cited as the "Safe Haven for Infants Act"."

Chapter 26 Section 2 Laws 2005

Section 2. A new section of the Safe Haven for Infants Act is enacted to read:

"PURPOSE.--The purpose of the Safe Haven for Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, ninety days of age or less, at a hospital. This act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents."

Chapter 26 Section 3 Laws 2005

Section 3. Section 24-22-2 NMSA 1978 (being Laws 2001, Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2) is amended to read:

"24-22-2. 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 Indian child as defined by the federal Indian Child Welfare Act of 1978;

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."

Chapter 26 Section 4 Laws 2005

Section 4. Section 24-22-3 NMSA 1978 (being Laws 2001, Chapter 31, Section 3 and Laws 2001, Chapter 132, Section 3) is amended to read:

"24-22-3. LEAVING AN INFANT.--

A. A person may leave an infant with the staff of a hospital without being subject to criminal 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."

Chapter 26 Section 5 Laws 2005

Section 5. Section 24-22-4 NMSA 1978 (being Laws 2001, Chapter 31, Section 4 and Laws 2001, Chapter 132, Section 4) is amended to read:

"24-22-4. 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 the availability of private adoption services;

(2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and

(3) written information regarding whom to contact at the children, youth and families department if the parent decides to seek reunification with the infant.

D. A hospital shall ask the person leaving the infant whether the infant has a parent who is either a member of an Indian tribe or is eligible for membership in an Indian tribe, but the person leaving the infant is not required to provide that information to the hospital.

E. Immediately 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. The hospital shall provide the children, youth and families department with all available information regarding the child and the parents, including the identity of the child and the parents, the location of the parents and the child's medical records."

Chapter 26 Section 6 Laws 2005

Section 6. Section 24-22-5 NMSA 1978 (being Laws 2001, Chapter 31, Section 5 and Laws 2001, Chapter 132, Section 5) is amended to read:

"24-22-5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The children, youth and families department shall be deemed to have emergency 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:

(1) the child's tribe shall be notified as required by Section 32A-1-14 NMSA 1978 and the federal Indian Child Welfare Act of 1978; and

(2) 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."

Chapter 26 Section 7 Laws 2005

Section 7. Section 24-22-7 NMSA 1978 (being Laws 2001, Chapter 31, Section 7 and Laws 2001, Chapter 132, Section 7) is amended to read:

"24-22-7. PROCEDURE IF REUNIFICATION IS SOUGHT.--

A. A person established as a parent of an infant previously left at a hospital shall have standing to participate in all proceedings regarding the child pursuant to the provisions of the Abuse and Neglect Act.

B. If a person not previously established as a parent seeks reunification with an infant previously left at a hospital and the person's DNA indicates parentage of the infant, that person shall have standing to participate in all proceedings regarding the infant pursuant to the provisions of the Abuse and Neglect Act."

Chapter 26 Section 8 Laws 2005

Section 8. REPEAL.--Section 24-22-6 NMSA 1978 (being Laws 2001, Chapter 31, Section 6 and Laws 2001, Chapter 132, Section 6) is repealed.

SENATE BILL 225, as amended

with certificate of correction

LAWS 2005, CHAPTER 27

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING EMERGENCY DRILLS IN PUBLIC AND PRIVATE SCHOOLS.

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

Chapter 27 Section 1 Laws 2005

Section 1. Section 22-13-14 NMSA 1978 (being Laws 1967, Chapter 16, Section 188, as amended) is amended to read:

"22-13-14. EMERGENCY DRILLS--REQUIREMENT.--

A. An emergency drill shall be conducted in each public and private school of the state at least once each week during the first four weeks of the school year and at least once each month thereafter until the end of the school year. Two drills during the year shall be shelter-in-place drills and one shall be an evacuation drill, as directed by the department. The remainder of the drills shall be fire drills. It shall be the responsibility of the person in charge of a school to carry out the provisions of this section.

B. In locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism.

C. The department shall determine penalties for any person failing to meet the provisions of this section."

Chapter 27 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 230

LAWS 2005, CHAPTER 28

AN ACT

RELATING TO CRIMINAL PROCEDURE; REPEALING LAWS 2003, CHAPTER 27, SECTION 3, WHICH SUNSETS THE PROCEDURES FOR CONSIDERATION OF DNA EVIDENCE AFTER CONVICTION.

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

Chapter 28 Section 1 Laws 2005

Section 1. REPEAL.--Laws 2003, Chapter 27, Section 3 is repealed.

SENATE BILL 241

LAWS 2005, CHAPTER 29

AN ACT

RELATING TO MOTOR VEHICLE LICENSING; PROVIDING AN EXCEPTION TO NIGHT DRIVING REQUIREMENTS FOR PROVISIONAL LICENSE HOLDERS.

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

Chapter 29 Section 1 Laws 2005

Section 1. Section 66-5-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 230, as amended) is amended to read:

"66-5-8. PROVISIONAL LICENSES--INSTRUCTION PERMITS--DRIVER EDUCATION STUDENTS--TEMPORARY LICENSES.--

A. A person fifteen years and six months of age or older who has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school, who has had an instruction permit for at least six months, and who has successfully completed a practice driving component may apply to the division for a provisional license. Successful completion of a practice driving component shall include not less than fifty hours of actual driving by the applicant, including not less than ten hours of night driving. An applicant for a provisional license who cannot drive at night due to low nighttime vision may be exempted from the night driving requirement of this subsection; provided that the applicant submits to the division an ophthalmologic or optometric report from a licensed ophthalmologist or optometrist who attests to the applicant's visual condition and its effect on the applicant's driving ability. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

B. When operating a motor vehicle, a provisional licensee may be accompanied by not more than one passenger under the age of twenty-one who is not a member of the licensee's immediate family. A provisional license entitles the licensee, while having the license in his immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight unless the provisional licensee is eligible for a license restricting driving to daylight hours. A provisional licensee may drive at any hour unless otherwise restricted as provided in this subsection if:

(1) accompanied by a licensed driver twenty-one years of age or older;

(2) required by family necessity as evidenced by a signed statement of a parent or guardian;

(3) required by medical necessity as evidenced by a signed statement from medical personnel;

(4) driving to and from work as evidenced by a signed statement from the licensee's employer;

(5) driving to and from school or a religious activity as evidenced by a signed statement of a school or religious official or a parent or guardian; or

(6) required due to a medical emergency.

C. A provisional license shall not be issued to a person convicted of a traffic violation in the ninety days prior to applying for a provisional license. A provisional license shall be in such form as to be readily distinguishable from an unrestricted

driver's license and shall contain an indication that the licensee may drive without supervision.

D. A person fifteen years of age or older who is enrolled in and attending or has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six months when accompanied by a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or in another state and who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle.

E. A person fifteen years of age or older who is a student enrolled in and attending a driver education course that is approved by the bureau or offered by a public school and that includes both a DWI education and prevention component and practice driving component may drive a motor vehicle on the highways of this state even though he has not reached the legal age to be eligible for a driver's license or a provisional license. In completing the practice driving component, a person may only operate a motor vehicle on a public highway if:

(1) an approved instructor is occupying a seat beside the person; or

(2) a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

F. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit shall be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

G. A holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle."

Chapter 29 Section 2 Laws 2005

Section 2. Section 66-5-19 NMSA 1978 (being Laws 1978, Chapter 35, Section 241) is amended to read:

"66-5-19. RESTRICTED LICENSES.--

A. The division, upon issuing a driver's license, or a provisional license has authority, whenever good cause appears, to impose restrictions, including the shortening of the licensure period suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle that the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. At age seventy-five and thereafter, the applicant shall renew the applicant's license on a yearly basis at no cost to the applicant.

B. The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

C. The division may issue a restricted license or a restricted provisional license for driving during daylight hours only to some visually handicapped persons who fail the usual eyesight test. The health standards advisory board created pursuant to the provisions of Section 66-5-6 NMSA 1978 shall evaluate the extent of the visual handicap and its effect on the driving ability of the applicant and, based on its recommendations, the director may issue a restricted license under the following conditions:

(1) the applicant has no record of moving violations;

(2) the necessity of the license is shown to the satisfaction of the director; and

(3) the applicant satisfies the provisions of Section 66-5-206 NMSA 1978 relating to proof of financial responsibility.

D. The division may, upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend the license, but the licensee is entitled to a hearing as upon a suspension under Sections 66-5-1 through 66-5-47 NMSA 1978.

E. It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to the person."

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 400, as amended

with certificate of correction

LAWS 2005, CHAPTER 30

AN ACT

RELATING TO DOMESTIC VIOLENCE; CREATING DOMESTIC VIOLENCE SPECIAL COMMISSIONERS; PROVIDING POWERS AND DUTIES; ELIMINATING THE DOMESTIC VIOLENCE PILOT PROGRAM IN THE ELEVENTH JUDICIAL DISTRICT.

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

Chapter 30 Section 1 Laws 2005

Section 1. A new section of the Family Violence Protection Act is enacted to read:

"DOMESTIC VIOLENCE SPECIAL COMMISSIONERS--APPOINTMENT--QUALIFICATIONS.--

A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.

B. A domestic violence special commissioner shall:

(1) be an attorney licensed to practice law in New Mexico;

(2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and

(3) conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner."

Chapter 30 Section 2 Laws 2005

Section 2. A new section of the Family Violence Protection Act is enacted to read:

"SPECIAL COMMISSIONERS--POWERS--DUTIES.--

A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act:

(1) review petitions for orders of protection and motions to enforce, modify or terminate orders of protection;

(2) if deemed necessary, interview petitioners. Any interview shall be on the record;

(3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection; and

(4) prepare recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection.

B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective."

Chapter 30 Section 3 Laws 2005

Section 3. REPEAL.--Section 40-13-8 NMSA 1978 (being Laws 1992, Chapter 107, Section 1) is repealed.

Chapter 30 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 447

LAWS 2005, CHAPTER 31

AN ACT

RELATING TO STATE PARK FUNDING; DECLARING THE FUNDING INTENT OF THE RIO GRANDE VALLEY STATE PARK ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 31 Section 1 Laws 2005

Section 1. Section 16-4-10 NMSA 1978 (being Laws 1983, Chapter 18, Section 2) is amended to read:

"16-4-10. DECLARATION OF POLICY AND FUNDING INTENT.--

A. The preservation, protection and maintenance of the natural and scenic beauty of a designated portion of the Rio Grande and its immediate corridor is in the public interest. The designation of the Rio Grande Valley state park will enable people to enjoy the recreational, environmental, educational and wildlife benefits of the river. Therefore, the legislature declares it to be in the public interest, in furtherance of sound environmental policy and for the good of the people to establish the Rio Grande Valley state park.

B. It is the intent of the Rio Grande Valley State Park Act that the state parks division of the energy, minerals and natural resources department not bear the operating costs for the Rio Grande Valley state park except for the area within the Rio Grande nature center state park. The state may expend funds within the boundaries of the entire Rio Grande Valley state park as it deems appropriate."

Chapter 31 Section 2 Laws 2005

Section 2. REPEAL.--Section 16-4-17 NMSA 1978 (being Laws 1983, Chapter 18, Section 9) is repealed.

SENATE BILL 529

LAWS 2005, CHAPTER 32

AN ACT

RELATING TO HIGHER EDUCATION; AUTHORIZING A TECHNICAL AND VOCATIONAL INSTITUTE DISTRICT BOARD TO ADOPT OR CHANGE THE NAME OF THE INSTITUTE.

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

Chapter 32 Section 1 Laws 2005

Section 1. Section 21-16-6 NMSA 1978 (being Laws 1963, Chapter 108, Section 6, as amended) is amended to read:

"21-16-6. BOARD--POWERS AND DUTIES.--

A. The board shall:

(1) determine the financial and educational policies of the technical and vocational institute and provide for the execution of these policies by selecting a competent president for the institute and, upon the president's recommendation, shall

employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the institute;

(2) fix fee rates and tuition rates for students;

(3) have authority to issue certificates of proficiency;

(4) have authority to issue associate of arts, associate of science and associate of applied science degrees; provided that associate degree programs shall be approved by the commission on higher education;

(5) have authority to accept gifts, receive federal aid or other aid and purchase, hold, sell and rent property and equipment in the name of the technical and vocational institute district;

(6) promote the general welfare of the technical and vocational institute for the best interest of educational service to the people of the technical and vocational institute district; and

(7) adopt a name for or change the name of the technical and vocational institute or the institute's campuses, provided no name is adopted in honor of a living person.

B. Whenever the board changes the name of a technical vocational institute or the institute's campuses:

(1) functions, personnel, appropriations, money, records, equipment and other property of the formerly named institute or campuses shall be transferred to the newly named institute or campuses;

(2) existing contracts and agreements in effect as to the formerly named institute or campuses shall be binding on the newly named institute or campuses; and

(3) references in state or local law to the formerly named institute or campuses shall be deemed to refer to the newly named institute or campuses."

SENATE BILL 626, as amended

LAWS 2005, CHAPTER 33

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:

Chapter 33 Section 1 Laws 2005

Section 1. **SHORT TITLE.**--This act may be cited as the "General Appropriation Act of 2005".

Chapter 33 Section 2 Laws 2005

Section 2. **DEFINITIONS.**--As used in the General Appropriation Act of 2005:

A. "agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

B. "efficiency" means the measure of the degree to which services are efficient and productive and is often expressed in terms of dollars or time per unit of output;

C. "explanatory" means information that can help users to understand reported performance measures and to evaluate the significance of underlying factors that may have affected the reported information;

D. "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;

E. "full-time equivalent" or "FTE" means one or more authorized positions that alone or together receives or receive compensation for not more than two thousand eighty-eight hours worked in fiscal year 2006. 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;

F. "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, the appropriation contingency fund, the tax stabilization reserve and any other fund, reserve or account from which general appropriations are restricted by law;

G. "interagency transfers" means revenue, other than internal service funds, legally transferred from one agency to another;

H. "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 2005;

I. "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 2005;

(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;

J. "outcome" means the measure of the actual impact or public benefit of a program;

K. "output" means the measure of the volume of work completed or the level of actual services or products delivered by a program;

L. "performance measure" means a quantitative or qualitative indicator used to assess a program;

M. "quality" means the measure of the quality of a good or service produced and is often an indicator of the timeliness, reliability or safety of services or products produced by a program;

N. "revenue" means all money received by an agency from sources external to that agency, net of refunds and other correcting transactions, other than from issue of debt, liquidation of investments or as agent or trustee for other governmental entities or private persons; and

O. "target" means the expected level of performance of a program's performance measures.

Chapter 33 Section 3 Laws 2005

Section 3. GENERAL PROVISIONS.--

A. Amounts set out under column headings are expressed in thousands of dollars.

B. Amounts set out under column headings are appropriated from the source indicated by the column heading. All amounts set out under the column heading "Internal Service Funds/Interagency Transfers" are intergovernmental transfers and do not represent a portion of total state government appropriations. All information designated as "Total" or "Subtotal" is provided for information and amounts are not appropriations.

C. Amounts set out in Section 4 of the General Appropriation Act of 2005, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2006 for the objects expressed.

D. Unencumbered balances in agency accounts remaining at the end of fiscal year 2005 shall revert to the general fund by October 1, 2005, unless otherwise indicated in the General Appropriation Act of 2005 or otherwise provided by law.

E. Unencumbered balances in agency accounts remaining at the end of fiscal year 2006 shall revert to the general fund by October 1, 2006, unless otherwise indicated in the General Appropriation Act of 2005 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 2005, appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2006. If any other act of the first session of the forty-seventh 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 2005 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. The department of finance and administration will regularly consult with the legislative finance committee staff to compare fiscal year 2006 revenue collections with the revenue estimate. If the analyses indicate that revenues and transfers to the general fund are not expected to meet appropriations, 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 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 exceeds specifically appropriated amounts may request budget increases from the state budget division. If approved by the state budget division, such money is appropriated.

~~J. Pursuant to Section 6-4-2 NMSA 1978, federal funds received during fiscal year 2006 and not specifically appropriated shall be subject to future appropriation by the legislature provided, however, that an agency may request a budget increase during fiscal year 2006 from the state budget division if the agency submits documentation to the state budget division and to the legislative finance committee showing that all of the following five requirements have been met:~~

~~(1) the requested budget increase is for federal funds the amount of which could not have been reasonably anticipated or known during the first session of the forty-seventh legislature and, therefore, could not have been requested by the agency or appropriated by the legislature;~~

~~(2) the federal law authorizing the disbursement of the federal funds to the state requires the funds to be expended for specific programs or specific governmental functions without leaving a policy choice to the state of how the funds are to be expended;~~

~~(3) the state has no discretion as to the programs or governmental functions for which the federal funds will be expended;~~

~~(4) the executive branch has had no input into the selection of the programs or governmental functions for which the federal funds are required to be expended; and~~

~~(5) due to the emergency nature of the purpose of the federal funds or the likelihood that the federal funds will be unavailable in the future, the funds need to be budgeted and expended before the second session of the forty-seventh legislature.] [LINE-ITEM VETO]~~

~~[K. For fiscal year 2006, 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 2005 or another act of the first session of the forty-seventh legislature provides for additional employees.] [LINE-ITEM VETO]~~

L. Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9.1 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2005 may be expended for payment of agency-issued credit card invoices.

M. To prevent unnecessary spending, expenditures from the General Appropriation Act of 2005 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.

N. For the purpose of administering the General Appropriation Act of 2005, the state of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration.

O. When approving budgets based on appropriations in the General Appropriation Act of 2005, the state budget division is specifically authorized to approve budgets in accordance with generally accepted accounting principles and the authority to extend the availability period of an appropriation through the use of an encumbrance shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration.

P. Notwithstanding the requirement in the General Appropriation Act of 2004 to follow the modified accrual basis of accounting for governmental funds, in the transition period of converting to the modified accrual basis, upon the review of the legislative finance committee, the department of finance and administration may extend the period for expending an appropriation made in the General Appropriation Act of 2004 beyond June 30, 2005 by approving a budget for all or a portion of the unexpended amount of that appropriation in fiscal year 2006 if the secretary of finance and administration finds that:

(1) there are likely to be unpaid costs and expenses covered by binding written obligations to third parties as of June 30, 2005; or

(2) the purpose of the appropriation will not be satisfied by the goods and services delivered as of June 30, 2005; there is no money appropriated for fiscal year 2006 to complete the purpose of the appropriation; and the state will suffer a pecuniary loss if the purpose of the appropriation is not satisfied.

~~[Q. The appropriations contained in Section 4 of the General Appropriation Act of 2005 in the contractual services category are contingent upon the attorney general reviewing contracts over two hundred thousand dollars (\$200,000).] [LINE-ITEM VETO]~~

Chapter 33 Section 4 Laws 2005

Section 4. FISCAL YEAR 2006 APPROPRIATIONS.--

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency/Trnsf	Federal Funds	Total/Target
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A. LEGISLATIVE

LEGISLATIVE COUNCIL SERVICE:

(1) Legislative building services:

Appropriations:

(a)	Personal services and employee benefits	2,324.8			2,324.8
(b)	Contractual services	99.8			99.8
(c)	Other	900.4	900.4		

Authorized FTE: 50.00 Permanent; 4.00 Temporary

(2) Energy council dues:

Appropriations:	32.0		32.0		
Subtotal			3,357.0		

TOTAL LEGISLATIVE 3,357.0 3,357.0

B. JUDICIAL

SUPREME COURT LAW LIBRARY:

The purpose of the supreme court law library program is to provide and produce legal information for all branches of state government, the legal community and the general public so that they may have equal access to the law, effectively address the courts, make laws, write regulations, better understand the legal system and conduct their affairs in accordance with the principles of law.

Appropriations:

(a)	Personal services and employee benefits	631.6			631.6
(b)	Contractual services	353.3			353.3

(c) Other 652.1 652.1

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Output: Percent of titles currently updated 80%

(b) Quality: Percent of staff time spent on shelving and updating
library materials <20%

(c) Output: Number of website hits 5,000

(d) Output: Number of research requests 500

Subtotal 1,637.0

NEW MEXICO COMPILATION COMMISSION:

The purpose of the New Mexico compilation commission program is to publish in print and electronic format, distribute and sell (1) laws enacted by the legislature, (2) opinions of the supreme court and court of appeals, (3) rules approved by the supreme court, (4) attorney general opinions and (5) other state and federal rules and opinions to ensure the accuracy and reliability of its publications.

Appropriations:

(a)	Personal services and employee benefits	227.3	227.3
(b)	Contractual services	883.7 81.0	964.7
(c)	Other	158.5	158.5

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Output: Amount of revenue collected, in thousands \$1,291.3

Subtotal 1,350.5

JUDICIAL STANDARDS COMMISSION:

The purpose of the judicial standards commission program is to provide a public review process addressing complaints involving judicial misconduct in order to preserve the integrity and impartiality of the judicial process.

Appropriations:

(a)	Personal services and		
	employee benefits	468.3	468.3
(b)	Contractual services	23.9	23.9
(c)	Other	80.9	80.9
	Authorized FTE: 6.50 Permanent		

Performance measures:

(a) Efficiency: Average case-duration rate, by meeting cycle 5

Subtotal 573.1

COURT OF APPEALS:

The purpose of the court of appeals program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and		
	employee benefits	4,266.1	4,266.1
(b)	Contractual services	98.5	98.5
(c)	Other	329.7 1.0	330.7
	Authorized FTE: 58.00 Permanent		

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

Subtotal 4,695.3

SUPREME COURT:

The purpose of the supreme court program is to provide access to justice, resolve disputes justly and timely, and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	2,121.0		2,121.0
(b)	Contractual services	102.0		102.0
(c)	Other	171.8	171.8	
	Authorized FTE: 30.00 Permanent			

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed	95%
Subtotal	2,394.8

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	2,190.0	634.1	2,824.1	
(b)	Contractual services	303.7	845.9	1,149.6	
(c)	Other	3,861.6	550.0	182.3	4,593.9
	Authorized FTE: 34.00 Permanent; 8.50 Term				

Performance measures:

(a) Output:	Average cost per juror	\$55
(b) Outcome:	Percent of jury summons successfully executed	92%

(2) Statewide judiciary automation:

The purpose of the statewide judiciary automation program is to provide development, enhancement, maintenance and support for core court automation and usage skills for appellate, district, magistrate and municipal courts and ancillary judicial agencies.

Appropriations:

(a)	Personal services and employee benefits	1,654.4	1,676.0	3,330.4
(b)	Contractual services	18.0	716.0	734.0
(c)	Other	2,729.4	2,729.4	

Authorized FTE: 37.50 Permanent; 9.00 Term

Performance measures:

- (a) Quality: Percent of accurate driving-while-intoxicated court reports 98%
- (b) Quality: Percent reduction in number of calls for assistance from
judicial agencies regarding the case management database
and network 10%
- (c) Quality: Average time to respond to automation calls for assistance,
in minutes 25

(3) Magistrate court:

The purpose of the magistrate court program is to provide access to justice, resolve disputes justly and timely, and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	13,102.5	1,551.7	14,654.2	
(b)	Contractual services	118.2	341.9	77.9	538.0
(c)	Other	4,940.0	876.8	5,816.8	

Authorized FTE: 262.00 Permanent; 51.50 Term

Performance measures:

- (a) Outcome: Amount of bench warrant revenue collected annually, in

millions \$2.3

(b) Efficiency: Percent of magistrate court financial reports submitted to

fiscal services division and reconciled on a monthly basis 100%

(c) Explanatory: Cases disposed as a percent of cases filed 90%

(4) Special court services:

The purpose of the special court services program is to provide court advocates, legal counsel and safe exchanges for children and families, to provide judges pro tempores and to adjudicate water rights disputes so that the constitutional rights and safety of citizens (especially children and families) are protected.

Appropriations:

(a) Contractual services 3,663.4 3,663.4

(b) Other 12.0 12.0

(c) Other financing uses 2,034.6 2,034.6

The general fund appropriation to the special court services program of the administrative office of the courts in the other financing uses category includes two hundred thousand dollars (\$200,000) for drug court expansions in district courts with the greatest need for services.

Performance measures:

(a) Output: Number of required events attended by attorneys in abuse

and neglect cases 7,000

(b) Output: Number of monthly supervised child visitations conducted 500

(c) Output: Number of cases to which court-appointed special advocates

volunteers are assigned 1,400

Subtotal 42,080.4

SUPREME COURT BUILDING COMMISSION:

The purpose of the supreme court building commission program is to retain custody, control, maintenance and preservation of the supreme court building and its grounds along with maintaining fixed assets records for furniture, fixtures and equipment acquired by the judiciary.

Appropriations:

(a) Personal services and

	employee benefits	459.8		459.8
(b)	Contractual services	88.2		88.2
(c)	Other	148.7	148.7	

Authorized FTE: 12.75 Permanent

Performance measures:

(a) Quality: Accuracy of fixed assets inventory records 100%

Subtotal 696.7

DISTRICT COURTS:

(1) First judicial district:

The purpose of the first judicial district court program, statutorily created in Santa Fe, Rio Arriba and Los Alamos counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	4,434.7	152.7	234.0	4,821.4
(b)	Contractual services	539.8	28.3	156.1	724.2
(c)	Other	189.2	175.6	41.3	406.1

Authorized FTE: 72.50 Permanent; 7.50 Term

Performance measures:

- (a) Output: Number of adult drug-court graduates 16
- (b) Output: Number of juvenile drug-court graduates 16
- (c) Output: Number of days to process juror payment vouchers 14
- (d) Quality: Recidivism of adult drug-court graduates 9.3%
- (e) Quality: Recidivism of juvenile drug-court graduates 36.3%
- (f) Explanatory: Cases disposed as a percent of cases filed 90%

(g) Outcome: Graduation rate, adult drug court 31%

(h) Outcome: Graduation rate, juvenile drug court 46%

(2) Second judicial district:

The purpose of the second judicial district court program, statutorily created in Bernalillo county, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and

employee benefits	16,331.1	691.3	110.0	938.8	18,071.2
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(b) Contractual services 378.5 20.0 157.3 168.2 724.0

(c) Other 964.4 51.0 2.4 114.5 1,132.3

Authorized FTE: 287.50 Permanent; 31.50 Term

The general fund appropriation to the second judicial district program in the contractual services category includes seventy-five thousand dollars (\$75,000) for the truancy court program.

Performance measures:

(a) Output: Number of adult drug-court graduates 185

(b) Output: Number of juvenile drug-court graduates 17

(c) Output: Number of days to process juror payment vouchers 14

(d) Quality: Recidivism of adult drug-court graduates 11%

(e) Quality: Recidivism of juvenile drug-court graduates 10%

(f) Explanatory: Cases disposed as a percent of cases filed 90%

(g) Explanatory: Graduation rate, adult drug court 55%

(h) Explanatory: Graduation rate, juvenile drug court 52%

(3) Third judicial district:

The purpose of the third judicial district court program, statutorily created in Dona Ana county, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	3,891.1	502.3		4,393.4
(b)	Contractual services	572.2	67.2	367.8	1,007.2
(c)	Other	288.8	56.8	112.7	458.3

Authorized FTE: 69.80 Permanent; 10.50 Term

Performance measures:

(a) Output:	Number of adult drug-court graduates	15
(b) Output:	Number of juvenile drug-court graduates	18
(c) Output:	Number of days to process juror payment vouchers	14
(d) Quality:	Recidivism of adult drug-court graduates	29.3%
(e) Quality:	Recidivism of juvenile drug-court graduates	24%
(f) Explanatory:	Cases disposed as a percent of cases filed	90%
(g) Explanatory:	Graduation rate, adult drug court	58.5%
(h) Explanatory:	Graduation rate, juvenile drug court	70%

(4) Fourth judicial district:

The purpose of the fourth judicial district court program, statutorily created in Guadalupe, San Miguel and Mora counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,085.6			1,085.6
(b)	Contractual services	65.7	6.6	128.9	201.2
(c)	Other	74.0	15.0		89.0

Authorized FTE: 19.50 Permanent

Performance measures:

- (a) Output: Number of juvenile drug-court graduates 9
- (b) Output: Number of days to process juror payment vouchers 14
- (c) Quality: Recidivism of juvenile drug-court graduates 30%
- (d) Explanatory: Cases disposed as a percent of cases filed 90%
- (e) Explanatory: Graduation rate, juvenile drug court 50%

(5) Fifth judicial district:

The purpose of the fifth judicial district court program, statutorily created in Eddy, Chaves and Lea counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and
employee benefits 3,762.1 81.8 3,843.9
- (b) Contractual services 198.0 176.5 298.0 672.5
- (c) Other 302.2 45.0 4.9 352.1

Authorized FTE: 66.00 Permanent; 1.00 Term

Performance measures:

- (a) Output: Number of family drug-court graduates 5
- (b) Output: Number of days to process juror payment vouchers 14
- (c) Quality: Recidivism of family drug-court graduates 28.6%
- (d) Explanatory: Cases disposed as a percent of cases filed 90%
- (e) Explanatory: Graduation rate, family drug court 80%

(6) Sixth judicial district:

The purpose of the sixth judicial district court program, statutorily created in Grant, Luna and Hidalgo counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,547.1	26.0		1,573.1
(b)	Contractual services	248.2	28.1	76.2	352.5
(c)	Other	176.1	8.6	184.7	

Authorized FTE: 27.50 Permanent

Performance measures:

- (a) Output: Number of juvenile drug-court graduates 4
- (b) Output: Number of days to process juror payment vouchers 14
- (c) Quality: Recidivism of juvenile drug-court graduates 15%
- (d) Explanatory: Cases disposed as a percent of cases filed 90%
- (e) Explanatory: Graduation rate, juvenile drug court 40%

(7) Seventh judicial district:

The purpose of the seventh judicial district court program, statutorily created in Socorro, Torrance, Sierra and Catron counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,301.6	211.1		1,512.7
(b)	Contractual services	65.4	22.0	24.6	112.0
(c)	Other	124.4	12.0	80.4	216.8

Authorized FTE: 23.50 Permanent; 3.50 Term

Performance measures:

- (a) Output: Number of days to process juror payment vouchers 14
- (b) Explanatory: Cases disposed as a percent of cases filed 90%

(8) Eighth judicial district:

The purpose of the eighth judicial district court program, statutorily created in Taos, Colfax and Union counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,433.9			1,433.9
(b)	Contractual services	525.8	97.5	75.6	698.9
(c)	Other	116.7	30.0	146.7	

Authorized FTE: 23.30 Permanent

Performance measures:

(a) Output:	Number of adult drug-court graduates	18
(b) Output:	Number of juvenile drug-court graduates	8
(c) Output:	Number of days to process juror payment vouchers	14
(d) Quality:	Recidivism of adult drug-court graduates	23%
(e) Quality:	Recidivism of juvenile drug-court graduates	11%
(f) Explanatory:	Cases disposed as a percent of cases filed	90%
(g) Explanatory:	Graduation rate, adult drug court	75%
(h) Explanatory:	Graduation rate, juvenile drug court	60%

(9) Ninth judicial district:

The purpose of the ninth judicial district court program, statutorily created in Curry and Roosevelt counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	1,772.0	285.7	2,057.7

(b)	Contractual services	63.8	27.3	106.2	197.3
(c)	Other	205.6	46.5	42.3	294.4

Authorized FTE: 30.50 Permanent; 4.00 Term

Performance measures:

- (a) Output: Number of days to process juror payment vouchers 14
- (b) Explanatory: Cases disposed as a percent of cases filed 90%

(10) Tenth judicial district:

The purpose of the tenth judicial district court program, statutorily created in Quay, DeBaca and Harding counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	529.1		529.1
(b)	Contractual services	12.3	11.6	23.9
(c)	Other	51.5	3.2	54.7
(d)	Other financing uses	15.0		15.0

Authorized FTE: 9.10 Permanent

Performance measures:

- (a) Output: Number of days to process juror payment vouchers 14
- (b) Explanatory: Cases disposed as a percent of cases filed 90%

(11) Eleventh judicial district:

The purpose of the eleventh judicial district court program, statutorily created in McKinley and San Juan counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and

	employee benefits	3,309.4		320.1		3,629.5
(b)	Contractual services	96.5	69.9	133.7	25.8	325.9
(c)	Other	345.8	41.6	49.8	1.2	438.4

Authorized FTE: 62.00 Permanent; 6.00 Term

Performance measures:

- (a) Output: Number of adult drug-court graduates 25
- (b) Output: Number of juvenile drug-court graduates 15
- (c) Output: Number of days to process juror payment vouchers 14
- (d) Quality: Recidivism of adult drug-court graduates 15%
- (e) Quality: Recidivism of juvenile drug-court graduates 18%
- (f) Explanatory: Cases disposed as a percent of cases filed 90%
- (g) Explanatory: Graduation rate, adult drug court 65%
- (h) Explanatory: Graduation rate, juvenile drug court 65%

(12) Twelfth judicial district:

The purpose of the twelfth judicial district court program, statutorily created in Otero and Lincoln counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and					
	employee benefits	1,844.4		33.9		1,878.3
(b)	Contractual services		191.6	27.0	140.1	358.7
(c)	Other	150.8	20.0	21.5		192.3

Authorized FTE: 32.50 Permanent; 1.00 Term

Performance measures:

- (a) Output: Number of juvenile drug-court graduates 14

- (b) Output: Number of days to process juror payment vouchers 14
- (c) Quality: Recidivism of juvenile drug-court participants 20%
- (d) Explanatory: Cases disposed as a percent of cases filed 90%
- (e) Explanatory: Graduation rate, juvenile drug court 67.1%

(13) Thirteenth judicial district:

The purpose of the thirteenth judicial district court program, statutorily created in Cibola, Sandoval and Valencia counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	3,252.8	309.9		3,562.7
(b)	Contractual services	151.7	83.0	241.0	475.7
(c)	Other	305.3	4.0	89.5	398.8

Authorized FTE: 55.50 Permanent; 4.00 Term

Performance measures:

- (a) Output: Number of juvenile drug-court graduates 44
- (b) Output: Number of days to process juror payment vouchers 14
- (c) Quality: Recidivism of juvenile drug-court graduates 20%
- (d) Explanatory: Cases disposed as a percent of cases filed 90%
- (e) Explanatory: Graduation rate, juvenile drug court 65%

Subtotal 58,646.1

BERNALILLO COUNTY METROPOLITAN COURT:

The purpose of the Bernalillo county metropolitan court program is to provide access to justice, resolve disputes justly and timely, and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	13,195.4	1,072.2	1,232.0	15,499.6
(b)	Contractual services	1,739.5	472.7	485.4	2,697.6
(c)	Other	2,813.7	382.7	42.3	3,238.7
(d)	Other financing uses	127.4			127.4

Authorized FTE: 267.00 Permanent; 48.00 Term

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Efficiency: Cost per client per day for
driving-while-intoxicated/drug-court participants \$15
- (c) Quality: Recidivism of driving-while-intoxicated/drug-court graduates 11%
- (d) Output: Number of driving-while-intoxicated/drug-court graduates 214
- (e) Explanatory: Graduation rate of driving-while-intoxicated/drug-court
participants 68%
- (f) Outcome: Fees and fines collected as a percent of fees and fines
assessed 90%

Subtotal 21,563.3

DISTRICT ATTORNEYS:

(1) First judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Santa Fé, Río Arriba and Los Alamos counties.

Appropriations:

(a)	Personal services and employee benefits	3,199.5	192.9	346.1	3,738.5
(b)	Contractual services	24.3		160.3	184.6

(c) Other 333.1 28.8 361.9

Authorized FTE: 57.00 Permanent; 13.50 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <3%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 3

(c) Efficiency: Average attorney caseload 130

(d) Output: Number of cases prosecuted 2,600

(e) Output: Number of cases referred for screening 2,800

(2) Second judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Bernalillo county.

Appropriations:

(a) Personal services and employee benefits	12,720.0	116.4	271.5	569.5	13,677.4
(b) Contractual services	94.8			94.8	
(c) Other	804.8	804.8			

Authorized FTE: 242.00 Permanent; 17.00 Term

The general fund appropriations to the prosecution program of the second judicial district attorney include two hundred thousand dollars (\$200,000) for the early plea program.

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <6%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 9

(c) Efficiency: Average attorney caseload 450

(d) Output: Number of cases prosecuted 25,300

(e) Output: Number of cases referred for screening 45,000

(3) Third judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Doña Ana county.

Appropriations:

(a)	Personal services and				
	employee benefits	2,636.9	38.9	456.5	3,132.3
(b)	Contractual services	28.3			28.3
(c)	Other	164.4	4.0	14.3	182.7

Authorized FTE: 47.00 Permanent; 11.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <.5

(b) Efficiency: Average time from filing of charge to final disposition, in
months 6

(c) Efficiency: Average attorney caseload 150

(d) Output: Number of cases prosecuted 3,300

(e) Output: Number of cases referred for screening 4,500

(4) Fourth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Mora, San Miguel and Guadalupe counties.

Appropriations:

(a)	Personal services and			
	employee benefits	2,138.2	106.7	2,244.9
(b)	Contractual services	54.1		54.1

(c) Other 218.9 218.9

Authorized FTE: 31.50 Permanent; 3.50 Term

The general fund appropriation to the fourth district attorney in the personal services and employee benefits category includes one hundred thousand dollars (\$100,000) to be used solely for the purpose of funding staffing needs for an office in Pecos.

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <2.25%

(b) Efficiency: Average time from filing of charge to final disposition, in
months 6

(c) Efficiency: Average attorney caseload 156

(d) Output: Number of cases prosecuted 1,500

(e) Output: Number of cases referred for screening 5,400

(5) Fifth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Eddy, Lea and Chaves counties.

Appropriations:

(a)	Personal services and				
	employee benefits	2,799.7	33.6	93.6	2,926.9
(b)	Contractual services	115.7			115.7
(c)	Other	210.0	20.0		230.0

Authorized FTE: 48.50 Permanent; 3.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule 0%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 3

(c) Efficiency: Average attorney caseload 200

(d) Output: Number of cases prosecuted 3,500

(e) Output: Number of cases referred for screening 3,800

(6) Sixth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Grant, Hidalgo and Luna counties.

Appropriations:

(a)	Personal services and				
	employee benefits	1,484.7	228.4	322.5	2,035.6
(b)	Contractual services	8.7			8.7
(c)	Other	193.1	193.1		

Authorized FTE: 27.00 Permanent; 9.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <1%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 6

(c) Efficiency: Average attorney caseload 75

(d) Output: Number of cases prosecuted 1,900

(e) Output: Number of cases referred for screening 2,200

(7) Seventh judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Catron, Sierra, Socorro and Torrance counties.

Appropriations:

(a)	Personal services and			
	employee benefits	1,631.2		1,631.2
(b)	Contractual services	49.5		49.5

(c) Other 154.4 154.4

Authorized FTE: 31.00 Permanent

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <5%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 4

(c) Efficiency: Average attorney caseload 130

(d) Output: Number of cases prosecuted 2,280

(e) Output: Number of cases referred for screening 2,400

(8) Eighth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Taos, Colfax and Union counties.

Appropriations:

(a)	Personal services and employee benefits	1,807.9	15.0	44.0	1,866.9
(b)	Contractual services	5.9	42.0		47.9
(c)	Other	225.3	18.0		243.3

Authorized FTE: 30.00 Permanent; 3.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <3.5%

(b) Efficiency: Average time from filing of charge to final disposition, in
months 8

(c) Efficiency: Average attorney caseload 200

(d) Output: Number of cases prosecuted 1,735

(e) Output: Number of cases referred for screening 3,600

(9) Ninth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Curry and Roosevelt counties.

Appropriations:

(a)	Personal services and				
	employee benefits	1,809.6		1,809.6	
(b)	Contractual services	8.6	5.0	13.6	
(c)	Other	98.7	11.3	15.0	125.0

Authorized FTE: 34.00 Permanent; 1.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <5%

(b) Efficiency: Average time from filing of petition to final disposition,

in months 4

(c) Efficiency: Average attorney caseload 200

(d) Output: Number of cases prosecuted 2,120

(e) Output: Number of cases referred for screening 2,038

(10) Tenth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Quay, Harding and DeBaca counties.

Appropriations:

(a)	Personal services and			
	employee benefits	651.1		651.1
(b)	Contractual services	6.6		6.6
(c)	Other	75.7		75.7

Authorized FTE: 11.00 Permanent

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1%
- (b) Efficiency: Average time from filing of charge to final disposition, in months 6
- (c) Efficiency: Average attorney caseload 500
- (d) Output: Number of cases prosecuted 1,349
- (e) Output: Number of cases referred for screening 2,045

(11) Eleventh judicial district-division I:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within San Juan county.

Appropriations:

- (a) Personal services and
employee benefits 2,355.3 403.7 63.4 2,822.4
- (b) Contractual services 15.0 5.2 20.2
- (c) Other 175.0 6.0 35.1 216.1

Authorized FTE: 48.00 Permanent; 9.80 Term

Performance measures:

- (a) Outcome: Percentage of cases dismissed under the six-month rule <.5%
- (b) Efficiency: Average time from filing of petition to final disposition, in months 6
- (c) Efficiency: Average attorney caseload 209
- (d) Output: Number of cases prosecuted 3,590
- (e) Output: Number of cases referred for screening 3,900

(12) Eleventh judicial district-division II:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within McKinley county.

Appropriations:

(a)	Personal services and				
	employee benefits	1,478.8	102.4	25.0	1,606.2
(b)	Contractual services	7.2			7.2
(c)	Other	139.7			139.7

Authorized FTE: 28.00 Permanent; 3.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <2%
- (b) Efficiency: Average time from filing of petition to final disposition,
in months 8
- (c) Efficiency: Average attorney caseload 500
- (d) Output: Number of cases prosecuted 2,200
- (e) Output: Number of cases referred for screening 4,100

(13) Twelfth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Lincoln and Otero counties.

Appropriations:

(a)	Personal services and				
	employee benefits	1,817.2	79.4	310.5	2,207.1
(b)	Contractual services	5.6			5.6
(c)	Other	239.1			239.1

Authorized FTE: 35.00 Permanent; 8.50 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <.5%

(b) Efficiency: Average time from filing of charge to final disposition, in
months 8

(c) Efficiency: Average attorney caseload 160

(d) Output: Number of cases prosecuted 4,300

(e) Output: Number of cases referred for screening 6,000

(14) Thirteenth judicial district:

The purpose of the prosecution program is to enforce state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Cibola, Sandoval and Valencia counties.

Appropriations:

(a)	Personal services and		
	employee benefits	2,829.9 188.8	3,018.7
(b)	Contractual services	67.3	67.3
(c)	Other	243.6 33.7	277.3

Authorized FTE: 56.00 Permanent; 4.00 Term

The general fund appropriation to the prosecution program of the thirteenth judicial district attorney in the personal services and employee benefits category includes fifty-four thousand seven hundred dollars (\$54,700) for an assistant trial attorney in Sandoval county.

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <.5%

(b) Efficiency: Average time from filing of petition to final disposition,
in months 9

(c) Efficiency: Average attorney caseload 231

(d) Output: Number of cases prosecuted 7,394

(e) Output: Number of cases referred for screening 8,642

Subtotal 47,534.9

ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:

(1) Administrative support:

The purpose of the administrative support program is to provide fiscal, human resource, staff development, automation, victim program services and support to all district attorneys' offices in New Mexico and to members of the New Mexico children's safehouse network so that they may obtain and access the necessary resources in order to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.

Appropriations:

(a)	Personal services and			
	employee benefits	645.0		645.0
(b)	Contractual services		15.5	15.5
(c)	Other	375.0	244.5	619.5

Authorized FTE: 9.00 Permanent; 1.00 Term

Performance measures:

(a) Output: Number of district attorney employees receiving training 800

(b) Output: Total number of victim notification events and escapes
reported 5,000

Subtotal 1,280.0

TOTAL JUDICIAL 154,831.9 14,263.1 7,996.8 5,360.3 182,452.1

C. GENERAL CONTROL

ATTORNEY GENERAL:

(1) Legal services:

The purpose of the legal services program is to deliver quality opinions, counsel and representation to state government entities and to enforce state law on behalf of the public so that New Mexicans have an open, honest, efficient government and enjoy the protection of state law.

Appropriations:

(a)	Personal services and			
	employee benefits	9,896.1	48.0	9,944.1

(b)	Contractual services	360.9		360.9
(c)	Other	827.5	500.0	1,327.5

Authorized FTE: 141.00 Permanent; 1.00 Temporary

The internal services/interagency transfers appropriation to the legal services program of the attorney general in the personal services and employee benefits category includes forty-eight thousand dollars (\$48,000) from the medicaid fraud division.

All revenue generated from antitrust cases and consumer protection settlements through the attorney general on behalf of the state, political subdivisions or private citizens shall revert to the general fund.

The other state funds appropriation to the legal services program of the attorney general in the other category includes five hundred thousand dollars (\$500,000) from settlement funds.

Performance measures:

- (a) Outcome: Percent of initial responses for attorney general opinions
 made within three days of request 80%

(2) Medicaid fraud:

The purpose of the medicaid fraud program is to investigate and prosecute medicaid provider fraud and recipient abuse and neglect in the medicaid program.

Appropriations:

(a)	Personal services and employee benefits	387.7		1,095.6	1,483.3
(b)	Contractual services	7.0		20.7	27.7
(c)	Other	72.1	180.0	252.1	
(d)	Other financing uses			104.0	104.0

Authorized FTE: 21.00 Permanent

Performance measures:

- (a) Outcome: Three-year projected savings resulting from fraud
 investigations, in millions \$4.50

Subtotal 13,499.6

STATE AUDITOR:

The purpose of the state auditor program is to audit the financial affairs of every agency annually so they can improve accountability and performance and to assure New Mexico citizens that funds are expended properly.

Appropriations:

(a)	Personal services and				
	employee benefits	1,903.4	250.2	2,153.6	
(b)	Contractual services	237.9		237.9	
(c)	Other	140.3	178.3	149.8	468.4

Authorized FTE: 30.00 Permanent; 1.00 Term

Performance measures:

(a) Output:	Total audit fees generated	\$400,000	
(b) Outcome:	Percent of audits completed by regulatory due date	70%	

Subtotal 2,859.9

TAXATION AND REVENUE DEPARTMENT:

(1) Tax administration:

The purpose of the tax administration program is to provide registration and licensure requirements for tax programs and to ensure the administration, collection and compliance of state taxes and fees that provide funding for support services for the general public through appropriations.

Appropriations:

(a)	Personal services and				
	employee benefits	19,829.2	319.4	841.5	20,990.1
(b)	Contractual services	725.5	18.0	743.5	
(c)	Other	5,250.3	337.6	110.5	5,698.4
(d)	Other financing uses	90.0		90.0	

Authorized FTE: 475.00 Permanent; 17.00 Term; 31.70 Temporary

Performance measures:

- (a) Outcome: Revenue collections as a percent of audit assessments 40%
- (b) Output: Percent of electronically filed personal income tax and
combined reporting system returns 30%
- (c) Outcome: Collections as a percent of collectable outstanding balance 10%
- (d) Efficiency: Tax fraud convictions as a percent of cases prosecuted 70%

(2) Motor vehicle:

The purpose of the motor vehicle program is to register, title and license vehicles, boats and motor vehicle dealers and to enforce operator compliance with the motor vehicle code and federal regulations by conducting tests, investigations and audits.

Appropriations:

(a)	Personal services and			
	employee benefits	8,600.1	4,116.6	12,716.7
(b)	Contractual services	695.0	2,206.4	2,901.4
(c)	Other	2,665.7	3,557.9	6,223.6

Authorized FTE: 316.00 Permanent; 4.00 Term; 4.00 Temporary

The other state funds appropriation to the motor vehicle program of the taxation and revenue department includes forty-one permanent full-time-equivalent positions and two million seven hundred fifty thousand eight hundred dollars (\$2,750,800) from increases in administrative services fees, contingent upon enactment of House Bill 201 or similar legislation of the first session of the forty-seventh legislature increasing the administrative services fees on motor vehicle division transactions.

Performance measures:

- (a) Outcome: Percent of registered vehicles with liability insurance 86%
- (b) Efficiency: Average call center wait time to reach an agent, in minutes 3.75
- (c) Efficiency: Average wait time in six offices equipped with automated
queuing system, in minutes 15
- (d) Efficiency: Average number of days to post court action on
driving-while-intoxicated citations to drivers' records
upon receipt 5

(3) Property tax:

The purpose of the property tax program is to administer the Property Tax Code, to ensure the fair appraisal of property and to assess property taxes within the state.

Appropriations:

(a)	Personal services and				
	employee benefits	167.9	1,725.0		1,892.9
(b)	Contractual services	286.3	69.9		356.2
(c)	Other	138.0	416.4	554.4	

Authorized FTE: 44.00 Permanent; 6.00 Term

Performance measures:

(a) Output: Number of appraisals and valuations for companies
conducting business within the state subject to state
assessment 510

(b) Outcome: Percent of delinquent accounts resolved 88%

(4) Program support:

The purpose of program support is to provide information system resources, human resource services, finance and accounting services, revenue forecasting and legal services in order to give agency personnel the resources needed to meet departmental objectives. For the general public, the program conducts hearings for resolving taxpayer protests and provides stakeholders with reliable information regarding the state's tax programs.

Appropriations:

(a)	Personal services and				
	employee benefits	12,295.0	178.1	369.0	12,842.1
(b)	Contractual services	1,844.9	52.7		1,897.6
(c)	Other	4,104.2	295.0	154.1	4,553.3

Authorized FTE: 208.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Number of tax protest cases resolved 728

(b) Outcome: Percent of driving-while-intoxicated drivers license

revocations rescinded due to failure to hold hearing within

ninety days 2%

Subtotal 71,460.2

STATE INVESTMENT COUNCIL:

(1) State investment:

The purpose of the state investment program is to provide investment management of the state's permanent funds for the citizens of New Mexico in order to maximize distributions to the state's operating budget while preserving the real value of the funds for future generations of New Mexicans.

Appropriations:

(a) Personal services and

employee benefits 2,474.0 265.0 2,739.0

(b) Contractual services 25,975.3 25,975.3

(c) Other 650.2 650.2

Authorized FTE: 27.00 Permanent

The other state funds appropriation to the state investment council in the contractual services category includes twenty-five million five hundred and sixty-five thousand seven hundred dollars (\$25,565,700) to be used only for money manager fees.

Performance measures:

(a) Outcome: One-year annualized investment returns to exceed internal

benchmarks, in basis points >25

(b) Outcome: Five-year annualized investment returns to exceed internal

benchmarks, in basis points >25

(c) Outcome: One-year annualized percentile performance ranking in

endowment investment peer universe >49th

(d) Outcome: Five-year annualized percentile performance ranking in

endowment investment peer universe >49th

Subtotal 29,364.5

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Policy development, fiscal analysis, budget oversight and education accountability:

The purpose of the policy development, fiscal analysis, budget oversight and education accountability program is to provide professional, coordinated policy development and analysis and oversight to the governor, the legislature and state agencies so they can advance the state's policies and initiatives using appropriate and accurate data to make informed decisions for the prudent use of the public's tax dollars.

Appropriations:

(a)	Personal services and		
	employee benefits	3,330.6	3,330.6
(b)	Contractual services	234.3	234.3
(c)	Other	227.8	227.8

Authorized FTE: 41.80 Permanent

Performance measures:

- (a) Outcome: Error rate for eighteen-month general fund revenue forecast 2.75%
- (b) Outcome: Percent of bond proceeds balances not reauthorized and older than five years for inactive projects that are reverted by June 30 80%
- (c) Outcome: Average number of working days to process each budget adjustment request 5

(2) Community development, local government assistance and fiscal oversight:

The purpose of the community development, local government assistance and fiscal oversight program is to provide federal and state oversight assistance to counties, municipalities and special districts with planning, implementation and development of fiscal management so that entities can maintain strong, lasting communities.

Appropriations:

(a)	Personal services and					
	employee benefits	1,580.3	614.9	122.9	594.9	2,913.0

(b)	Contractual services	29.2	2,115.2	49.4	3.0	2,196.8
(c)	Other	68.5	19,904.2	2,287.2	20,072.1	42,332.0
(d)	Other financing uses		5,125.0	65.0		5,190.0

Authorized FTE: 26.00 Permanent; 21.00 Term

The federal funds appropriation to the community development, local government assistance and fiscal oversight program of the department of finance and administration includes twenty million six hundred seventy thousand dollars (\$20,670,000) for the community development program fund.

The other state funds appropriation to the community development, local government assistance and fiscal oversight program of the department of finance and administration includes thirty thousand dollars (\$30,000) from the community development program fund; three million two hundred twenty-five thousand seven hundred dollars (\$3,225,700) from the enhanced 911 fund; three million forty-five thousand dollars (\$3,045,000) from the network and database surcharge fund; four million nine hundred twenty thousand dollars (\$4,920,000) from the wireless enhanced 911 fund; twenty-three thousand four hundred dollars (\$23,400) from the 911 enhancement fund; fourteen million six hundred thousand dollars (\$14,600,000) from the local DWI grant fund; and one million nine hundred fifteen thousand two hundred dollars (\$1,915,200) from the civil legal services fund.

The internal services funds/interagency transfers appropriations to the community development, local government assistance and fiscal oversight program of the department of finance and administration include forty thousand dollars (\$40,000) from the local DWI grant fund; two million four hundred fifty thousand two hundred dollars (\$2,450,200) from the 911 enhancement fund; and thirty-four thousand three hundred dollars (\$34,300) from the civil legal services fund.

The other state funds appropriation to the community development, local government assistance and fiscal oversight program of the department of finance and administration in the other financing uses category includes one million five hundred thousand dollars (\$1,500,000) from the local DWI grant fund for drug courts.

Performance measures:

- (a) Output: Percent of community development block grant closeout
letters issued within forty-five days of review of final
report 70%
- (b) Output: Percent of capital outlay projects closed within the
original reversion date 65%
- (c) Outcome: Number of alcohol-involved traffic fatalities 170
- (d) Output: Percent of interim budgets, final budgets and budget
resolutions approved by statutory deadlines 100%

(e) Quality: Percent of local governments receiving training that express satisfaction in the presentation and subjects covered 85%

(3) Fiscal management and oversight:

The purpose of the fiscal management and oversight program is to provide for and promote financial accountability for public funds throughout state government and to provide state government agencies and the citizens of New Mexico with timely, factual and comprehensive information on the financial status and expenditures of the state.

Appropriations:

(a)	Personal services and employee benefits	3,012.3	3,012.3
(b)	Contractual services	471.5	471.5
(c)	Other	957.0	957.0

Authorized FTE: 51.00 Permanent

Performance measures:

(a) Quality: Average number of business days required to process payments 4

(4) Program support:

The purpose of program support is to provide other department of finance and administration programs with central direction to agency management processes to ensure consistency, legal compliance and financial integrity; to administer the executive's exempt salary plan; and to review and approve professional services contracts.

Appropriations:

(a)	Personal services and employee benefits	1,259.0	1,259.0
(b)	Contractual services	71.4	71.4
(c)	Other	64.1	64.1

Authorized FTE: 20.00 Permanent

Performance measures:

(a) Output: Percent of department fund accounts reconciled within two months following the closing of each month 100%

(b) Output: Percent of monthly reconciliations completed within fifteen days of receiving central accounting system reports and correcting entries made within fifteen days of receiving central accounting system reports and correcting entries made within fifteen days after completing the reconciliations 100%

(c) Output: Percent of applicable contracts containing at least one performance measure in all newly issued contracts procured through the request for proposals process 100%

(5) Dues and membership fees/special appropriations:

Appropriations:

(a)	Council of state governments	81.5	81.5
(b)	Western interstate commission for higher education	108.0	108.0
(c)	Education commission of the states	56.0	56.0
(d)	Rocky mountain corporation for public broadcasting	13.1	13.1
(e)	National association of state budget officers	13.9	13.9
(f)	National conference of state legislatures	98.0	98.0
(g)	Western governors'		

	association	36.0		36.0
(h)	Governmental accounting standards board	22.0		22.0
(i)	National center for state courts	81.4	81.4	
(j)	National conference of insurance legislators	10.0		10.0
(k)	National council of legislators from gaming states	6.0		6.0
(l)	National governors association	71.9		71.9
(m)	Citizens' review board	410.0	190.0	600.0
(n)	Emergency water fund	100.0		100.0
(o)	Fiscal agent contract	1,050.0		1,050.0
(p)	New Mexico water resources association	6.6		6.6
(q)	State planning districts	524.2		524.2
(r)	Emergency 911 principal and interest	4.5	771.0	775.5
(s)	Mentoring program	893.3		893.3
(t)	Law enforcement enhancement fund	6,781.8		6,781.8
(u)	Leasehold community assistance	123.9		123.9
(v)	Acequia and community ditch			

	program	30.0	30.0
(w)	Food banks	400.0	400.0
(x)	Ignition interlock devices		
	fund	899.9	899.9

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 of the legislative finance committee, the secretary of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of one million five hundred thousand dollars (\$1,500,000) in fiscal year 2006. 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 2006 exceed two hundred fifty thousand dollars (\$250,000), any additional repayments shall be transferred to the general fund.

Subtotal 75,042.8

PUBLIC SCHOOL INSURANCE AUTHORITY:

(1) Benefits:

The purpose of the benefits program is to provide an effective health insurance package to educational employees and their eligible family members so they can be protected against catastrophic financial losses due to medical problems, disability or death.

Appropriations:

(a)	Contractual services	236,198.3	236,198.3
(b)	Other financing uses	532.4	532.4

Performance measures:

(a) Outcome: Percent of participants receiving recommended preventive

care 70%

(b) Efficiency: Percent variance of medical premium change between the

public school insurance authority and industry average $\leq 3\%$

(2) Risk:

The purpose of the risk program is to provide economical and comprehensive property, liability and workers' compensation programs to educational entities so they are protected against injury and loss.

Appropriations:

(a)	Contractual services	43,700.2	43,700.2
(b)	Other financing uses	532.3	532.3

Performance measures:

(a) Outcome: Percent variance of public property premium change between public school insurance authority and industry average $\leq 8\%$

(b) Outcome: Percent variance of workers' compensation premium change between public school insurance authority and industry average $\leq 8\%$

(c) Outcome: Percent variance of public liability premium change between public school insurance authority and industry average $\leq 8\%$

(3) Program support:

The purpose of program support is to provide administrative support for the benefit and risk programs and to assist the agency in delivering services to its constituents.

Appropriations:

(a)	Personal services and employee benefits	683.9	683.9
(b)	Contractual services	177.8	177.8
(c)	Other	203.0	203.0

Authorized FTE: 10.00 Permanent

Subtotal 282,027.9

RETIREE HEALTH CARE AUTHORITY:

(1) Health care benefits administration:

The purpose of the health care benefits administration program is to provide core group and optional healthcare benefits and life insurance to current and future eligible retirees and their dependents so they may access covered and available core group and optional healthcare benefits and life insurance benefits when they need them.

Appropriations:

(a)	Contractual services	154,474.4	154,474.4
(b)	Other financing uses	2,534.2	2,534.2

Performance measures:

- (a) Outcome: Total revenue generated, in millions \$142.4
- (b) Output: Number of years of long-term actuarial solvency 15
- (c) Output: Average monthly per participant claim cost, medicare eligible \$250
- (d) Efficiency: Total healthcare benefits program claims paid, in millions \$130.9
- (e) Efficiency: Average monthly per participant claim cost, non-medicare eligible \$497
- (f) Efficiency: Percent of medical plan premium subsidy 51%

(2) Senior prescription drug:

The purpose of the senior prescription drug program is to administer the senior prescription drug card program aimed at reducing prescription drug expenditures for covered participants.

Appropriations:

(a)	Other	10.0	10.0
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(3) Program support:

The purpose of program support is to provide administrative support for the healthcare benefits administration program to assist the agency in delivering its services to its constituents.

Appropriations:

(a)	Personal services and employee benefits	1,083.1	1,083.1
(b)	Contractual services	714.7	714.7
(c)	Other	736.4	736.4

Authorized FTE: 22.00 Permanent

The internal services funds/interagency transfers appropriations to the program support program of the retiree health care authority include sufficient funding for a satellite office in Santa Fe.

Any unexpended or unencumbered balance in the administrative division of the retiree health care authority remaining at the end of fiscal year 2006 shall revert to the benefits division.

Subtotal 159,552.8

GENERAL SERVICES DEPARTMENT:

(1) Employee group health benefits:

The purpose of the employee group health benefits program is to effectively administer comprehensive health-benefit plans to state employees.

Appropriations:

(a)	Contractual services	14,875.0	14,875.0
(b)	Other	182,000.0	182,000.0
(c)	Other financing uses	836.1	836.1

Performance measures:

(a) Outcome: Number of state employees participating in state group health plan TBD

(b) Outcome: Number of nonstate employees participating in state group health plan TBD

(c) Efficiency: Percent change in medical premium compared with the industry average </=3%

(2) Risk management:

The purpose of the risk management program is to protect the state's assets against property, public liability and workers' compensation, state unemployment compensation, local public bodies unemployment compensation, and surety bond losses so agencies can perform their missions efficiently and responsively.

Appropriations:

(a)	Personal services and employee benefits	2,916.6	2,916.6
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(b)	Contractual services	500.0	500.0
(c)	Other	531.9	531.9
(d)	Other financing uses	405.9	405.9

Authorized FTE: 51.00 Permanent

~~[The internal services funds/interagency transfers appropriations to the risk management program of the general services department are contingent on the risk management program not implementing employee co-pay or co-insurance reductions for medical, dental, vision and insurance plans or programs.] [LINE-~~

ITEM VETO]

Performance measures:

(a) Outcome: Percent decrease of state government workers' compensation

claims 6%

(b) Explanatory: Dollar value of claims payable for the public liability

insurance fund, in thousands TBD

(c) Explanatory: Dollar value of claims payable for the worker's

compensation fund, in thousands TBD

(3) Risk management funds:

Appropriations:

(a)	Public liability	38,867.0	38,867.0
(b)	Surety bond	136.0	136.0
(c)	Public property reserve	6,916.8	6,916.8
(d)	Local public bodies		
	unemployment compensation	1,280.7	1,280.7
(e)	Workers' compensation		
	retention	14,731.6	14,731.6
(f)	State unemployment		
	compensation	4,845.7	4,845.7

(4) Information technology:

The purpose of the information technology program is to provide quality information processing services that are both timely and cost-effective so agencies can perform their missions efficiently and responsively.

Appropriations:

(a)	Personal services and employee benefits	9,293.2	9,293.2
(b)	Contractual services	7,045.9	7,045.9
(c)	Other	5,190.6	5,190.6
(d)	Other financing uses	751.2	751.2

Authorized FTE: 145.00 Permanent

Performance measures:

(a) Outcome: Percent of information processing rates five percent lower than the average of the three lowest competitors 70%

(b) Efficiency: Percent of individual information processing services that break even, including sixty days of operating reserve 75%

(c) Efficiency: Percent of individual printing services that break even, including an allowance for sixty days cash operating reserve 75%

(5) Communications:

The purpose of the communications program is to provide quality communications services that are both timely and cost effective so agencies can perform their missions effectively and responsively.

Appropriations:

(a)	Personal services and employee benefits	4,229.8	4,229.8
(b)	Contractual services	338.6	338.6
(c)	Other	12,096.9	12,096.9
(d)	Other financing uses	1,007.4	1,007.4

Authorized FTE: 70.00 Permanent

Performance measures:

(a) Efficiency: Percent of individual communication services that break even, including sixty days of operational reserve 75%

(6) Business office space management and maintenance services:

The purpose of the business office space management and maintenance services program is to provide employees and the public with effective property management and maintenance so agencies can perform their missions efficiently and responsively.

Appropriations:

(a)	Personal services and employee benefits	4,996.0	192.0	5,188.0
(b)	Contractual services	5.1	.2	5.3
(c)	Other	4,383.1	168.4	4,551.5
(d)	Other financing uses	304.1	11.7	315.8

Authorized FTE: 152.00 Permanent

Performance measures:

(a) Efficiency: Percent increase in average cost per square foot of both leased and owned office space in Santa Fe 0%

(b) Efficiency: Operating costs per square foot in Santa Fe for state-owned buildings \$5.62

(c) Explanatory: Percent of state controlled space that is occupied 90%

(7) Transportation services:

The purpose of the transportation services program is to provide centralized and effective administration of the state's motor pool and aircraft transportation services so agencies can perform their missions efficiently and responsively.

Appropriations:

(a) Personal services and

	employee benefits	131.7	1,417.2	1,548.9
(b)	Contractual services		23.8	23.8
(c)	Other	347.4	3,678.0	4,025.4
(d)	Other financing uses		328.1	328.1

Authorized FTE: 34.00 Permanent

Performance measures:

(a) Outcome: Percent of long-term auto lease rates five percent lower than the average of the three lowest competitors 70%

(b) Efficiency: Percent of short-term vehicle utilization 80%

(c) Efficiency: Percent of total available aircraft fleet hours utilized 90%

(8) 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 agencies can perform their missions efficiently and responsively.

Appropriations:

(a)	Personal services and				
	employee benefits	852.5	241.5	213.2	1,307.2
(b)	Contractual services		34.3		34.3
(c)	Other	88.5	76.0	37.2	201.7
(d)	Other financing uses	132.8	55.8		188.6

Authorized FTE: 23.00 Permanent; 6.00 Term

Performance measures:

(a) Outcome: Total audited savings from the save smart New Mexico program, in thousands \$16,022

(b) Output: Percent increase in small business clients 15%

(9) Program support:

The purpose of program support is to manage the program performance process to demonstrate success.

Appropriations:

(a)	Personal services and employee benefits		2,413.8	2,413.8
(b)	Contractual services		124.7	124.7
(c)	Other	596.3	596.3	
(d)	Other financing uses		219.4	219.4

Authorized FTE: 47.00 Permanent

Performance measures:

(a) Outcome: Dollar value of accounts receivable at thirty, sixty and
ninety days, in thousands \$32,104

Subtotal 329,869.7

EDUCATIONAL RETIREMENT BOARD:

(1) Educational retirement:

The purpose of the educational retirement program is to provide secure retirement benefits to active and retired members so they can have a secure monthly benefit when their career is finished.

Appropriations:

(a)	Personal services and employee benefits		2,967.6	2,967.6
(b)	Contractual services		16,781.7	16,781.7
(c)	Other	683.9	683.9	

Authorized FTE: 50.00 Permanent

The other state funds appropriation to the educational retirement board in the contractual services category includes fourteen million eight hundred eight thousand dollars (\$14,808,000) to be used only for investment manager fees.

The other state funds appropriation to the educational retirement board in the contractual services category includes five hundred twenty-five thousand dollars (\$525,000) for payment of custody services associated with the fiscal agent contract upon monthly assessments.

Performance measures:

(a) Outcome: Average rate of return over a cumulative five-year period 8%

(b) Outcome: Funding period of unfunded actuarial accrued liability in
years <=30

Subtotal 20,433.2

NEW MEXICO SENTENCING COMMISSION:

The purpose of the New Mexico sentencing commission is to provide information, analysis, recommendations and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems.

Appropriations:

(a)	Contractual services	600.8	600.8
(b)	Other	6.0	6.0
Subtotal			606.8

PUBLIC DEFENDER DEPARTMENT:

(1) Criminal legal services:

The purpose of the criminal legal services program is to provide effective legal representation and advocacy for eligible clients so that their liberty and constitutional rights are protected and to serve the community as a partner in assuring a fair and efficient criminal justice system that also sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Appropriations:

(a)	Personal services and		
	employee benefits	17,669.3	17,669.3
(b)	Contractual services	8,497.0 700.0	9,197.0
(c)	Other	4,799.4 150.0	4,949.4

Authorized FTE: 317.00 Permanent

Performance measures:

- (a) Output: Number of alternative sentencing treatment placements for
felony and juvenile clients 2,350
 - (b) Output: Number of expert witness services approved by the department 3,400
 - (c) Explanatory: Annual attorney full-time equivalent turnover rate 12%
 - (d) Efficiency: Percent of cases in which application fees were collected 40%
 - (e) Quality: Percent of felony cases resulting in a reduction of original
formally filed charges 60%
- Subtotal 31,815.7

GOVERNOR:

(1) Executive management and leadership:

The purpose of the executive management and leadership program is to provide appropriate management and leadership to the citizens of the state and, more specifically, to the executive branch of government to allow for a more efficient and effective operation of the agencies within that branch of government.

Appropriations:

- (a) Personal services and
employee benefits 3,745.2 235.2 3,980.4
- (b) Contractual services 110.1 30.0 140.1
- (c) Other 517.8 31,363.6 31,881.4
- (d) Other financing uses 5,000.0 5,000.0

Authorized FTE: 45.30 Permanent; 4.00 Term

Subtotal 41,001.9

LIEUTENANT GOVERNOR:

(1) State ombudsman:

The purpose of the state ombudsman program is to facilitate and promote cooperation and understanding between the citizens of New Mexico and the agencies of state government, refer any complaints or

special problems citizens may have to the proper entities and keep records of activities and make an annual report to the governor.

Appropriations:

(a)	Personal services and		
	employee benefits	555.9	555.9
(b)	Contractual services	6.6	6.6
(c)	Other	56.4	56.4
	Authorized FTE: 7.00 Permanent		
	Subtotal		618.9

OFFICE OF THE CHIEF INFORMATION OFFICER:

(1) Information technology management:

The purpose of the information technology management program is to provide information technology strategic planning, oversight and consulting services to New Mexico government agencies so they can provide improved services to New Mexico citizens.

Appropriations:

(a)	Personal services and		
	employee benefits	873.2	873.2
(b)	Contractual services	10.7	10.7
(c)	Other	61.9	61.9
	Authorized FTE: 10.00 Permanent		

Performance measures:

(a) Outcome: Amount of savings in information technology, in millions \$5

(b) Output: Number of key information technology project reviews

completed 36

Subtotal 945.8

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

(1) Pension administration:

The purpose of the pension administration program is to provide information, retirement benefits and an actuarially sound fund to association members so they can receive the defined benefit to which they are entitled, based on age and service, when they retire from public service.

Appropriations:

(a)	Personal services and		
	employee benefits	4,685.2	4,685.2
(b)	Contractual services	18,634.4	18,634.4
(c)	Other	1,937.8	1,937.8

Authorized FTE: 86.00 Permanent

The other state funds appropriation to the public employees retirement association in the contractual services category includes sixteen million three hundred seven thousand dollars (\$16,307,000) to be used only for investment manager fees.

The other state funds appropriation to the public employees retirement association in the contractual services category includes one million two hundred fifty thousand dollars (\$1,250,000) for payment of custody services associated with the fiscal agent contract upon monthly assessments.

Performance measures:

(a) Outcome: Five-year average annualized investment returns to exceed

internal benchmark, in basis points >50 b.p.

(b) Outcome: Five-year annualized performance ranking in a national

survey of fifty to sixty similar large public pension plans

in the United States, as a percentile >49th

Subtotal 25,257.4

STATE COMMISSION OF PUBLIC RECORDS:

(1) Records, information and archival management:

The purpose of the records, information and archival management program is to develop, implement and provide tools, methodologies and services for the benefit of government agencies, historical repositories and the public and to effectively create, preserve, protect and properly dispose of records and facilitate their use and understanding and protect the interests of the citizens of New Mexico.

Appropriations:

(a)	Personal services and				
	employee benefits	1,917.0	42.1	9.7	1,968.8
(b)	Contractual services	31.4	5.0		36.4
(c)	Other	282.0	100.9	26.1	409.0

Authorized FTE: 36.50 Permanent; 1.70 Term

The general fund appropriation to the records, information and archival management program of the state commission of public records in the personal services and employee benefits category includes twenty-two thousand four hundred dollars (\$22,400) for the purpose of reclassifying key positions pursuant to consultation with the state personnel office.

Performance measures:

- (a) Outcome: Maximum number of days of lag time between rule effective date and online availability 36
- (b) Outcome: Percent of state agencies with current records retention and disposition schedules 66%
- (c) Output: Number of consultations, research reports and educational activities provided by the state historian 150

Subtotal 2,414.2

SECRETARY OF STATE:

The purpose of the secretary of state program is to provide voter education and information on election law and government ethics to citizens, public officials, candidates and commercial and business entities so they can comply with state law.

Appropriations:

(a)	Personal services and			
	employee benefits	1,827.9		1,827.9
(b)	Contractual services	85.1	4,500.0	4,585.1
(c)	Other	1,076.2	9,000.0	10,076.2

Authorized FTE: 38.00 Permanent; 1.00 Temporary

Performance measures:

(a) Output: Number of new registered voters 85,000
Subtotal 16,489.2

PERSONNEL BOARD:

(1) Human resource management:

The purpose of the human resource management program is to provide a flexible system of merit-based opportunity, appropriate compensation, human resource accountability and employee development that meet the evolving needs of state agencies, employees, applicants and the public, so economy and efficiency in the managements of state affairs may be provided while protecting the interest of the public.

Appropriations:

(a) Personal services and
employee benefits 3,630.0 3,630.0
(b) Contractual services 22.0 62.7 84.7
(c) Other 280.0 280.0

Authorized FTE: 65.00 Permanent

Any unexpended or unencumbered balance in the state employee's career development conference fund remaining at the end of fiscal year 2006 shall not revert to the general fund.

Performance measures:

(a) Outcome: Average employee pay as a percent of board-approved
comparator market, based on legislative authorization 95%
(b) Outcome: Percent of managers and supervisors completing
board-required training as a percent of total manager and
supervisor category employees 90%
(c) Output: Perform quality reviews (audits) on agencies in accordance
with the quality assurance program 70%
(d) Output: Number of days to produce employment lists 15
Subtotal 3,994.7

PUBLIC EMPLOYEES LABOR RELATIONS BOARD:

The purpose of the public employee labor relations board is to ensure all state and local public body employees have the right to organize and bargain collectively with their employers.

Appropriations:

(a)	Personal services and			
	employee benefits	201.9		201.9
(b)	Other	109.8	109.8	
	Authorized FTE: 3.00 Permanent			
	Subtotal		311.7	

STATE TREASURER:

The purpose of the state treasurer is to provide a financial environment that maintains maximum accountability for receipt, investment and disbursement of public funds to protect the financial interests of New Mexico citizens.

Appropriations:

(a)	Personal services and			
	employee benefits	2,476.2	25.0	2,501.2
(b)	Contractual services	174.6		174.6
(c)	Other	757.5	757.5	
	Authorized FTE: 41.50 Permanent			

Performance measures:

(a) Outcome:	Percent of investments with a return rate that exceeds the overnight rate	100%	
(b) Output:	Percent of cash-to-books reconciliation items processed and adjusted to the agency fund balance within thirty days of closing from the department of finance and administration	100%	
	Subtotal		3,433.3

TOTAL GENERAL CONTROL	147,599.9	282,483.1	644,083.7	36,833.5
	1,111,000.2			

D. COMMERCE AND INDUSTRY

BOARD OF EXAMINERS FOR ARCHITECTS:

(1) Architectural registration:

The purpose of the architectural registration program is to safeguard life, health and property and to promote public welfare by ensuring any person practicing architecture complies with its provisions.

Appropriations:

(a)	Personal services and		
	employee benefits	220.4	220.4
(b)	Contractual services	14.2	14.2
(c)	Other	69.2	69.2
	Authorized FTE: 4.00 Permanent		
	Subtotal	303.8	

BORDER AUTHORITY:

(1) Border development:

The purpose of the border development program is to encourage and foster development of the state by developing port facilities and infrastructure at international ports of entry to attract new industries and businesses to the New Mexico border and to assist industries, businesses and the traveling public in their efficient and effective use of ports and related facilities.

Appropriations:

(a)	Personal services and		
	employee benefits	332.4	332.4
(b)	Contractual services	22.8	22.8
(c)	Other	67.4	67.4
	Authorized FTE: 5.00 Permanent		

Performance measures:

(a) Outcome: Annual trade share of New Mexico ports within the west

Texas and New Mexico region 3.1%

Subtotal 422.6

TOURISM DEPARTMENT:

(1) Marketing:

The purpose of the marketing program is to create and maintain an "image" or "brand" for the state of New Mexico and influence in-state, domestic and international markets to directly affect the positive growth and development of New Mexico as a top tourism destination so that New Mexico may increase its tourism market share.

Appropriations:

(a)	Personal services and		
	employee benefits	1,230.2	1,230.2
(b)	Contractual services	125.0	125.0
(c)	Other	3,425.0	3,425.0

Authorized FTE: 34.50 Permanent

Performance measures:

(a) Outcome: New Mexico's domestic tourism market share 1.2%

(b) Output: Print advertising conversion rate 40%

(c) Output: Broadcast advertising conversion rate 30%

(2) Promotion:

The purpose of the promotion program is to produce and provide collateral material, editorial content and special events for consumers and industry partners so that they may increase their awareness of New Mexico as a premier tourist destination.

Appropriations:

(a)	Personal services and		
	employee benefits	255.9	255.9
(b)	Contractual services	75.0	75.0

(c) Other 185.6 185.6

Authorized FTE: 4.00 Permanent

The general fund appropriations to the promotion program of the tourism department include fifty thousand dollars (\$50,000) for promotion of New Mexico as a golf destination.

Performance measures:

(a) Output: Number of events increasing awareness of New Mexico as a
visitor destination 115

(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 138.7 138.7
(b) Contractual services 20.0 20.0
(c) Other 1,090.6 1,090.6

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Number of partnered cooperative advertising applications
received 25

(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 1,054.5 1,054.5
(b) Contractual services 932.9 932.9

(c) Other 2,206.8 2,206.8

Authorized FTE: 18.00 Permanent

Performance measures:

(a) Outcome: Circulation rate 115,000

(b) Output: Ancillary product revenue, in dollars \$275,000

(5) New Mexico clean and beautiful:

The purpose of the New Mexico clean and beautiful program is to reduce litter to the maximum practical extent within the state by funding incorporated local government programs statewide that implement projects that eliminate, control and prevent litter; fund programs and projects that educate citizens on the effects of littering; enforce litter ordinances; increase public awareness; recycle; beautify; eliminate graffiti and weeds and promote litter awareness; and involve New Mexicans by enlisting them as volunteers in program- and community-sponsored activities.

Appropriations:

(a) Personal services and

employee benefits 118.4 118.4

(b) Contractual services 150.0 150.0

(c) Other 590.0 590.0

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Dollar value of grants awarded to communities \$600,000

(b) Outcome: Pounds of litter removed 5,500,000

(6) Program support:

The purpose of program support is to provide administrative assistance to support the department's programs and personnel so they may be successful in implementing and reaching their strategic initiatives and maintaining full compliance with state rules and regulations.

Appropriations:

(a) Personal services and

employee benefits 890.9 890.9

(b) Contractual services 117.1 117.1

(c) Other 610.7 610.7

Authorized FTE: 14.00 Permanent

Subtotal 13,217.3

ECONOMIC DEVELOPMENT DEPARTMENT:

(1) Economic development:

The purpose of the economic development program is to assist communities in preparing for their role in the new economy, focusing on high-quality job creation and improved infrastructure so New Mexicans can increase their wealth and improve their quality of life.

Appropriations:

(a) Personal services and

employee benefits 1,260.8 1,260.8

(b) Contractual services 470.0 470.0

(c) Other 621.8 621.8

Authorized FTE: 21.00 Permanent

Notwithstanding Section 21-19-7 NMSA 1978 and Section 21-9-7.1 NMSA 1978, the economic development department may use up to five percent of the cash balances in the development training fund as of December 31, 2004 for skill-enhancement training and pre-employment training programs for the film and multimedia industry.

Performance measures:

(a) Outcome: Number of communities certified through the community

certification initiative 15

(b) Outcome: Number of business expansions assisted by the economic

development program in urban areas of New Mexico 40

(c) Outcome: Total number of rural jobs created 1,600

(d) Outcome: Number of jobs created through the economic development

partnership 1,000

(2) Film:

The purpose of the film program is to maintain the core business for the film location services and stimulate growth in digital film media to maintain the economic vitality of the New Mexico film industry.

Appropriations:

(a)	Personal services and		
	employee benefits	510.3	510.3
(b)	Contractual services	140.1	140.1
(c)	Other	139.6	139.6

Authorized FTE: 10.00 Permanent

The general fund appropriations to the film program of the economic development department include sixty-six thousand dollars (\$66,000) for marketing.

Performance measures:

- (a) Outcome: Number of media industry worker days 48,500
- (b) Outcome: Economic impact of media industry productions in New Mexico, in millions \$73.5
- (c) Outcome: Number of films and media projects principally photographed in New Mexico 58

(3) Trade with Mexico:

The purpose of the trade with Mexico 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	125.8	125.8
(b)	Contractual services	82.0	82.0
(c)	Other	104.0	104.0

Authorized FTE: 3.00 Permanent

Performance measures:

(a) Outcome: Dollar value of New Mexico exports to Mexico as a result of
the trade with Mexico program, in millions \$350

(b) Outcome: Number of jobs created by the programs of the office of
Mexican affairs 250

(4) Technology and space commercialization:

The purpose of the technology and space commercialization program is to increase the start-up, relocation and growth of technology-based business in New Mexico to give New Mexico citizens the opportunity for high-paying jobs.

Appropriations:

(a)	Personal services and		
	employee benefits	583.8	583.8
(b)	Other	122.2	122.2

Authorized FTE: 8.00 Permanent; 2.00 Term

Performance measures:

(a) Output: Number of jobs created by aerospace and aviation companies 150

(b) Outcome: Ranking of New Mexico in technology intensiveness according
to the state science and technology institute index 22

(5) Program support:

The purpose of program support is to provide central direction to agency management processes and fiscal support to agency programs to ensure consistency, continuity and legal compliance.

Appropriations:

(a)	Personal services and		
	employee benefits	1,492.1	1,492.1
(b)	Contractual services	192.7	192.7
(c)	Other	316.2	316.2

Authorized FTE: 24.00 Permanent

Subtotal 6,161.4

REGULATION AND LICENSING DEPARTMENT:

(1) Construction industries and manufactured housing:

The purpose of the construction industries and manufactured housing program is to provide code compliance oversight; issue licenses, permits, and citations; perform inspections; administer exams; process complaints; and enforce laws, rules and regulations relating to general construction and manufactured housing standards to industry professionals.

Appropriations:

(a)	Personal services and				
	employee benefits	6,394.4		128.1	6,522.5
(b)	Contractual services	57.9		1.0	58.9
(c)	Other	1,010.2	100.0	69.4	1,179.6

Authorized FTE: 118.00 Permanent; 1.00 Term

Performance measures:

- (a) Outcome: Percent of permitted manufactured housing projects inspected 90%
- (b) Efficiency: Percent of reviews of commercial plans completed within a standard time based on valuation of project 80%

(2) Financial institutions and securities:

The purpose of the financial institutions and securities program is to issue charters and licenses; perform examinations; investigate complaints; enforce laws, rules and regulations; and promote investor protection and confidence so that capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a)	Personal services and				
	employee benefits	2,443.9	60.9		2,504.8
(b)	Contractual services	5.1	235.0		240.1
(c)	Other	219.9	160.9	380.8	

Authorized FTE: 41.00 Permanent

Performance measures:

(a) Outcome: Percent of statutorily compliant applications processed
within a standard number of days by type of application 98%

(b) Outcome: Percent of examination reports mailed to a depository
institution within thirty days of examination departure 90%

(3) Alcohol and gaming:

The purpose of the alcohol and gaming program is to regulate the sale, service and public consumption of alcoholic beverages and regulate the holding, operating and conducting of certain games of chance by licensing qualified people and, in cooperation with the department of public safety, enforce the Liquor Control Act and the Bingo and Raffle Act to protect the health, safety and welfare of the citizens of and visitors to New Mexico.

Appropriations:

(a)	Personal services and			
	employee benefits	769.2		769.2
(b)	Contractual services	11.2		11.2
(c)	Other	64.1	64.1	
	Authorized FTE: 15.00 Permanent			

Performance measures:

(a) Outcome: Number of days to issue new or transfer liquor licenses 125

(b) Output: Number of days to resolve an administrative citation 46

(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.

Appropriations:

(a)	Personal services and			
	employee benefits	1,652.6	551.1	2,203.7
(b)	Contractual services	141.7	82.1	223.8

(c) Other 260.8 178.9 439.7

Authorized FTE: 34.70 Permanent

Performance measures:

(a) Outcome: Percent of prior-year audit findings resolved 100%

(b) Output: Percent of payment vouchers submitted to and approved by
the department of finance and administration within seven
days of receipt from vendor 90%

(5) New Mexico state board of public accountancy:

The purpose of the public accountancy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	244.2	244.2
(b)	Contractual services	68.0	68.0
(c)	Other	139.2	139.2
(d)	Other financing uses	43.7	43.7

Authorized FTE: 5.00 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application
and issue a license 5

(6) Board of acupuncture and oriental medicine:

The purpose of the acupuncture and oriental medicine board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and

	employee benefits	109.5	109.5
(b)	Contractual services	11.3	11.3
(c)	Other	27.9	27.9
(d)	Other financing uses	21.3	21.3

Authorized FTE: 3.20 Permanent

Performance measures:

(a) Output: Average number of days to process completed application and issue a license 5

(7) New Mexico athletic commission:

The purpose of the athletic commission program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	55.0	55.0
(b)	Contractual services	40.0	40.0
(c)	Other	57.0	57.0
(d)	Other financing uses	30.0	30.0

Authorized FTE: 1.00 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application and issue a license 5

(8) Athletic trainer practice board:

The purpose of the athletic trainer practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and

	employee benefits	11.2	11.2
(b)	Contractual services	.9	.9
(c)	Other	6.4	6.4
(d)	Other financing uses	3.9	3.9

Authorized FTE: .20 Permanent

(9) Board of barbers and cosmetology:

The purpose of the barbers and cosmetology board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	395.0	395.0
(b)	Contractual services	50.0	50.0
(c)	Other	92.8	92.8
(d)	Other financing uses	76.4	76.4

Authorized FTE: 9.90 Permanent

Performance measures:

- (a) Output: Average number of days to process a completed application
and issue a license 5

(10) Chiropractic board:

The purpose of the chiropractic examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	60.5	60.5
(b)	Contractual services	2.6	2.6

(c)	Other	27.8	27.8
(d)	Other financing uses	20.9	20.9

Authorized FTE: 1.30 Permanent

(11) Counseling and therapy practice board:

The purpose of the counseling and therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	219.4	219.4
(b)	Contractual services	15.5	15.5
(c)	Other	115.9	115.9
(d)	Other financing uses	51.8	51.8

Authorized FTE: 4.90 Permanent

(12) New Mexico board of dental health care:

The purpose of the New Mexico board of dental health care program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	228.0	228.0
(b)	Contractual services	21.7	21.7
(c)	Other	67.2	67.2
(d)	Other financing uses	47.6	47.6

Authorized FTE: 4.90 Permanent

Performance measures:

- (a) Output: Average number of days to process a completed application

and issue a license 5

(b) Efficiency: Average number of hours to respond to telephone complaints 24

(13) Interior design board:

The purpose of the interior design board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	13.5	13.5
(b)	Other	10.2	10.2
(c)	Other financing uses	6.3	6.3

Authorized FTE: .20 Permanent

(14) Board of landscape architects:

The purpose of the board of landscape architects program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	19.2	19.2
(b)	Contractual services	.3	.3
(c)	Other	15.5	15.5
(d)	Other financing uses	7.8	7.8

Authorized FTE: .30 Permanent

(15) Board of massage therapy:

The purpose of the massage therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and

	employee benefits	117.1	117.1
(b)	Contractual services	12.0	12.0
(c)	Other	45.3	45.3
(d)	Other financing uses	29.4	29.4

Authorized FTE: 2.50 Permanent

(16) Board of nursing home administrators:

The purpose of the nursing home administrators board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	35.0	35.0
(b)	Contractual services	.2	.2
(c)	Other	12.8	12.8
(d)	Other financing uses	9.0	9.0

Authorized FTE: .60 Permanent

(17) Nutrition and dietetics practice board:

The purpose of the nutrition and dietetics practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	18.5	18.5
(b)	Contractual services	.3	.3
(c)	Other	11.6	11.6
(d)	Other financing uses	5.9	5.9

Authorized FTE: .30 Permanent

(18) Board of examiners for occupational therapy:

The purpose of the occupational therapy practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	37.8	37.8
(b)	Contractual services	2.0	2.0
(c)	Other	17.4	17.4
(d)	Other financing uses	10.0	10.0

Authorized FTE: .60 Permanent

Performance measures:

(a) Output:	Average number of days to process a completed application
	and issue a license
	5

(19) Board of optometry:

The purpose of the optometry board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	43.3	43.3
(b)	Contractual services	11.5	11.5
(c)	Other	9.8	9.8
(d)	Other financing uses	11.4	11.4

Authorized FTE: .80 Permanent

(20) Board of osteopathic medical examiners:

The purpose of the osteopathic medical examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	52.8	52.8
(b)	Contractual services	2.0	2.0
(c)	Other	25.2	25.2
(d)	Other financing uses	11.1	11.1

Authorized FTE: .80 Permanent

(21) Board of pharmacy:

The purpose of the board of pharmacy program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	900.8	900.8
(b)	Contractual services	26.3	26.3
(c)	Other	290.1	290.1
(d)	Other financing uses	54.4	54.4

Authorized FTE: 12.00 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application
and issue a license 5

(b) Efficiency: Average number of hours to respond to telephone complaints 24

(22) Physical therapy board:

The purpose of the physical therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and

	employee benefits	80.4	80.4
(b)	Contractual services	3.0	3.0
(c)	Other	29.7	29.7
(d)	Other financing uses	17.9	17.9

Authorized FTE: 1.60 Permanent

(23) Board of podiatry:

The purpose of the podiatry board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	18.9	18.9
(b)	Contractual services	.5	.5
(c)	Other	10.8	10.8
(d)	Other financing uses	7.0	7.0

Authorized FTE: .30 Permanent

(24) Private investigators and polygraphers advisory board:

The purpose of the private investigators and polygraphers board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	66.0	66.0
(b)	Contractual services	10.0	10.0
(c)	Other	35.3	35.3
(d)	Other financing uses	21.4	21.4

Authorized FTE: 1.40 Permanent

(25) New Mexico state board of psychologist examiners:

The purpose of the psychologist examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	108.6	108.6
(b)	Contractual services	20.0	20.0
(c)	Other	49.8	49.8
(d)	Other financing uses	28.8	28.8

Authorized FTE: 2.30 Permanent

Performance measures:

(a) Output:	Average number of days to process a completed application
	and issue a license
	5

(26) Real estate appraisers board:

The purpose of the real estate appraisers board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	93.9	93.9
(b)	Contractual services	12.5	12.5
(c)	Other	36.7	36.7
(d)	Other financing uses	22.5	22.5

Authorized FTE: 2.10 Permanent

(27) New Mexico real estate commission:

The purpose of the real estate commission program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	495.4	495.4
(b)	Contractual services	117.0	117.0
(c)	Other	287.1	287.1
(d)	Other financing uses	52.2	52.2

Authorized FTE: 10.00 Permanent

(28) Advisory board of respiratory care practitioners:

The purpose of the advisory board of respiratory care practitioners program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	43.0	43.0
(b)	Other	9.4	9.4
(c)	Other financing uses	10.3	10.3

Authorized FTE: .80 Permanent

(29) Board of social work examiners:

The purpose of the board of social work examiners program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	222.2	222.2
(b)	Contractual services	3.0	3.0
(c)	Other	72.4	72.4
(d)	Other financing uses	38.4	38.4

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application
and issue a license 5

(b) Efficiency: Average number of hours to respond to telephone complaints 24

(30) Speech language pathology, audiology and hearing aid dispensing practices board:

The purpose of the speech language pathology, audiology and hearing aid dispensing practices board is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	102.7	102.7
(b)	Contractual services	2.7	2.7
(c)	Other 21.8	21.8	
(d)	Other financing uses	18.8	18.8

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application
and issue a license 5

(31) Board of thanatopractice:

The purpose of the thanatopractice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	90.0	90.0
(b)	Contractual services	7.5	7.5

(c)	Other	37.0	37.0
(d)	Other financing uses	15.9	15.9

Authorized FTE: 1.80 Permanent

Performance measures:

- (a) Output: Average number of days to process a completed application
and issue a license 5

Subtotal 21,157.3

PUBLIC REGULATION COMMISSION:

(1) Policy and regulation:

The purpose of the policy and regulation program is to fulfill the constitutional and legislative mandates regarding regulated industries through rulemaking, adjudications and policy initiatives to ensure the provision of adequate and reliable services at fair, just and reasonable rates so that the interests of the consumers and regulated industries are balanced to promote and protect the public interest.

Appropriations:

(a)	Personal services and employee benefits	5,859.2	12.5	5,871.7
(b)	Contractual services	148.6		148.6
(c)	Other	1,338.8	1,338.8	

Authorized FTE: 85.70 Permanent

The internal services funds/interagency transfers appropriation to the policy and regulation program of the public regulation commission includes twelve thousand five hundred dollars (\$12,500) from the patient's compensation fund.

Performance measures:

- (a) Output: Number of formal complaints processed by the transportation
division 75
- (b) Output: Number of docketed cases completed 130
- (c) Efficiency: Average number of days for a rate case to reach final order 240

(d) Efficiency: Percent of cases processed in less than the statutory time allowance 100%

(e) Outcome: Average commercial electric rate comparison between major New Mexico utilities and selected regional utilities + or - 5%

(f) Outcome: Dollar amount of credits and refunds obtained for New Mexico consumers through complaint resolution \$1,800

(2) Insurance policy:

The purpose of the insurance policy program is to assure easy public access to reliable insurance products that meet consumers' needs and are underwritten by dependable, reputable, financially sound companies that charge fair rates and are represented by trustworthy, qualified agents, while promoting a positive competitive business climate.

Appropriations:

(a)	Personal services and employee benefits		1,352.6	3,462.7	4,815.3
(b)	Contractual services		215.5		215.5
(c)	Other	27.4	947.5	974.9	
(d)	Other financing uses			110.0	110.0

Authorized FTE: 84.00 Permanent

The internal services funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include forty thousand dollars (\$40,000) from the title insurance maintenance assessment fund, one hundred thousand dollars (\$100,000) from the insurance fraud fund, eighty thousand dollars (\$80,000) from the reproduction fund, two hundred twelve thousand five hundred dollars (\$212,500) from the patients' compensation fund, six hundred twenty-five thousand dollars (\$625,000) from the agent's surcharge fund, and three million four hundred sixty-two thousand seven hundred dollars (\$3,462,700) from the insurance operations fund.

The other state funds appropriations to the insurance policy program of the public regulation commission include one million two hundred forty-eight thousand three hundred dollars (\$1,248,300) from the insurance fraud fund and three hundred forty-seven thousand two hundred dollars (\$347,200) from the title insurance maintenance assessment fund.

Performance measures:

(a) Output: Percent of internal and external insurance-related

- grievances closed within one hundred eighty days of filing 90%
- (b) Outcome: Percent of employers whose workers' compensation accident frequency is reduced through counseling, advice and training 60%
- (c) Output: Percent of insurance division interventions conducted with domestic and foreign insurance companies when risk-based capital is less than two hundred percent 80%
- (d) Efficiency: Percent of insurance fraud bureau complaints processed and recommended for either further administrative action or closure within sixty days 80%

(3) Public safety:

The purpose of the public safety program is to provide services and resources to the appropriate entities to enhance their ability to protect the public from fire and pipeline hazards and other risks as assigned to the public regulation commission.

Appropriations:

(a)	Personal services and employee benefits	2,143.4	278.4	2,421.8
(b)	Contractual services	172.2	40.7	212.9
(c)	Other	1,137.0	325.8	1,462.8

Authorized FTE: 47.30 Permanent; 1.00 Term

The internal services funds/interagency transfers appropriations to the public safety program of the public regulation commission include one million six hundred ninety-nine thousand nine hundred dollars (\$1,699,900) for the office of the state fire marshal from the fire protection fund.

The internal services funds/interagency transfers appropriations to the public safety program of the public regulation commission include one million two hundred fifty-six thousand nine hundred dollars (\$1,256,900) for the fire fighter training academy from the fire protection fund.

Performance measures:

- (a) Output: Number of inspections and audit hours performed by the state fire marshal's office and pipeline safety bureau 25,302

(b) Output: Number of personnel completing training through the state

fire fighter training academy 3,722

(c) Outcome: Percent of fire departments' insurance service office

ratings of nine or ten that have been reviewed by survey or

audit 75%

(4) Program support:

The purpose of program support is to provide administrative support and direction to ensure consistency, compliance, financial integrity and fulfillment of the agency mission.

Appropriations:

(a) Personal services and

employee benefits	2,062.1	362.7	2,424.8
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(b) Contractual services	75.6		75.6
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(c) Other	701.0	701.0	
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Authorized FTE: 52.00 Permanent

The internal services funds/interagency transfers appropriations to program support of the public regulation commission include two hundred forty thousand two hundred dollars (\$240,200) from the fire protection fund, seventy thousand dollars (\$70,000) from the insurance fraud fund, twelve thousand five hundred dollars (\$12,500) from the pipeline safety fund and forty thousand dollars (\$40,000) from the title insurance maintenance assessment fund.

Performance measures:

(a) Outcome: Percent of total outstanding corporation bureau corporate

revocations processed 100%

(b) Efficiency: Percent of fully functional applications systems 100%

(c) Outcome: Opinion of previous fiscal year independent agency audit Unqualified

(5) Patient's compensation fund:

Appropriations:

(a) Contractual services	300.0	300.0
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(b) Other	10,064.0	10,064.0
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(c)	Other financing uses	225.0	225.0
	Subtotal	31,362.7	

MEDICAL BOARD:

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulation and licensure to medical doctors, physician assistants and anesthesiologist assistants and to ensure competent and ethical medical care to consumers.

Appropriations:

(a)	Personal services and employee benefits	677.4	677.4
(b)	Contractual services	238.2	238.2
(c)	Other	271.9	271.9
(d)	Other financing uses	40.0	40.0

Authorized FTE: 12.00 Permanent

Subtotal 1,227.5

BOARD OF NURSING:

(1) Licensing and certification:

The purpose of the licensing and certification program is to regulate nurses, hemodialysis technicians, medication aides and their education and training programs, so they can provide competent and professional healthcare services to consumers.

Appropriations:

(a)	Personal services and employee benefits	764.8	764.8
(b)	Contractual services	36.0	36.0
(c)	Other	344.7	344.7
(d)	Other financing uses	1.1	38.9

Authorized FTE: 14.00 Permanent

Performance measures:

(a) Output:	Number of licenses issued	11,000	
Subtotal			1,185.5

NEW MEXICO STATE FAIR:

(1) State fair:

The purpose of the state fair program is to promote the New Mexico state fair as a year-round operation with venues, events and facilities that provide for greater use of the assets of the agency.

Appropriations:

(a)	Personal services and			
	employee benefits	5,965.9		5,965.9
(b)	Contractual services	3,489.8		3,489.8
(c)	Other	3,800.1	1,300.0	5,100.1

Authorized FTE: 59.00 Permanent; 18.00 Term

The internal services funds/interagency transfers appropriation to the New Mexico state fair in the other category includes one million three hundred thousand dollars (\$1,300,000) for capital improvements at the state fairgrounds and for debt service on bonds issued for the capital improvements pursuant to Chapter 119 of Laws 2004.

Performance measures:

(a) Quality:	Percent of surveyed attendees at the annual state fair		
	event rating their experience as satisfactory or better	85%	
(b) Output:	Percent of counties represented through exhibits at the		
	annual state fair	100%	
(c) Outcome:	Number of paid attendees at annual state fair event		600,000
(d) Quality:	Percent of surveyed attendees at the annual state fair		
	event rating that the state fair has improved	40%	
Subtotal			14,555.8

STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS:

(1) Regulation and licensing:

The purpose of the regulation and licensing program is to regulate the practices of engineering and surveying in the state as they relate to the welfare of the public in safeguarding life, health and property, and to provide consumers with licensed professional engineers and licensed professional surveyors.

Appropriations:

(a)	Personal services and		
	employee benefits	280.4	280.4
(b)	Contractual services	69.8	69.8
(c)	Other	193.6	193.6

Authorized FTE: 7.00 Permanent

Performance measures:

(a) Output:	Number of licenses or certifications issued	600
Subtotal		543.8

GAMING CONTROL BOARD:

(1) Gaming control:

The purpose of the gaming control program is to strictly regulate gaming activities and to promote responsible gaming to the citizens of New Mexico so they can attain a strong level of confidence in the board's administration of gambling laws and assurance that the state has honest and competitive gaming free from criminal and corruptive elements and influences.

Appropriations:

(a)	Personal services and		
	employee benefits	3,745.3	3,745.3
(b)	Contractual services	737.3	737.3
(c)	Other	1,331.9	1,331.9

Authorized FTE: 59.00 Permanent; .50 Temporary

Performance measures:

(a) Quality: Percent of time central monitoring system is operational 100%

(b) Output: Percent decrease in repeat violations by licensed gaming operators 75%

(c) Output: Percent variance identified between actual tribal quarterly payments made to the state treasurer's office and the audited financial statements received from the tribe as a result of an analytical review 10%

(d) Outcome: Ratio of revenue generated to general funds expended 20:1

Subtotal 5,814.5

STATE RACING COMMISSION:

(1) Horseracing regulation:

The purpose of the horseracing regulation program is to provide regulation in an equitable manner to New Mexico's pari-mutuel horseracing industry to protect the interest of wagering patrons and the state of New Mexico in a manner that promotes a climate of economic prosperity for horsemen, horse owners and racetrack management.

Appropriations:

(a)	Personal services and employee benefits	1,102.9	1,102.9
(b)	Contractual services	630.4	630.4
(c)	Other	253.8	253.8

Authorized FTE: 17.30 Permanent; .60 Term; 1.80 Temporary

Performance measures:

(a) Outcome: Percent of equine samples testing positive for illegal substance .8%

(b) Efficiency: Average regulatory cost per live race day at each racetrack \$4,000

Subtotal 1,987.1

BOARD OF VETERINARY MEDICINE:

(1) Veterinary licensing and regulatory:

The purpose of the veterinary licensing and regulatory program is to protect the public and promote quality veterinary care through regulation of the profession of veterinary medicine.

Appropriations:

(a)	Personal services and		
	employee benefits	138.0	138.0
(b)	Contractual services	73.2	73.2
(c)	Other	57.5	57.5
	Authorized FTE: 3.00 Permanent		
	Subtotal	268.7	

CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION:

Appropriations:

(a)	Other	100.0	100.0
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Any revenues generated by the Cumbres and Toltec scenic railroad commission in fiscal year 2006, such as ticket sales, are appropriated to the Cumbres and Toltec scenic railroad commission for use towards operating expenses of this railroad.

The general fund appropriation is not contingent on operational funding contributions by the state of Colorado.

Subtotal	100.0
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TOTAL COMMERCE AND INDUSTRY	45,866.6	40,240.6	11,357.4	843.4
	98,308.0			

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

CULTURAL AFFAIRS DEPARTMENT:

(1) Museums and monuments:

The purpose of the museums and monuments program is to develop and enhance the quality of state museums and monuments by providing the highest standards in exhibitions, performances and programs showcasing the arts, history and science of New Mexico and cultural traditions worldwide.

Appropriations:

(a)	Personal services and employee benefits	13,149.4	2,869.5	113.9	68.0	16,200.8
(b)	Contractual services	904.4	197.5	7.8	4.7	1,114.4
(c)	Other	3,969.6	891.4	35.4	21.1	4,917.5

Authorized FTE: 303.20 Permanent; 51.60 Term; 4.00 Temporary

~~[The appropriations to the museums and monuments program of the cultural affairs department include two hundred thousand dollars (\$200,000) from the general fund, ninety one thousand dollars (\$91,000) from other state funds and two permanent full-time equivalent positions for the Roy E. Disney performing arts center.] [LINE-ITEM VETO]~~

The general fund appropriations to the museums and monuments program of the cultural affairs department include one hundred twenty-five thousand dollars (\$125,000) and one permanent full-time-equivalent position for El Camino Real international heritage center.

The general fund appropriations to the museums and monuments program of the cultural affairs department include one hundred fifty thousand dollars (\$150,000) and one permanent full-time-equivalent position for the Bosque Redondo.

~~[The general fund appropriations to the museums and monuments program of the cultural affairs department include fifty thousand dollars (\$50,000) and one permanent full-time equivalent position for the state history museum.] [LINE-ITEM VETO]~~

The general fund appropriations to the museums and monuments program of the cultural affairs department include fifty thousand dollars (\$50,000) to provide for the administration and promotion of the African-American culture and history collection for the African-American performing arts center and exhibit hall at the New Mexico state fair.

Performance measures:

- (a) Output: Total attendance to museum exhibitions, performances, films
and other presenting programs 897,500
- (b) Output: Number of participants at on-site educational, outreach and
special events 324,485

(2) Preservation:

The purpose of the preservation program is to identify, study and protect New Mexico's unique cultural resources, including its archaeological sites, architectural and engineering achievements, cultural landscapes and diverse heritage.

Appropriations:

(a)	Personal services and employee benefits	683.7	105.8	2,310.8	851.5	3,951.8
(b)	Contractual services	44.7	6.9	151.1	55.7	258.4
(c)	Other	76.1	15.0	327.7	120.7	539.5

Authorized FTE: 36.00 Permanent; 40.50 Term; 6.00 Temporary

The internal services funds/interagency transfers appropriations to the preservation program of the cultural affairs department include one million dollars (\$1,000,000) from the department of transportation for archaeological studies related to highway projects.

Performance measures:

(a) Outcome: Percent of grant funds distributed to communities outside

of Santa Fe, Albuquerque and Las Cruces 56%

(b) Output: Total number of new structures preserved annually utilizing

preservation tax credits 45

(3) Library services:

The purpose of the library services program is to empower libraries to support the educational, economic and health goals of their communities and to deliver direct library and information services to those who need them.

Appropriations:

(a)	Personal services and employee benefits	1,967.6	16.9	783.1	2,767.6
(b)	Contractual services	602.0	5.2	239.7	846.9
(c)	Other	891.9	7.9	365.8	1,265.6

Authorized FTE: 42.00 Permanent; 19.50 Term

Performance measures:

(a) Outcome: Percent of grant funds distributed to communities outside

of Santa Fe, Albuquerque and Las Cruces 75%

(b) Output: Total number of library materials catalogued in systemwide
 access to libraries in state agencies and keystone library
 automation system online databases available through the
 internet 935,000

(4) Arts:

The purpose of the arts program is to preserve, enhance and develop the arts in New Mexico through partnerships, public awareness and education.

Appropriations:

(a)	Personal services and				
	employee benefits	504.9		226.2	731.1
(b)	Contractual services	673.4		301.7	975.1
(c)	Other	62.0	28.7	90.7	

Authorized FTE: 10.50 Permanent; 4.50 Term

Performance measures:

(a) Outcome: Percent of grant funds distributed to communities outside
 of Santa Fe, Albuquerque and Las Cruces 46%

(b) Output: Attendance at new programs partially funded by New Mexico
 Arts, provided by arts organizations statewide 1,800,000

(5) Program support:

The purpose of the program support program is to deliver effective, efficient, high-quality services in concert with the core agenda of the governor.

Appropriations:

(a)	Personal services and				
	employee benefits	2,715.3	15.5	62.2	2,793.0
(b)	Contractual services	265.5	1.5	6.1	273.1
(c)	Other	160.0	1.0	3.9	164.9

Authorized FTE: 40.70 Permanent; 1.00 Term; 2.00 Temporary

Any unexpended or unencumbered balance in the cultural affairs department remaining at the end of fiscal year 2006 from appropriations made from the general fund shall not revert.

Performance measures:

(a) Output: Number of payment vouchers accurately processed within
seventy-two hours of receipt 8,700

(b) Outcome: Percent of performance measure targets in the General
Appropriation Act met excluding this measure 75%

Subtotal 36,890.4

NEW MEXICO LIVESTOCK BOARD:

(1) Livestock inspection:

The purpose of the livestock inspection program is to protect the livestock industry from loss of livestock by theft or straying and to help control the spread of dangerous diseases of livestock.

Appropriations:

(a)	Personal services and			
	employee benefits	217.0	2,449.6	2,666.6
(b)	Contractual services		251.2	251.2
(c)	Other	139.7	784.6	924.3

Authorized FTE: 58.20 Permanent

Performance measures:

(a) Output: Number of road stops per month 40

(b) Outcome: Number of livestock thefts reported per 1,000 head inspected 1

(2) Meat inspection:

The purpose of the meat inspection program is to provide meat inspection services to meat processors and slaughterers to assure consumers of clean, wholesome and safe products.

Appropriations:

(a)	Personal services and				
	employee benefits	417.9		417.8	835.7
(b)	Contractual services		8.5		8.5
(c)	Other	44.2	47.9	44.3	136.4

Authorized FTE: 17.80 Permanent

The general fund appropriation to the New Mexico livestock board for its meat inspection program, including administrative costs, is contingent upon a dollar-for-dollar match of federal funds for that program.

Performance measures:

- (a) Outcome: Percent of inspections where violations are found 2%
- (b) Outcome: Number of violations resolved within one day 210
- (c) Output: Number of compliance visits made to approved establishments 7,500

(3) Administration:

The purpose of the administration program is to provide administrative and logistical services to employees.

Appropriations:

(a)	Personal services and				
	employee benefits	68.3	323.4	72.2	463.9
(b)	Contractual services		17.0		17.0
(c)	Other	146.6		146.6	

Authorized FTE: 8.00 Permanent

Subtotal 5,450.2

DEPARTMENT OF GAME AND FISH:

(1) Sport hunting and fishing:

The purpose of the sport hunting and fishing program is to provide a statewide system for hunting activities as well as self-sustaining and hatchery-supported fisheries, taking into account hunter safety, quality hunts, high demand areas, guides and outfitters, quotas and assuring that local and financial interests receive consideration.

Appropriations:

(a)	Personal services and employee benefits	8,372.9	3,009.5	11,382.4
(b)	Contractual services	414.6	377.6	792.2
(c)	Other	2,878.0	1,934.0	4,812.0
(d)	Other financing uses	78.7	236.3	315.0

Authorized FTE: 189.00 Permanent; 2.00 Term; 4.00 Temporary

The internal services funds/interagency transfers appropriations to the sport hunting and fishing program of the department of game and fish include one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operation. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 from this appropriation shall revert to the game protection fund.

The internal services funds/interagency transfers appropriations to the sport hunting and fishing program of the department of game and fish include two hundred fifty-two thousand dollars (\$252,000) from the game protection fund for six permanent full-time-equivalent positions and two hundred seventy-six thousand four hundred dollars (\$276,400) for other costs.

The internal services funds/interagency transfers appropriations to the sport hunting and fishing program of the department of game and fish include two hundred fifty thousand dollars (\$250,000) from the game protection fund for the private landowner sportsman access program contingent on the state game commission promulgating rules establishing the conservation and access validation fee.

The internal service funds/interagency transfers appropriation to the sport hunting and fishing program of the department of game and fish in the personal services and employee benefits category includes five hundred fifty-five thousand dollars (\$555,000) from the game protection fund for salary increases. Any salary adjustments will be based on a proficiency and capability compensation plan as outlined within the state game and fish compensation plan developed by the department of game and fish, in conjunction with the state personnel office.

Performance measures:

- (a) Outcome: Percent of angler opportunity and success 80%
- (b) Outcome: Number of days of elk hunting opportunity provided to New Mexico resident hunters on an annual basis 165,000
- (c) Outcome: Percent of public hunting licenses drawn by New Mexico resident hunters 80%
- (d) Output: Annual output of fish from the department's hatchery

system, in pounds 400,000

(2) Conservation services:

The purpose of the conservation services program is to provide information and technical guidance to any person wishing to conserve and enhance wildlife habitat and recover indigenous species of threatened and endangered wildlife.

Appropriations:

(a) Personal services and

employee benefits 179.6 576.3 1,468.8 2,224.7

(b) Contractual services

244.4 418.6 663.0

(c) Other

1,554.5 708.2 2,262.7

Authorized FTE: 32.00 Permanent; 8.00 Term; .50 Temporary

The internal service funds/interagency transfers appropriation to the conservation services program of the department of game and fish in the personal services and employee benefits category includes one hundred eight thousand dollars (\$108,000) from the game protection fund for salary increases. Any salary adjustments will be based on a proficiency and capability compensation plan as outlined within the state game and fish compensation plan developed by the department of game and fish, in conjunction with the state personnel office.

Performance measures:

(a) Output: Number of threatened and endangered species monitored,

studied or involved in the recovery plan process 35

(b) Outcome: Number of wildlife areas opened for access under the

gaining access into nature project 2

(c) Outcome: Number of acres of wildlife habitat conserved, enhanced or

positively affected statewide 100,000

(3) Wildlife depredation and nuisance abatement:

The purpose of the wildlife depredation and nuisance abatement program is to provide complaint administration and intervention processes to private landowners, leaseholders and other New Mexicans so they may be relieved of and precluded from property damage, annoyances or risks to public safety caused by protected wildlife.

Appropriations:

(a)	Personal services and employee benefits	277.9	277.9
(b)	Contractual services	179.7	179.7
(c)	Other	499.1	499.1

Authorized FTE: 5.00 Permanent

The internal service funds/interagency transfers appropriation to the wildlife depredation and nuisance abatement program of the department of game and fish in the personal services and employee benefits category includes twenty-one thousand dollars (\$21,000) from the game protection fund for salary increases. Any salary adjustments will be based on a proficiency and capability compensation plan as outlined within the state game and fish compensation plan developed by the department of game and fish, in conjunction with the state personnel office.

Performance measures:

- (a) Outcome: Percent of depredation complaints resolved within the
mandated one-year timeframe 95%

(4) Program support:

The purpose of program support is to provide an adequate and flexible system of direction, oversight, accountability and support to all divisions so they may successfully attain planned outcomes for all department programs.

Appropriations:

(a)	Personal services and employee benefits	3,700.7	77.0	3,777.7
(b)	Contractual services	546.5	228.8	775.3
(c)	Other	2,074.8	179.2	2,254.0

Authorized FTE: 57.00 Permanent; 2.00 Term

The internal service funds/interagency transfers appropriation to the program support program of the department of game and fish in the personal services and employee benefits category includes two hundred ninety-one thousand dollars (\$291,000) from the game protection fund for salary increases. Any salary adjustments will be based on a proficiency and capability compensation plan as outlined within the state game and fish compensation plan developed by the department of game and fish in conjunction with the state personnel office.

Subtotal 30,215.7

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:

(1) Renewable energy and energy efficiency:

The purpose of the renewable energy and energy efficiency program is to develop and implement clean energy programs in order to decrease per capita energy consumption, utilize New Mexico's substantial renewable energy resources, minimize local, regional and global air emissions, lessen dependence on foreign oil and reduce in-state water demands associated with fossil-fueled electrical generation.

Appropriations:

(a)	Personal services and				
	employee benefits	616.9		229.4	846.3
(b)	Contractual services	3.9		1,601.9	1,605.8
(c)	Other	4.2	139.8	144.0	
(d)	Other financing uses		500.0		500.0

Authorized FTE: 9.00 Permanent; 2.00 Term

Performance measures:

- (a) Outcome: Percent reduction in energy use in public facilities
receiving efficiency retrofit projects 5%
- (b) Outcome: Percent decrease in gasoline consumption by state and local
government fleets through the application of alternative
transportation fuel technologies 15%
- (c) Explanatory: Annual utility costs for state-owned buildings, in thousands \$13,708

(2) Healthy forests:

The purpose of the healthy forests program is to promote the health of New Mexico's forest lands by managing wildfires, mitigating urban interface fire threats and providing stewardship of private and state forest lands and associated watersheds.

Appropriations:

(a)	Personal services and				
	employee benefits	2,385.3	155.7	20.0	1,005.1 3,566.1

(b)	Contractual services	123.2		2.0	1,022.9	1,148.1
(c)	Other	496.0	60.0	427.5	3,307.3	4,290.8
(d)	Other financing uses			449.5		449.5

Authorized FTE: 54.00 Permanent; 11.00 Term

Performance measures:

(a) Output: Number of fire and insect vulnerability assessments and number of implemented mitigation programs in high-risk communities 47 of 217

(b) Output: Number of nonfederal wildland firefighters provided with technical fire training appropriate to their incident command system 500

(3) State parks:

The purpose of the state parks program is to create the best recreational opportunities possible in state parks by preserving cultural and natural resources, continuously improving facilities and providing quality, fun activities and to do it all efficiently.

Appropriations:

(a)	Personal services and employee benefits	7,976.3	3,424.4	282.6	11,683.3	
(b)	Contractual services	212.7	174.5	4,350.0	4,737.2	
(c)	Other	1,252.5	3,524.2	2,512.7	1,257.2	8,546.6
(d)	Other financing uses			2,512.7	2,512.7	

Authorized FTE: 229.00 Permanent; 6.00 Term; 48.00 Temporary

The general fund appropriation to the state parks program of the energy, minerals and natural resources department in the other costs category includes twenty-five thousand dollars (\$25,000) for Sierra county regional dispatch participation.

The general fund appropriation to the state parks program of the energy, minerals and natural resources department in the personal services and employee benefits category includes six thousand dollars (\$6,000) for a trails coordinator.

The federal funds appropriation to the state parks program of the energy, minerals and natural resources department in the personal services and employee benefits category includes thirty-four thousand two hundred dollars (\$34,200) for a trails coordinator.

Performance measures:

- (a) Outcome: Percent completion of new parks and park expansion projects 45%
- (b) Output: Number of interpretive programs available to park visitors 2,500
- (c) Explanatory: Number of visitors to state parks 4,000,000
- (d) Explanatory: Self-generated revenue per visitor, in dollars \$0.86

(4) Mine reclamation:

The purpose of the mine reclamation program is to implement the state laws that regulate the operation and reclamation of hard rock and coal mining facilities and to reclaim abandoned mine sites.

Appropriations:

(a)	Personal services and				
	employee benefits	324.5	648.8	1,179.4	2,152.7
(b)	Contractual services	11.0	27.2	1,167.8	1,206.0
(c)	Other	51.9	97.9	164.6	314.4
(d)	Other financing uses		773.9		773.9

Authorized FTE: 16.00 Permanent; 15.00 Term

Performance measures:

- (a) Output: Number of inspections conducted per year to ensure mining is being conducted in compliance with approved permits and regulations 300

- (b) Explanatory: Number of abandoned mines safeguarded 120

(5) Oil and gas conservation:

The purpose of the oil and gas conservation program is to assure the conservation and responsible development of oil and gas resources through professional and dynamic regulation.

Appropriations:

(a)	Personal services and				
	employee benefits	3,386.4	80.0	198.9	3,665.3
(b)	Contractual services	80.9	1,200.0		1,280.9
(c)	Other	527.8	12.4	540.2	
(d)	Other financing uses		1,200.0	105.0	1,305.0

Authorized FTE: 61.00 Permanent; 2.00 Term

Performance measures:

- (a) Outcome: Percent of inventoried orphaned wells plugged 30%
- (b) Output: Number of orphan wells plugged 60
- (c) Output: Number of inspections of oil and gas wells and associated facilities 25,750

(6) Program leadership and support:

The purpose of program leadership and support is to provide leadership, set policy and provide support for every division in achieving goals.

Appropriations:

(a)	Personal services and				
	employee benefits	2,895.9	50.0	243.3	3,189.2
(b)	Contractual services	23.7		5.8	29.5
(c)	Other	140.9	1.5	209.5	351.9
(d)	Other financing uses			1,522.5	1,522.5

Authorized FTE: 45.00 Permanent; 3.00 Term

Subtotal 56,361.9

YOUTH CONSERVATION CORPS:

The purpose of the youth conservation corps program is to provide funding for the employment of New Mexicans from the ages of fourteen through twenty-five to work on projects that will improve New Mexico's natural, cultural, historical and agricultural resources.

Appropriations:

(a)	Personal services and employee benefits	126.3	126.3
(b)	Contractual services	2,175.9	2,175.9
(c)	Other	47.8	47.8
(d)	Other financing uses	50.0	50.0

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Number of projects funded in a year that improve New Mexico's natural resources and provide lasting community benefits 40

(b) Output: Number of youth employed annually 625

(c) Output: Number of cash bonuses and tuition vouchers awarded 15

Subtotal 2,400.0

COMMISSIONER OF PUBLIC LANDS:

(1) Land trust stewardship:

The purpose of the land trust stewardship program is to generate sustainable revenue from state trust lands to support public education and other beneficiary institutions and to build partnerships with all New Mexicans to conserve, protect and maintain the highest level of stewardship for these lands so that they may be a significant legacy for generations to come.

Appropriations:

(a)	Personal services and employee benefits	9,303.9	9,303.9
(b)	Contractual services	309.2	309.2
(c)	Other	2,677.5	2,677.5
(d)	Other financing uses	519.0	519.0

Authorized FTE: 155.00 Permanent

The other state funds appropriation to the commissioner of public lands includes five hundred thousand dollars (\$500,000) for asset inventory, forest health and other necessary remediation projects for state trust lands, royalty recovery litigation costs and inventory, preservation and protection of trust water assets.

Performance measures:

(a) Output:	Total trust revenue generated, in millions	\$240.1
(b) Outcome:	Dollars generated through oil, natural gas and mineral audit activities, in millions	\$5.0
(c) Output:	Average income per acre from oil, natural gas and mineral activities	\$20.00
(d) Output:	Average income per acre from agriculture leasing activities	\$0.85
(e) Output:	Average income per acre from commercial leasing activities	\$15.00
Subtotal		12,809.6

STATE ENGINEER:

(1) Water resource allocation:

The purpose of the water resource allocation program is to provide for the administration, distribution, protection, conservation and development of the state's available surface and underground water resources so all New Mexicans can maintain their quality of life.

Appropriations:

(a)	Personal services and employee benefits	7,350.6	368.4	7,719.0	
(b)	Contractual services	20.6	1.3	461.7	483.6
(c)	Other	623.3	86.4	138.3	848.0

Authorized FTE: 135.00 Permanent

The internal services funds/interagency transfers appropriation to the water resource allocation program of the state engineer includes six hundred thousand dollars (\$600,000) from the improvement of the Rio Grande income fund.

Performance measures:

(a) Outcome: Percent of applications abstracted into the water

administration technical engineering resource system

database 50%

(b) Output: Average number of untested new and pending applications

processed per month 75

(c) Output: Average number of protested and aggrieved applications

processed per month 12

(d) Explanatory: Number of untested and unaggrieved water right

applications backlogged 600

(e) Explanatory: Number of protested and aggrieved water rights backlogged 175

(2) Interstate stream compact compliance and water development:

The purpose of the interstate stream compact compliance and water development program is to provide resolution of federal and interstate water issues and to develop water resources and stream systems for the people of New Mexico so they can have maximum sustained beneficial use of available water resources.

Appropriations:

(a) Personal services and

employee benefits	2,915.2	110.0	3,025.2
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(b) Contractual services	25.0	4,273.8	4,298.8
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(c) Other	129.9	77.4	2,590.0	2,797.3
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Authorized FTE: 45.00 Permanent

The internal services funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include five million one hundred thirty-eight thousand eight hundred dollars (\$5,138,800) from the irrigation works construction fund. Of this amount two million five hundred forty-eight thousand eight hundred dollars (\$2,548,800) is in the contractual services category and two million five hundred ninety thousand dollars (\$2,590,000) is in the other category.

The internal services funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer in the contractual service category includes one million six hundred twenty-five thousand dollars (\$1,625,000) from the improvement of the Rio Grande income fund.

The internal services funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer includes one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operation. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 from this appropriation shall revert to the game protection fund.

Revenue from the sale of water to United States government agencies by New Mexico for the emergency drought water agreement dated April 2003, which expires February 28, 2013, and from contractual reimbursements associated with state engineer use of the revenue is appropriated to the state engineer for the conservation and recovery of the listed species in the middle Rio Grande basin, including the optimizing of middle Rio Grande conservancy district operations.

Revenue from the sale of water to United States government agencies by New Mexico resulting from litigation settlement between New Mexico and the United States implemented by the conservation water agreement dated June 29, 2001, and from contractual reimbursements associated with state engineer use of the revenue is appropriated to the state engineer for use as required by the conservation water agreement.

Performance measures:

- (a) Outcome: Cumulative state-line delivery credit per the Pecos river compact and amended decree at the end of a calendar year 0
- (b) Outcome: Rio Grande compact accumulated delivery credit at the end of a calendar year 0

(3) Litigation and adjudication:

The purpose of the litigation and adjudication program is to obtain a judicial determination and definition of water rights within each stream system and underground basin to effectively perform water rights administration and meet interstate stream obligations.

Appropriations:

(a)	Personal services and			
	employee benefits	4,569.1		4,569.1
(b)	Contractual services	50.0	1,670.0	1,720.0
(c)	Other	186.3	171.0	357.3

Authorized FTE: 75.00 Permanent

Performance measures:

- (a) Outcome: Number of offers to defendants in adjudications 2,200

(b) Outcome: Percent of all water rights that have judicial

determinations 30%

(4) Program support:

The purpose of program support is to provide necessary administrative support to the agency programs so they may be successful in reaching their goals and objectives.

Appropriations:

(a)	Personal services and			
	employee benefits	2,843.3		2,843.3
(b)	Contractual services	54.7	200.0	254.7
(c)	Other	289.1	218.0	507.1

Authorized FTE: 41.00 Permanent

(5) New Mexico irrigation works construction fund:

Appropriations:

(a)	Other financing uses	3,931.3	3,466.5	7,397.8
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The appropriations to the irrigation works construction program of the state engineer include (1) one million nine hundred thousand dollars (\$1,900,000) to match seventeen and one-half percent of the cost of work undertaken by the United States army corps of engineers pursuant to the Federal Water Resources Development Act of 1986, provided that no amount of this appropriation shall be expended for any project unless the appropriate acequia system or community ditch has agreed to provide seven and one-half percent of the cost from any source other than the irrigation works construction fund or improvement of the Rio Grande income fund and provided that no more than two hundred fifty thousand dollars (\$250,000) shall be expended on one acequia per fiscal year; and for the construction, improvement, repair and protection from floods of dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state through the interstate stream commission eighty-twenty program, provided that no more than one hundred twenty thousand dollars (\$120,000) of this appropriation shall be used for any one community ditch and that no state funds other than loans may be used to meet the association's twenty percent share of the total cost of the project; and (2) two hundred fifty thousand dollars (\$250,000) for planning, design, supervision of construction and construction of approved acequia improvement projects in cooperation with the United States department of agriculture, United States department of the interior, United States department of the army or other engineers. The state engineer may enter into cooperative agreements with owners or commissioners of ditch associations to ensure that the work is done in the most efficient and economical manner and may contract with the federal government or any of its agencies or instrumentalities that provide matching funds or assistance.

The appropriations to the irrigation works construction program of the state engineer include 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 on Indian land, whether pueblo or reservation.

The interstate stream commission's authority to make loans for irrigation improvements includes five hundred thousand dollars (\$500,000) for loans to acequia, irrigation and conservancy districts. The interstate stream commission's authority also includes five hundred thousand dollars (\$500,000) for loans to irrigation districts, conservancy districts and soil and water conservation districts for re-loan to farmers for implementation of water conservation improvements.

(6) Debt service fund:

Appropriations:

(a)	Other financing uses	270.0	270.0
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(7) IWCF/IRGF income funds:

Appropriations:

(a)	Other financing uses	6,150.0	6,150.0
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(8) Improvement of the Rio Grande fund:

Appropriations:

(a)	Other financing uses	1,092.6	1,132.4	2,225.0
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The general fund and other state funds appropriations to the state engineer in the contractual services category are contingent upon the state engineer including performance measures in its contracts to increase contract oversight and accountability. The appropriations are further contingent on the preparation and presentation of a report on contractors' purposes and performance compliance to the legislative finance committee prior to October 1, 2005.

Subtotal	45,466.2
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ORGANIC COMMODITY COMMISSION:

(1) New Mexico organic:

The purpose of the New Mexico organic program is to provide consumers of organic products in New Mexico with credible assurance about the veracity of organic claims made and to enhance the development of local economies tied to agriculture, through rigorous regulatory oversight of the organic industry in New Mexico and through ongoing educational and market assistance projects.

Appropriations:

(a)	Personal services and			
	employee benefits	209.3		209.3
(b)	Contractual services	7.5	32.0	39.5
(c)	Other	67.4	56.0	123.4

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Outcome: Percent increase in New Mexico organic market as measured

by clients' gross sales of organic products 10%

(b) Output: Number of residue tests performed 20

(c) Output: Number of client requests for assistance 400

Subtotal 372.2

TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES	67,560.0	41,904.8	50,152.6	30,348.8
189,966.2				

F. HEALTH, HOSPITALS AND HUMAN SERVICES

COMMISSION ON THE STATUS OF WOMEN:

(1) Status of women:

The purpose of the status of women program is to provide information, public events, leadership, support services and career development to individuals, agencies and women's organizations so they can improve the economic, health and social status of women in New Mexico.

Appropriations:

(a) Personal services and

employee benefits	323.3	123.5	446.8
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(b) Contractual services 18.2 1,002.7 1,020.9

(c) Other 123.3 367.5 490.8

Authorized FTE: 7.00 Permanent; 7.00 Term

The internal services funds/interagency transfers appropriations to the commission on the status of women include one million four hundred forty thousand dollars (\$1,440,000) for the teamworks program directed toward workforce development for adult women on temporary assistance for needy families from the federal block grant funding to New Mexico and fifty-three thousand seven hundred dollars (\$53,700) from the commission on the status of women conference fund to host the governor's award for outstanding New Mexico women, the pioneer award, the trailblazer award and various conference booths.

Revenue collected for ticket sales in excess of expenses for conferences, awards programs, seminars and summits shall not revert.

Performance measures:

(a) Outcome: Number of paid employment teamworks placements 250

(b) Outcome: Percent of teamworks participants employed at nine months
after initial employment placement 70%

(c) Output: Number of temporary assistance for needy families clients
served through the teamworks program 950

Subtotal 1,958.5

OFFICE OF AFRICAN AMERICAN AFFAIRS:

(1) Public awareness:

The purpose of the public awareness program is to provide information and advocacy services to all New Mexicans and to empower African-Americans of New Mexico to improve their quality of life.

Appropriations:

(a)	Personal services and		
	employee benefits	225.9	225.9
(b)	Contractual services	107.4	107.4
(c)	Other	87.8	87.8

Authorized FTE: 3.00 Permanent

The general fund appropriation to the public awareness program of the office of African American affairs in the contractual services category includes twenty-five thousand dollars (\$25,000) to continue the research and assistance activities initiated under the joint powers agreement with the division of vocational rehabilitation of the public education department.

Subtotal 421.1

COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS:

(1) Deaf and hard-of-hearing:

The purpose of the deaf and hard-of-hearing program is to provide advocacy, outreach, referral and education and to oversee the New Mexico telecommunications relay network for deaf and hard-of-hearing citizens, government agencies, institutions, businesses and hearing individuals affiliated with those who have a hearing loss so they may become more aware of accessibility and services available and have equal access to telecommunications services.

Appropriations:

(a)	Personal services and employee benefits		636.9	636.9
(b)	Contractual services		2,464.1	2,464.1
(c)	Other	348.4	348.4	
(d)	Other financing uses		146.5	146.5

Authorized FTE: 11.00 Permanent; 2.00 Term

The internal service funds/interagency transfers appropriation to the deaf and hard-of-hearing program of the commission for deaf and hard-of-hearing persons in the other financing uses category includes one hundred forty-six thousand five hundred dollars (\$146,500) to transfer to the rehabilitation services program of the division of vocational rehabilitation to match with federal funds to provide deaf and hard-of-hearing rehabilitation services.

Performance measures:

(a) Output:	Number of clients served	5,244
Subtotal		3,595.9

MARTIN LUTHER KING, JR. COMMISSION:

The purpose of the Martin Luther King, Jr. Commission is to promote Martin Luther King, Jr.'s nonviolent principles and philosophy to the people of New Mexico through remembrance, celebration and action so that everyone gets involved in making a difference toward the improvement of interracial cooperation and reduction of youth violence in our communities.

Appropriations:

(a)	Personal services and employee benefits	131.9	131.9
(b)	Contractual services	13.8	13.8
(c)	Other	109.7	109.7

Authorized FTE: 2.00 Permanent

Subtotal	255.4
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COMMISSION FOR THE BLIND:

(1) Blind services:

The purpose of the blind services program is to assist blind or visually impaired citizens of New Mexico to achieve economic and social equality so they can have independence based on their personal interests and abilities.

Appropriations:

(a)	Personal services and				
	employee benefits	810.0	791.9	2,901.2	4,503.1
(b)	Contractual services	44.2		163.2	207.4
(c)	Other	696.9	400.0	2,263.7	3,360.6

Authorized FTE: 106.50 Permanent; 1.00 Term

Any unexpended or unencumbered balances in the commission for the blind remaining at the end of fiscal year 2006 from appropriations made from the general fund shall not revert.

Performance measures:

- (a) Output: Number of quality employment opportunities for blind or visually impaired consumers 35
- (b) Output: Number of blind or visually impaired consumers trained in the skills of blindness to enable them to live independently in their homes and communities 400
- (c) Outcome: Average employment wage for the blind or visually impaired person \$11
- (d) Output: Number of employment opportunities provided for blind business entrepreneurs in different vending and food facilities through the business enterprise program 32

Subtotal 8,071.1

INDIAN AFFAIRS DEPARTMENT:

(1) Indian affairs:

The purpose of the Indian affairs program is to serve as the coordinating body between state government and tribal government for New Mexico Indian tribes so they can address issues pertaining to health, economy, legislation and social issues in the most efficient way.

Appropriations:

(a)	Personal services and		
	employee benefits	917.1	917.1
(b)	Contractual services	362.8	362.8
(c)	Other	1,091.8	1,091.8

Authorized FTE: 13.00 Permanent

Performance measures:

- (a) Output: Percent of employee files that contain performance appraisal development plans that were completed by the employee's anniversary date 100%
- (b) Outcome: Number of audit findings 0
- (c) Output: Number of capital projects over fifty thousand dollars that are completed and closed 70
- (d) Output: Number of capital outlay process training sessions conducted for tribes 4
- (e) Output: Percent of grants and service contracts with more than two performance measures 100%

Subtotal 2,371.7

AGING AND LONG-TERM SERVICES DEPARTMENT:

(1) Consumer and elder rights:

The purpose of the consumer and elder rights program is to provide current information, assistance, counseling, education and support to older individuals and persons with disabilities, residents of long-term care facilities and their families and caregivers to allow them to protect their rights and make informed choices about quality service.

Appropriations:

(a)	Personal services and				
	employee benefits	450.3		613.9	1,064.2
(b)	Contractual services	27.1		11.0	38.1
(c)	Other	152.8	218.9	371.7	

Authorized FTE: 10.00 Permanent; 10.00 Term

Performance measures:

(a) Output: Number of client contacts to assist on health, insurance, prescriptions and other programs 30,100

(b) Output: Number of clients who receive assistance to access low- or no-cost prescription drugs through MEDBANK and brownbag events 5,000

(c) Output: Number of resident contacts by ombudsmen 3,990

(2) Aging network:

The purpose of the aging network program is to provide supportive social and nutritional services for older individuals and persons with disabilities so they can remain independent and involved in their communities and to provide training, education and work experience to older individuals so they can enter or re-enter the work force and receive appropriate income and benefits.

Appropriations:

(a)	Personal services and				
	employee benefits	145.8		45.5	191.3
(b)	Other	20,613.6	325.6	7,887.1	28,826.3
(c)	Other financing uses	280.6			280.6

Authorized FTE: 4.00 Term

The general fund appropriation to the aging network program of the aging and long-term services department in the other category includes one million seven hundred thousand dollars (\$1,700,000) for senior services, senior volunteer services, senior employment programs and legal services for senior citizens.

The general fund appropriation to the aging network program of the aging and long-term services department in the other category to supplement the federal Older Americans Act shall be contracted to the designated area agencies on aging.

Performance measures:

- (a) Outcome: Percent of individuals participating in the federal older worker program obtaining unsubsidized, permanent employment 23%
- (b) Outcome: Percent of individuals aged sixty and over served through community services 44%
- (c) Output: Unduplicated number of persons served through community services 140,000
- (d) Output: Number of adult daycare service hours provided 191,100
- (e) Output: Number of hours of respite care provided 123,375

(3) Long-term services:

The purpose of the long-term services program is to administer home- and community-based, long-term service programs that support individuals in the least restrictive environment possible.

Appropriations:

- (a) Personal services and employee benefits 793.3 359.8 55.0 1,208.1
- (b) Contractual services 911.6 2,439.0 1,295.9 4,646.5
- (c) Other 151.5 91.2 242.7

Authorized FTE: 15.00 Permanent; 9.00 Term

The general fund appropriation to the long-term services program of the aging and long-term services department in the personal services and employee benefits category includes three hundred thousand dollars (\$300,000) and five permanent full-time-equivalent positions to maintain zero tolerance of elder abuse.

Performance measures:

- (a) Outcome: Percent of total personal-care option cases that are consumer directed 4%

(b) Outcome: Percent of disabled and elderly medicaid waiver clients who receive services within ninety days of eligibility determination 100%

(c) Output: Number of traumatic brain injury compliance reviews performed annually 10

(4) Adult protective services:

The purpose of the adult protective services program is to receive and investigate referrals of adult abuse and neglect and to provide legal services to vulnerable adults to ensure their safety and well-being.

Appropriations:

(a)	Personal services and			
	employee benefits	6,382.0	566.5	6,948.5
(b)	Contractual services	1,637.7	1,042.5	2,680.2
(c)	Other	2,894.1	1,540.4	4,434.5

Authorized FTE: 164.00 Permanent

The general fund appropriation to the adult protective services program of the aging and long-term services department in the personal services and employee benefits category includes two million dollars (\$2,000,000) to replace federal temporary assistance for needy family block grant funding.

The general fund appropriation to the adult protective services program of the aging and long-term services department in the other category includes five hundred fifty-five thousand dollars (\$555,000) for program operating costs.

Performance measures:

(a) Outcome: Percent of adults with repeat maltreatment 10.8%

(5) Program support:

The purpose of program support is to provide clerical, record keeping and administrative support in the areas of personnel, budget, procurement and contracting to agency staff, outside contractors and external control agencies to implement and manage programs.

Appropriations:

(a)	Personal services and				
	employee benefits	1,451.7	102.0	526.5	2,080.2

(b)	Contractual services	80.0	1.0	15.6	96.6
(c)	Other	211.2	71.4	46.6	329.2

Authorized FTE: 30.00 Permanent; 5.00 Term

Subtotal 53,438.7

HUMAN SERVICES DEPARTMENT:

(1) Medical assistance:

The purpose of the medical assistance program is to provide the necessary resources and information to enable low-income individuals to obtain either free or low-cost health care.

Appropriations:

(a)	Personal services and employee benefits	3,727.5	184.8	4,520.8	8,433.1	
(b)	Contractual services	6,320.9	399.0	905.0	27,390.6	35,015.5
(c)	Other	543,019.8	45,436.9	90,030.0	1,835,800.8	2,514,287.5
(d)	Other financing uses	16,493.3	6.2	58,987.5	75,487.0	

Authorized FTE: 131.00 Permanent

Notwithstanding any general restrictions in the General Appropriations Act of 2005 or in Section 27-5-7 NMSA 1978 regarding fund transfers, the medical assistance division may receive interagency, intergovernmental transfers and bona fide donations for the purpose of matching medicaid funds to implement the health insurance flexibility and accountability waiver program. ~~[It is the intent of the legislature that such funds should not supplant local funds used to support the sole community provider hospital fund and local primary care clinics, and that transfers from counties are to be expended proportionally in participating counties based on the amounts transferred from each county.]~~ Such funds transferred pursuant to this authorization are hereby appropriated to the medical assistance program.*[LINE-ITEM VETO]*

Performance measures:

- (a) Outcome: Percent of children enrolled in medicaid managed care who have a dental exam within the performance measure year 90%
- (b) Outcome: Percent of readmissions to the same level of care or higher for individuals in managed care discharged from resident treatment centers 15%

- (c) Outcome: Number of children receiving services in the medicaid school-based services program 16,000
- (d) Outcome: Percent of children in medicaid managed care receiving early and periodic screening, diagnosis and treatment services 80%
- (e) Outcome: Percent of adolescents in medicaid managed care receiving well-care visits 50%
- (f) Outcome: Percent of women enrolled in medicaid managed care and in the age-appropriate group receiving breast cancer screens 70%
- (g) Outcome: Percent of women enrolled in medicaid managed care and in the age-appropriate group receiving cervical cancer screens 75%

(2) Income support:

The purpose of the income support program is to provide cash assistance and supportive services to eligible low-income families so they can achieve self-sufficiency.

Appropriations:

(a)	Personal services and				
	employee benefits	15,155.6		23,734.6	38,890.2
(b)	Contractual services	3,787.0		22,883.1	26,670.1
(c)	Other	24,615.8	2,164.9	378,749.4	405,530.1
(d)	Other financing uses			37,608.3	37,608.3

Authorized FTE: 936.00 Permanent

The appropriations to the income support program of the human services department include thirteen million two hundred thousand dollars (\$13,200,000) 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 fourteen million nine hundred twenty-five thousand two hundred dollars (\$14,925,200) from the general fund and sixty million four hundred twenty-four thousand eight hundred dollars (\$60,424,800) from the federal temporary assistance for needy families block grant to provide cash assistance grants to participants as

defined in the New Mexico Works Act, including education grants, clothing allowances, wage subsidies, disregard pass through payments, one-time diversion payments and state-funded aliens payments.

The appropriations to the income support program of the human services department include two hundred fifty thousand dollars (\$250,000) from the general fund and eleven million seven hundred twenty-five thousand dollars (\$11,725,000) from the federal temporary assistance for needy families block grant for support services, including nine million three hundred thousand dollars (\$9,300,000) for job training and placement, four hundred twenty-five thousand dollars (\$425,000) for employment related costs, eight hundred thousand dollars (\$800,000) for transportation services, four hundred thousand dollars (\$400,000) for a family-strengthening and fatherhood program, eight hundred thousand dollars (\$800,000) for substance abuse programs and two hundred fifty thousand dollars (\$250,000) from the general fund for Navajo and Zuni programs.

The appropriations to the income support program of the human services department include thirty-six million seven hundred fifty-nine thousand three hundred dollars (\$36,759,300) from the temporary assistance for needy families block grant for transfers to other agencies, including thirty-two million two hundred nineteen thousand three hundred dollars (\$32,219,300) to the children, youth and families department for childcare programs, two million six hundred thousand dollars (\$2,600,000) to the children, youth and families department for domestic violence programs, one million four hundred forty thousand dollars (\$1,440,000) to the commission on the status of women for the teamworks program, and five hundred thousand dollars (\$500,000) to the aging and long term care services department for the gold mentor program.

The two hundred fifty thousand dollar (\$250,000) disbursement from the general fund to the Navajo and Zuni temporary assistance for needy families programs is contingent on the presidents of the respective Indian nations submitting an increase in services plan to the secretary of the department of finance and administration. It is further contingent on approval by the board of finance and review by the legislative finance committee.

The appropriations to the income support program of the human services department include four million five hundred sixty-five thousand five hundred dollars (\$4,565,500) from the general fund and five hundred thousand dollars (\$500,000) from other state funds for general assistance.

The appropriations to the income support program of the human services department include five hundred thousand dollars (\$500,000) from the general fund to implement a supplemental food stamp program for the elderly contingent on enactment of Senate Bill 112 or similar legislation of the first session of the forty-seventh legislature.

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.

The federal funds appropriation to the income support program of the human services department includes five million dollars (\$5,000,000) prior year carry-over from the federal temporary assistance for needy families block grant. If some or any part of this fund balance is unavailable, then an amount equal to the unavailable portion up to a maximum of five million dollars (\$5,000,000) may be transferred from the appropriation contingency fund to the income support program of the human services department after certification to and approval by the board of finance.

Performance measures:

- (a) Outcome: Percent of temporary assistance for needy families participants who retain a job three or more months 70%
- (b) Outcome: Percent of all temporary assistance for needy families recipients meeting federally required work participation requirements 50%
- (c) Outcome: Percent of food-stamp-eligible children participating in the program 90%
- (d) Outcome: Percent of expedited food stamp cases meeting the federally required measure of timeliness within seven days 96%
- (e) Outcome: Number of temporary assistance for needy families cash assistance recipients who receive a job 9,250

(3) Child support enforcement:

The purpose of the child support enforcement program is to provide location, establishment and collection services for custodial parents and their children to ensure that all court orders for support payments are being met to maximize child support collections and to reduce public assistance rolls.

Appropriations:

- (a) Personal services and employee benefits 3,863.4 2,344.3 11,022.1 17,229.8
- (b) Contractual services 4,069.2 8,012.1 12,081.3
- (c) Other 816.4 2,344.4 4,370.9 7,531.7

Authorized FTE: 387.00 Permanent

Performance measures:

- (a) Outcome: Percent of temporary assistance for needy families' cases with court-ordered child support receiving collections 58%
- (b) Outcome: Amount of child support collected, in millions of dollars \$88
- (c) Outcome: Percent of current support owed that is collected 60%

- (d) Outcome: Percent of cases with support orders 60%
- (e) Outcome: Percent of children born out-of-wedlock with voluntary paternity acknowledgment 60%
- (f) Outcome: Percent of children with court-ordered medical support covered by private health insurance 30%

(4) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program and to assist in achieving its programmatic goals.

Appropriations:

- (a) Personal services and employee benefits 3,719.4 1,046.0 7,204.1 11,969.5
- (b) Contractual services 344.3 731.7 1,076.0
- (c) Other 788.5 1,000.0 3,075.5 4,864.0
- (d) Other financing uses 44.8 95.2 140.0

Authorized FTE: 213.00 Permanent

Performance measures:

- (a) Quality: Percent of federal financial reporting completed on time and accurately 100%
- (b) Outcome: Percent of fund reconciliations completed thirty days after receipt of accurate monthly reports from the department of finance and administration, human services department joint accounting system and the state treasurer's office 100%
- (c) Outcome: Percent of invoices paid within thirty days of receipt of invoice 100%
- (d) Outcome: Percent of fiscal year 2004 audit finding resolved within

the next fiscal year 100%

(e) Outcome: Percent of fiscal year 2005 audit findings that are
material weaknesses 0%

(f) Outcome: Number of active office of inspector general claims over
thirty-six months old 0

(g) Outcome: Percent of reconciling items resolved within fifteen days
of completion of reconciliation 95%

Subtotal 3,196,814.1

LABOR DEPARTMENT:

(1) Operations:

The purpose of the operations program is to provide workforce development and labor market services that meet the needs of job seekers and employers.

Appropriations:

(a)	Personal services and employee benefits	1,194.9	7,996.3	9,191.2
(b)	Contractual services	32.3	215.8	248.1
(c)	Other	458.0	2,912.0	3,370.0
(d)	Other financing uses	2.8	18.6	21.4

Authorized FTE: 184.00 Permanent; 39.00 Term; 3.00 Temporary

The federal funds appropriations to the operations program of the labor department include three million one hundred eighty-seven thousand five hundred dollars (\$3,187,500) from the Economic Security and Recovery Act of 2001 (H.R. 3090) and Section 903 of the Social Security Act, as amended, also known as Reed Act funds, for the administration of employment services and unemployment insurance programs.

Performance measures:

(a) Outcome: Number of individuals served by labor market services who
found employment 52,000

(b) Outcome: Percent of status determinations for newly established employers made within ninety days of the quarter's end 90%

(c) Explanatory: Number of persons served by the labor market services program 172,000

(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.

Appropriations:

(a)	Personal services and employee benefits	620.4	550.2	516.2	183.7	1,870.5
(b)	Contractual services	5.2	4.6	4.3	1.5	15.6
(c)	Other	205.1	181.9	170.7	60.7	618.4
(d)	Other financing uses	.3	.3	.3	.1	1.0

Authorized FTE: 41.00 Permanent

The internal services funds/interagency transfers appropriation to the compliance program of the labor department in the contractual services category includes six hundred ninety-one thousand five hundred dollars (\$691,500) from the workers' compensation administration fund.

Performance measures:

(a) Output: Number of targeted public works inspections completed 1,775

(b) Outcome: Percent of wage claims investigated and resolved within one hundred twenty days 95%

(c) Efficiency: Number of backlogged human rights commission hearings pending20

(d) Efficiency: Percent of discrimination cases settled through alternative dispute resolution 75%

(e) Efficiency: Average number of days for completion of discrimination

investigations and determinations 145

(f) Output: Annual collections of apprentice contributions for public
works projects \$850,000

(3) Unemployment administration:

The purpose of the unemployment administration program is to provide payment of unemployment insurance benefits to qualified individuals who have lost their jobs through no fault of their own so that they may maintain economic stability and continue their livelihood while seeking employment and collect unemployment taxes from employers.

Appropriations:

(a)	Personal services and employee benefits			7,341.5	7,341.5
(b)	Contractual services			693.5	693.5
(c)	Other	2,007.8		2,007.8	
(d)	Other financing uses			3.6	3.6

Authorized FTE: 180.00 Permanent; 5.00 Term

The federal funds appropriations to the unemployment administration program of the labor department include one million seventy-three thousand two hundred dollars (\$1,073,200) from the Economic Security and Recovery Act of 2001 (H.R. 3090) and Section 903 of the Social Security Act, as amended, also known as Reed Act funds, for the administration of employment services and unemployment insurance programs.

(4) Support:

The purpose of the support program is to provide overall leadership, direction and administrative support to each agency program to assist in achieving its programmatic goals.

Appropriations:

(a)	Personal services and employee benefits	766.4	319.7	5,449.0	6,535.1
(b)	Contractual services	125.2	52.2	889.9	1,067.3
(c)	Other	240.2	100.2	1,707.5	2,047.9
(d)	Other financing uses	6.4	2.6	45.3	54.3

Authorized FTE: 111.00 Permanent; 7.00 Term

The federal funds appropriations to the support program of the labor department include one million seven hundred five thousand two hundred dollars (\$1,705,200) from the Economic Security and Recovery Act of 2001 (H.R. 3090) and Section 903 of the Social Security Act, as amended, also known as Reed Act funds, for the administration of employment services and unemployment insurance programs.

Performance measures:

(a) Outcome: Error rate for forecasting employment data +/-2%

(5) Office of workforce training and development:

The purpose of the office of workforce training and development program is to provide workforce development services that meet the needs of job seekers and employers and to provide resources to job training entities so that they may train and re-train individuals seeking work or improved employment opportunities.

Appropriations:

(a)	Personal services and employee benefits	1,940.8	1,940.8
(b)	Contractual services	350.0	350.0
(c)	Other	1,869.1	1,869.1
(d)	Other financing uses	3.0	3.0

Authorized FTE: 37.00 Permanent; 1.00 Temporary

Performance measures:

(a) Outcome: Percent of adults receiving workforce development services who have entered employment within one quarter of leaving job training services 78%

(b) Outcome: Percent of all local Workforce Investment Act boards monitored a minimum of once a year to ensure compliance with all federal and state fiscal and program requirements 100%

(c) Outcome: Percent of youth receiving workforce development services who have entered employment within one quarter of leaving

the program 70%

(d) Outcome: Percent of dislocated workers receiving workforce development services who have entered employment within one quarter of leaving the program 85%

(e) Output: Number of individuals in the adult, dislocated worker and youth programs receiving services through the federal Workforce Investment Act 8,800

(6) At-risk youth:

Appropriations:

(a)	Other	800.0	800.0
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The general fund appropriation to the at-risk youth program of the labor department in the other category includes one hundred thousand dollars (\$100,000) to expand the at-risk program in Bernalillo county.

(7) Local WIA board fund:

Appropriations:

(a)	Other	18,004.0	18,004.0
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Subtotal		58,054.1	
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WORKERS' COMPENSATION ADMINISTRATION:

(1) Workers' compensation administration:

The purpose of the workers' compensation administration program is to arbitrate and administer the workers' compensation system to maintain a balance between workers' prompt receipt of statutory benefits and reasonable costs for employers.

Appropriations:

(a)	Personal services and employee benefits	7,500.5	7,500.5
(b)	Contractual services	892.3	892.3
(c)	Other	1,304.1	1,304.1

Authorized FTE: 134.00 Permanent

Performance measures:

- (a) Outcome: Percent of formal claims resolved without trial 85%
- (b) Output: Number of first reports of injury processed 40,500
- (c) Output: Number of reviews of employers to ensure the employer has
workers' compensation insurance 3,500

(2) Uninsured employers' fund:

Appropriations:

(a)	Contractual services		100.0		100.0
(b)	Other	650.0		650.0	
Subtotal				10,446.9	

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitation services:

The purpose of the rehabilitation services program is to promote opportunities for people with disabilities to become more independent and productive by empowering individuals with disabilities so that they may maximize their employment, economic self-sufficiency, independence and inclusion and integration into society.

Appropriations:

(a)	Personal services and employee benefits	1,760.3	20.0	427.4	8,780.5	10,988.2
(b)	Contractual services	186.4	1.4	68.5	680.2	936.5
(c)	Other	3,823.1	33.6	223.1	14,240.1	18,319.9
(d)	Other financing uses	.4			2.0	2.4

Authorized FTE: 186.00 Permanent; 26.00 Term

The division of vocational rehabilitation may apply an indirect cost rate of up to five percent of the general fund appropriation for the independent living program for administering and monitoring independent living projects and may use the general fund appropriation for the independent living program to provide the required state match for the federal independent living grant.

The general fund appropriation to the rehabilitation services program of the division of vocational rehabilitation in the personal services and employee benefits category includes sixty thousand dollars (\$60,000) to continue the outreach activities initiated under the joint powers agreement with the office of African American affairs.

The general fund appropriation to the rehabilitation services program of the division of vocational rehabilitation in the contractual services category includes seventy thousand dollars (\$70,000) to encourage independent living among native American people with disabilities.

The internal services funds/interagency agency transfers appropriation to the rehabilitation services program of the division of vocational rehabilitation in the other category includes one hundred forty-six thousand five hundred dollars (\$146,500) to match with federal funds to support and enhance deaf and hard-of-hearing rehabilitation services. The general fund appropriation to the rehabilitation services program of the division of vocational rehabilitation in the personal services and employee benefits category includes one hundred forty-six thousand five hundred dollars (\$146,500) to match with federal funds and meet the maintenance of effort requirement.

Any unexpended or unencumbered balance in the division of vocational rehabilitation remaining at the end of fiscal year 2006 from appropriations made from the general fund shall not revert.

Performance measures:

- (a) Outcome: Number of persons achieving suitable employment for a minimum of ninety days 1,695
 - (b) Outcome: Percent of persons achieving suitable employment outcomes of all cases closed after receiving planned services 60%
 - (c) Outcome: Percent of persons achieving suitable employment outcomes who are competitively employed or self employed and earning at least minimum wage 75%
 - (d) Outcome: Percent of individuals with significant disabilities achieving suitable employment outcomes who are competitively employed or self employed and earning at least minimum wage 65%
 - (e) Output: Number of independent-living plans developed 355
 - (f) Output: Number of individuals served for independent living 558
- (2) Disability determination:

The purpose of the disability determination services program is to produce accurate and timely eligibility determinations to social security disability applicants so that they may receive benefits.

Appropriations:

(a)	Personal services and		
	employee benefits	5,324.9	5,324.9
(b)	Contractual services	234.5	234.5
(c)	Other	5,695.9	5,695.9

Authorized FTE: 100.00 Permanent

Performance measures:

(a) Efficiency:	Number of days for completing an initial disability claim	80
(b) Quality:	Percent of disability determinations completed accurately	97.5%

Subtotal 41,502.3

GOVERNOR'S COMMISSION ON DISABILITY:

(1) Information and advocacy:

The purpose of the information and advocacy program is to provide needed information on disability case law analysis, building code comparisons, awareness of technologies, dispelling of stereotypes, training on the legislative process and population estimates to New Mexico individuals with disabilities and decision-makers, so they can improve the economic, health and social status of New Mexico individuals with disabilities.

Appropriations:

(a)	Personal services and		
	employee benefits	451.3	30.0
			481.3
(b)	Contractual services	42.5	
			42.5
(c)	Other	84.8	169.0
			253.8

Authorized FTE: 7.50 Permanent; .50 Term

Performance measures:

(a) Output:	Number of persons able to live independently outside of
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nursing homes as a result of the gap program 40

(b) Output: Number of persons seeking technical assistance on
disability issues 6,500

(c) Output: Number of architectural plans reviewed and sites inspected 220

Subtotal 777.6

DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:

(1) Developmental disabilities planning council:

The purpose of the developmental disabilities planning council program is to provide and produce opportunities to and for persons with developmental disabilities so that they may realize their dreams and potentials and become integrated members of society.

Appropriations:

(a)	Personal services and				
	employee benefits	285.6	109.4	395.0	
(b)	Contractual services	47.2	131.2	178.4	
(c)	Other	111.4	30.0	281.3	422.7

Authorized FTE: 8.50 Permanent

The general fund appropriations to the developmental disabilities planning council program of the developmental disabilities planning council include one hundred thirty thousand dollars (\$130,000) and two permanent full-time-equivalent positions for continuation of the advocacy resource center.

Performance measures:

(a) Output: Number of persons with developmental disabilities served by
the agency in federally mandated areas 8,000

(b) Output: Number of site visits conducted 42

(c) Output: Number of project, programmatic and financial reports
reviewed to assure compliance with state and federal
regulations 44

(2) Brain injury advisory council:

The purpose of the brain injury advisory council program is to provide guidance on the utilization and implementation of programs provided through the aging and long-term services department's brain injury fund so that they may align service delivery with the needs as identified by the brain injury community.

Appropriations:

(a)	Personal services and		
	employee benefits	54.4	54.4
(b)	Contractual services	18.4	18.4
(c)	Other	33.1	33.1

Authorized FTE: 1.00 Permanent

Performance measures:

- (a) Outcome: Percent of individuals receiving education or training on traumatic brain injury issues who demonstrate increased knowledge with a minimum score of seventy percent or better or a thirty percent increase on post-training tests 80%

(3) Office of guardianship:

The purpose of the office of guardianship program is to enter into, monitor and enforce guardianship contracts for income-eligible persons and to file, investigate and resolve complaints about guardianship services provided by contractors.

Appropriations:

(a)	Personal services and		
	employee benefits	215.9	215.9
(b)	Contractual services	2,224.0	2,224.0
(c)	Other	52.4	52.4

Authorized FTE: 4.00 Permanent

Performance measures:

- (a) Outcome: Percent of complaints resolved to the satisfaction of the complainant 75%

(b) Outcome: Percent of wards and their families satisfied with services 80%

(c) Output: Number of complaints received annually 35

Subtotal 3,594.3

MINERS' HOSPITAL OF NEW MEXICO:

(1) Healthcare:

The purpose of the healthcare program is to provide quality acute care, long-term care and related health services to the beneficiaries of the miners' trust fund of New Mexico and the people of the region so they can maintain optimal health and quality of life.

Appropriations:

(a)	Personal services and employee benefits	7,315.9	2,565.0	106.5	9,987.4
(b)	Contractual services	2,104.2	675.0	116.8	2,896.0
(c)	Other	2,842.2	1,260.0	36.4	4,138.6
(d)	Other financing uses		4,500.0		4,500.0

Authorized FTE: 211.50 Permanent; 13.50 Term

Performance measures:

(a) Outcome: Status of the long-term care facility to acquire accreditation by the joint commission on accreditation of healthcare organizations In work

(b) Outcome: Percent of billed revenue collected 80%

(c) Output: Number of outpatient visits 18,000

(d) Output: Number of outreach clinics conducted 24

(e) Output: Number of emergency room visits 5,000

(f) Output: Number of patient days at the acute care facility 6,300

(g) Output: Number of patient days at the long-term care facility 9,000

Subtotal 21,522.0

DEPARTMENT OF HEALTH:

(1) Prevention and health promotion:

The purpose of the prevention and health promotion program is to provide a statewide system of prevention, health promotion and education, community health improvement and other public health services for the people of New Mexico.

Appropriations:

(a)	Personal services and						
	employee benefits	9,371.0	2,876.9	1,222.3	16,437.0	29,907.2	
(b)	Contractual services	17,963.3		202.9	78.7	10,162.3	28,407.2
(c)	Other	11,208.8	13,778.0	346.8	38,198.2	63,531.8	
(d)	Other financing uses	304.5				304.5	

Authorized FTE: 106.00 Permanent; 540.50 Term

The general fund appropriation to the prevention and health promotion program of the department of health in the contractual services category includes two million eight hundred twenty-two thousand seven hundred eight dollars (\$2,822,708) for contracts related to the County Maternal and Child Health Plan Act.

The general fund appropriation to the prevention and health promotion program of the department of health in the contractual services category includes an additional twenty-five thousand dollars (\$25,000) for sickle cell contracts.

~~[The general fund appropriation to the prevention and health promotion program of the department of health in the other category includes fifty thousand dollars (\$50,000) for stroke detection equipment.]~~

~~[The general fund appropriation to the prevention and health promotion program of the department of health in the contractual services category includes fifty thousand dollars (\$50,000) for contracting with a statewide association of community colleges to develop and implement an interactive distance education program for dental hygiene.] [LINE-ITEM VETO]~~

The general fund appropriation to the prevention and health promotion program of the department of health in the other category includes one hundred fifty thousand dollars (\$150,000) to establish, review and monitor a public health and social service delivery program for low-income and indigent residents in Bernalillo county.

The general fund appropriation to the prevention and health promotion program of the department of health in the other category includes five hundred thousand dollars (\$500,000) for start-up pilot expenses for the hepatitis C collaborative health services project.

Any unexpended and unencumbered balance in the prevention and health promotion program of the department of health in the other category from appropriations made from the general fund for influenza vaccine remaining at the end of fiscal year 2006 shall not revert.

Performance measures:

- (a) Outcome: Rate of 4:3:1:3:3 immunization coverage among children
 nineteen to thirty-five months 83%

(2) Health infrastructure:

The purpose of the health infrastructure program is to maintain and enhance a statewide public health infrastructure and the interrelated systems of district and local public health, primary care, rural health, dental and school-based health services to assure access to an integrated system of high quality health services for all New Mexicans.

Appropriations:

(a)	Personal services and					
	employee benefits	15,482.0	131.7	782.5	16,396.2	
(b)	Contractual services	11,745.3	105.0	2,336.8	676.3	14,863.4
(c)	Other	3,072.0	47.0	87.4	3,206.4	
(d)	Other financing uses	500.0			500.0	

Authorized FTE: 254.50 Permanent; 66.00 Term

The general fund appropriation to the health infrastructure program of the department of health in the contractual services category includes an additional three hundred thousand dollars (\$300,000) for the support of primary health care services related to the Rural Primary Health Care Act.

~~[Any unexpended and unencumbered balances in the health infrastructure program of the department of health in the contractual services category from appropriations made from the county-supported medicaid fund for the support of primary health care services related to the Rural Primary Health Care Act remaining at the end of fiscal years 2005 and 2006 shall not revert.] [LINE-ITEM VETO]~~

(3) Surveillance, response and reporting:

The purpose of the surveillance, response and reporting program is to maintain and enhance a statewide system of population-based surveillance, vital records and health statistics, emergency medical services, bioterrorism and emergency preparedness and injury prevention.

Appropriations:

(a)	Personal services and					
	employee benefits	3,738.2	400.0	176.8	6,678.5	10,993.5
(b)	Contractual services	2,077.3		1,059.0	6,473.0	9,609.3

(c)	Other	3,833.7	223.3	246.6	1,897.2	6,200.8
(d)	Other financing uses				18.1	18.1

Authorized FTE: 56.00 Permanent; 157.50 Term

(4) Testing and pharmaceutical:

The purpose of the testing and pharmaceutical program is to provide quality core analytical services for public health, environmental and toxicologic programs performed by state agencies and to provide pharmacy services to public health programs.

Appropriations:

(a)	Personal services and					
	employee benefits	4,360.6	1,580.7		505.8	6,447.1
(b)	Contractual services	304.5	283.1			587.6
(c)	Other	1,293.5	1,493.5	1,570.1		4,357.1

Authorized FTE: 79.00 Permanent; 44.00 Term

(5) Behavioral health services:

The purpose of the behavioral health services program is to provide an effective, accessible, regionally coordinated and integrated continuum of behavioral health prevention and treatment services, which are consumer driven and provided in the least restrictive setting, for eligible persons in New Mexico so that they may become stabilized and their functioning levels may improve.

Appropriations:

(a)	Personal services and					
	employee benefits	34,388.7	4,598.5	11,938.5	10,184.4	61,110.1
(b)	Contractual services	36,737.5	3,921.4	10,537.4	12,918.6	64,114.9
(c)	Other	6,487.4	692.4	2,010.8	281.4	9,472.0
(d)	Other financing uses	737.2	78.7	211.4	259.2	1,286.5

Authorized FTE: 1,234.00 Permanent; 134.00 Term

The general fund appropriation to the behavioral health services program of the department of health includes fifty thousand dollars (\$50,000) for a Navajo-speaking social worker at Las Vegas medical center.

(6) Long-term care services:

The purpose of the long-term care services program is to provide an effective, efficient and accessible safety net system of long-term care facilities and services for eligible New Mexicans so that their quality of life and independence can be maximized.

Appropriations:

(a)	Personal services and					
	employee benefits	8,128.8	22,400.0	3,585.6	2,721.0	36,835.4
(b)	Contractual services	1,927.5	538.4	103.2	2,569.1	
(c)	Other	7,379.7	3,417.8	300.0	11,097.5	

Authorized FTE: 584.00 Permanent; 337.50 Term; 15.00 Temporary

Performance measures:

- (a) Outcome: Rate of abuse, neglect and exploitation per one hundred patients in department-operated long-term care facilities as confirmed by the division of health improvement <1.5%

(7) Developmentally disabled community services:

The purpose of the developmentally disabled community services program is to provide a statewide system of community-based services and support to improve the quality of life and increase independence of individuals with developmental disabilities.

Appropriations:

(a)	Personal services and					
	employee benefits	2,245.1	3,288.3	381.5	5,914.9	
(b)	Contractual services	20,701.8	1,645.0	2,900.0	25,246.8	
(c)	Other	1,275.0	1,002.1	57.2	2,334.3	
(d)	Other financing uses	64,959.6			64,959.6	

Authorized FTE: 69.00 Permanent; 47.00 Term

The general fund appropriation to the developmentally disabled community services program of the department of health in the other financing uses category includes five million dollars (\$5,000,000) to offset changes in the federal medical assistance percentage for existing developmental disabilities medicaid waiver services. The disbursement to the agency is contingent upon certification from the secretary of the human services department and the secretary of the department of health to the department of finance and administration and review by the legislative finance committee that the funding

in the base budget for this purpose has been expended and additional funds are required to offset changes in the federal medical assistance percentage for existing developmental disabilities medicaid waiver services.

The general fund appropriation to the developmentally disabled community services program of the department of health in the other financing uses category includes two million dollars (\$2,000,000) for expenditure in fiscal years 2006 and 2007 for anticipated services allotted for individual service plans, annual resource allocations and associated services for developmental disabilities medicaid waiver clients that may be encumbered by the department of health. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

The general fund appropriation to the developmentally disabled community services program of the department of health in the other category includes an additional one million one hundred thousand dollars (\$1,100,000) to support the family infant toddler program.

Performance measures:

- (a) Efficiency: Number of days between eligibility determination and
service initiation for developmental disabilities medicaid
waiver clients 98

(8) Licensing, certification and oversight:

The purpose of the licensing, certification and oversight program is to assure safety and quality care in New Mexico's healthcare facilities and community-based programs in collaboration with consumers, providers, advocates and other agencies.

Appropriations:

- | | | | | | | |
|-----|--|---------|-------|---------|---------|---------|
| (a) | Personal services and
employee benefits | 4,014.4 | 345.0 | 2,280.0 | 1,253.5 | 7,892.9 |
| (b) | Contractual services | 72.0 | 225.0 | | | 297.0 |
| (c) | Other | 339.7 | 581.3 | 434.2 | 399.8 | 1,755.0 |
| (d) | Other financing uses | | 115.0 | | | 115.0 |

Authorized FTE: 60.00 Permanent; 78.00 Term

Performance measures:

- (a) Efficiency: Percent of community-based program incident investigations
completed within forty-five days 98%

(9) Administration and policy:

The purpose of the administration and policy program is to provide leadership, policy development, administrative support and information technology to the department of health.

Appropriations:

(a)	Personal services and					
	employee benefits	5,308.8	360.2	637.2	2,553.2	8,859.4
(b)	Contractual services	828.4	78.1	138.1	840.0	1,884.6
(c)	Other	760.4	80.6	142.7	861.1	1,844.8

Authorized FTE: 133.00 Permanent; 19.50 Term

The general fund appropriation to the department of health in the contractual services category in all programs is contingent upon the department including performance measures in its outcome-based contracts to increase oversight and accountability.

Upon reorganization and creation of the deputy secretary for facilities, the department of health is authorized to create a facilities program in the fiscal year 2006 operating budget and may transfer existing resources from other programs. The authorization is contingent upon a certified reorganization plan approved by the department of finance and administration and reviewed by the legislative finance committee.

Subtotal 502,920.0

DEPARTMENT OF ENVIRONMENT:

(1) Field operations:

The purpose of the field operations program is to protect the public health and the environment through specific programs that provide regulatory oversight over food service and food processing facilities, on-site treatment and disposal of liquid wastes, public swimming pools and baths, medical radiation and radiological technologist certification, compliance with the Safe Drinking Water Act, mosquito abatement and waste isolation pilot plant transportation, and education and public outreach about radon in homes and public buildings.

Appropriations:

(a)	Personal services and					
	employee benefits	4,044.2		3,716.5	1,776.2	9,536.9
(b)	Contractual services	51.3		2,098.8	1,178.1	3,328.2
(c)	Other	1,342.5	377.5	988.0		2,708.0

Authorized FTE: 111.00 Permanent; 63.00 Term

Performance measures:

- (a) Efficiency: Percent of new septic tanks inspections completed 80%
- (b) Efficiency: Percent of public drinking water systems inspected within one week of notification of system problems that might impact public health 80%
- (c) Efficiency: Percent of drinking water chemical samplings completed within the regulatory timeframe 75%
- (d) Output: Percent of annual commercial food establishment inspections completed 100%
- (e) Output: Percent of license inspections and radiation-producing-machine inspections completed within nuclear regulatory commission and food and drug administration guidelines 100%
- (f) Outcome: Percentage of public water systems that comply with acute maximum contaminant levels 90%

(2) Water quality:

The purpose of the water quality program is to protect the quality of New Mexico's ground and surface water resources to ensure clean and safe water supplies are available now and in the future to support domestic, agricultural, economic and recreational activities and provide healthy habitat for fish, plants and wildlife and to ensure that hazardous waste generation, storage, treatment and disposal is conducted in a manner protective of public health and environmental quality.

Appropriations:

- (a) Personal services and employee benefits 2,913.0 2,741.4 5,581.6 11,236.0
- (b) Contractual services 133.4 619.8 2,446.4 3,199.6
- (c) Other 377.2 739.7 729.4 1,846.3

Authorized FTE: 45.00 Permanent; 138.50 Term

Performance measures:

- (a) Outcome: Percent of permitted facilities where groundwater monitoring results do not exceed standards 70%
- (b) Output: Percent of permitted facilities receiving annual field inspections 60%
- (c) Output: Percent increase of hazardous waste generator inspections completed 10%
- (d) Efficiency: Percent of department of energy generator site audits for waste isolation pilot project on which agency action will be taken within forty-five days 80%
- (e) Output: Number of stream miles and acreage of lakes monitored annually to determine if surface water quality is impaired 1,500, 10K
- (f) Output: Number of nonpoint source pollution impaired stream miles currently being addressed through watershed restoration plans to improve surface water quality 220
- (g) Output: Percent of cases in which Sandia national laboratories and Los Alamos national laboratory are notified of agency action on document submittals within the timeframes specified in the executed consent orders 90%

(3) Environmental protection:

The purpose of the environmental protection program is to ensure that New Mexicans breathe healthy air, prevent releases of petroleum products into the environment, ensure solid waste is handled and disposed without harming natural resources, and ensure every employee safe and healthful working conditions.

Appropriations:

- (a) Personal services and employee benefits 1,994.8 6,737.6 2,349.0 11,081.4

(b)	Contractual services	27.7	126.3	133.1	287.1
(c)	Other	424.4	1,065.1	722.5	2,212.0

Authorized FTE: 66.00 Permanent; 123.00 Term

Performance measures:

- (a) Outcome: Percent of landfills meeting groundwater monitoring requirements 93%
- (b) Outcome: Percent of confirmed releases from leaking storage tank sites that are undergoing assessment or corrective action 50%
- (c) Outcome: Percent of facilities taking corrective action to mitigate air quality violations discovered as a result of inspections 95%
- (d) Outcome: Improvement in visibility at all monitored locations in New Mexico based on a rolling average of the previous four quarters 3.25 km
- (e) Outcome: Percent of underground storage tank facilities in significant operational compliance with release prevention and release detection provisions of the petroleum storage tank regulations 80%
- (f) Outcome: Percent of inspected solid waste facilities in substantial compliance with the solid waste management regulations 75%
- (g) Outcome: Percent of serious worker health and safety violations noted on issued citations corrected within fourteen days for consultation section and within fifteen days for the compliance section 85%
- (h) Efficiency: Percent of worker health and safety complaints responded to within five days 95%

(4) Program support:

The purpose of program support is to provide overall leadership, administrative, legal and information management support to allow programs to operate in the most knowledgeable, efficient and cost-effective manner so the public can receive the information it needs to hold the department accountable.

Appropriations:

(a)	Personal services and				
	employee benefits	1,629.6	2,566.8	2,666.5	6,862.9
(b)	Contractual services	99.8	286.3	145.3	531.4
(c)	Other	332.9	225.3	448.7	1,006.9

Authorized FTE: 59.00 Permanent; 42.00 Term

Performance measures:

(a) Output: Percent of enforcement actions brought within one year of inspection or documentation of violation 90%

(b) Quality: Percent customer satisfaction with the construction program services provided in conjunction with federal and state loan and grant projects for construction of water, wastewater and solid waste projects, based on written customer surveys 100%

(5) Special revenue funds:

Appropriations:

(a)	Contractual services	6,000.0	6,000.0
(b)	Other	12,750.0	12,750.0
(c)	Other financing uses	20,992.6	20,992.6

Subtotal 93,579.3

OFFICE OF THE NATURAL RESOURCES TRUSTEE:

(1) Natural resource damage assessment and restoration:

The purpose of the natural resource damage assessment and restoration program is to restore or replace natural resources or resource services injured or lost due to releases of hazardous substances or oil into the environment.

Appropriations:

(a)	Personal services and			
	employee benefits	230.1	67.6	297.7
(b)	Contractual services		24.6	24.6
(c)	Other	51.4		51.4

Authorized FTE: 3.70 Permanent

Performance measures:

(a) Outcome: Percent of cases in settlement or settled with restorations

planned, in progress or completed 75%

(b) Output: Number of acres of habitat restored 500

(c) Output: Number of acre-feet of water conserved through restoration 500

Subtotal 373.7

NEW MEXICO HEALTH POLICY COMMISSION:

(1) Health information and policy analysis:

The purpose of the health information and policy analysis program is to provide relevant and current health-related data, information and comprehensive analysis to consumers, state health agencies, the legislature, and the private health sector so they can obtain or provide improved healthcare access in New Mexico.

Appropriations:

(a)	Personal services and			
	employee benefits	878.1		878.1
(b)	Contractual services	210.3		210.3
(c)	Other	267.0	1.0	268.0

Authorized FTE: 17.00 Permanent

Performance measures:

(a) Output: Number of health-related bills analyzed during the legislative session 150

Subtotal 1,356.4

VETERANS' SERVICE DEPARTMENT:

(1) Veterans' services:

The purpose of the veterans' services program is to provide information and assistance to veterans and their eligible dependents to obtain the benefits to which they are entitled in order to improve their quality of life.

Appropriations:

(a)	Personal services and				
	employee benefits	1,608.0	116.3	1,724.3	
(b)	Contractual services	367.2	94.2	461.4	
(c)	Other	272.0	11.2	24.0	49.2
					356.4

Authorized FTE: 35.00 Permanent

Performance measures:

(a) Outcome: Percent of New Mexico veterans impacted by department programs 12%

(b) Output: Number of veterans served by department field offices 42,000

(c) Output: Number of referrals from veteran service officers to contract veterans organizations 17,000

(d) Output: Number of homeless veterans provided shelter for a period of two weeks or more 90

(e) Output: Compensation received by New Mexico veterans assisted by department veterans service officers, in thousands of dollars \$110,000

Subtotal 2,542.1

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

(1) Juvenile justice:

The purpose of the juvenile justice program is to provide rehabilitative services to youth committed to the department, including but not limited to medical, educational, mental health and other services, early intervention and prevention, detention and screening and probation and parole supervision aimed at keeping youth from committing additional delinquent acts.

Appropriations:

(a)	Personal services and			
	employee benefits	39,072.5	953.7	40,026.2
(b)	Contractual services	9,080.1		9,080.1
(c)	Other	5,028.3 1,149.2 621.0	6,798.5	
(d)	Other financing uses	53.6		53.6

Authorized FTE: 866.50 Permanent; 29.30 Term

The general fund appropriation to the juvenile justice program of the children, youth and families department in the contractual services category includes five thousand dollars (\$5,000) for a photographer for the John Paul Taylor reintegration center.

Performance measures:

- (a) Outcome: Percent of clients who complete formal probation 83%
- (b) Outcome: Percent of youth confined over ninety days who show an increase in reading, math or language arts scores between children, youth and families department facility admission and discharge 70%
- (c) Outcome: Percent of re-adjudicated clients 4%
- (d) Outcome: Percent of clients recommitted to a children, youth and families department facility 11.5%
- (e) Outcome: Percent of clients receiving functional family therapy and

multi-systemic therapy who have not committed a subsequent
juvenile offense 65%

(f) Output: Percent of clients earning education credits while in
facility schools 75%

(g) Output: Number of children in community corrections programs 800

(2) Child and adult protective services:

The purpose of the child and adult protective services program is to receive and investigate referrals of adult and child abuse and neglect and provide family preservation and treatment and legal services to vulnerable children and adults and their families to ensure their safety and well being.

Appropriations:

(a)	Personal services and				
	employee benefits	23,878.5	8,086.0	9,773.1	41,737.6
(b)	Contractual services	1,758.0	7,106.0	8,864.0	
(c)	Other	15,974.2	1,259.5	1,949.2	24,154.7
					43,337.6
(d)	Other financing uses	208.0			208.0

Authorized FTE: 791.00 Permanent

Performance measures:

(a) Outcome: Percent of children with repeat maltreatment 7.5%

(b) Outcome: Percent of children adopted within twenty-four months of
entry into foster care 40%

(c) Outcome: Percent of children maltreated while in foster care .57%

(d) Outcome: Percent of children determined to be maltreated within six
month of a prior determination 7.5%

(e) Outcome: Percent of children committed to a juvenile facility who
were the subjects of an accepted report of maltreatment
within five years of a commitment 65%

(f) Output: Number of children in foster care for twelve months with no
 more than two placements 2100

(3) Family services:

The purpose of the family services 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.

Appropriations:

(a)	Personal services and					
	employee benefits	7,090.0	566.5	2,168.5	9,825.0	
(b)	Contractual services	25,705.1	234.0	2,000.0	6,484.0	34,423.1
(c)	Other	6,088.4	891.9	33,339.4	79,957.6	120,277.3
(d)	Other financing uses	125.0		448.0	573.0	

Authorized FTE: 146.30 Permanent; 62.00 Term

The general fund appropriation to the family services program of the children, youth and families department in the contractual services category includes five hundred thousand dollars (\$500,000) for a home visiting program. At least two hundred fifty thousand dollars (\$250,000) shall be used to match federal funds for the state children's health insurance program. The balance will be used to better coordinate home visiting programs statewide to address existing service gaps within local communities.

The general fund appropriation to the family services program of the children, youth and families department in the other category includes one million five hundred thousand dollars (\$1,500,000) for equalizing childcare rates of urban and rural providers.

The general fund appropriation to the family services program of the children, youth and families department in the personal services and employee benefits category includes one hundred twenty thousand dollars (\$120,000) for a domestic violence czar.

Performance measures:

(a) Outcome: Percent of children in families receiving behavioral health
 services who experience an improved level of functioning at
 discharge 60%

(b) Outcome: Percent of family providers participating in the
 child-and-adult care food program 82%

(c) Outcome: Percent of movement through levels one through five of aim high 25%

(d) Outcome: Percent of children receiving state subsidy in aim high programs of levels two, three, four and five and with national accreditation 13%

(e) Outcome: Percent of adult victims receiving domestic violence services who show improved client competencies in social, living, coping and thinking skills 65%

(f) Outcome: Percent of adult victims receiving domestic violence services living in a safer, more stable environment 85%

(g) Output: Number of adult victim witnesses receiving domestic violence services TBD

(4) Program support:

The purpose of the program support program is to provide the direct services 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.

Appropriations:

(a)	Personal services and employee benefits	7,304.6	518.0	2,600.1	10,422.7
(b)	Contractual services	1,324.8	112.7	379.8	1,817.3
(c)	Other	1,030.8	236.9	1,665.5	2,933.2

Authorized FTE: 170.00 Permanent

Performance measures:

(a) Output: Turnover rate for social workers 20%

(b) Output: Turnover rate for juvenile correctional officers 11.9%

Subtotal 330,377.2

TOTAL HEALTH, HOSPITALS AND HUMAN	1,112,200.4	187,946.6	232,498.9
2,801,326.5	4,333,972.4		

SERVICES

G. PUBLIC SAFETY

DEPARTMENT OF MILITARY AFFAIRS:

(1) National guard support:

The purpose of the national guard support program is to provide administrative, fiscal, personnel, facility construction and maintenance support to the New Mexico national guard military and civilian activities so they can maintain a high degree of readiness to respond to state and federal missions.

Appropriations:

- (a) Personal services and
 employee benefits 2,208.3 2,586.6 4,794.9
- (b) Contractual services 19.2 575.0 594.2
- (c) Other 1,825.3 56.1 2,094.7 3,976.1

Authorized FTE: 31.00 Permanent; 65.00 Term

The general fund appropriation to the national guard support program of the department of military affairs in the personal services and employee benefits category includes funding for the adjutant general position not to exceed range thirty-four in the governor's exempt plan 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 national guard support program of the department of military affairs in the other category includes twenty-five thousand dollars (\$25,000) for expenditures for the employee support of guard and reserve program.

Performance measures:

- (a) Outcome: Rate of attrition of the New Mexico army national guard 14%
- (b) Outcome: Percent of strength of the New Mexico national guard 90%
- (c) Output: Number of major environmental compliance findings from
 inspections 7

(2) Crisis response:

The purpose of the crisis response program is to provide resources and a highly trained and experienced force to protect the public and improve the quality of life for New Mexicans.

Appropriations:

(a)	Personal services and				
	employee benefits	765.5		1,079.3	1,844.8
(b)	Contractual services	232.0		348.0	580.0
(c)	Other	236.1	30.0	252.7	518.8
Authorized FTE: 1.00 Permanent; 39.00 Term					

Performance measures:

- (a) Outcome: Percent of cadets successfully graduating from the youth challenge academy 90%

Subtotal 12,308.8

PAROLE BOARD:

(1) Adult parole:

The purpose of the adult parole program is to provide and establish parole conditions and guidelines for inmates and parolees so they may reintegrate back into the community as law-abiding citizens.

Appropriations:

(a)	Personal services and				
	employee benefits	262.2		262.2	
(b)	Contractual services	6.4		6.4	
(c)	Other	97.3		97.3	
Authorized FTE: 5.00 Permanent					

Performance measures:

- (a) Efficiency: Percent of revocation hearings held within thirty days of a parolee's return to the corrections department 90%
- (b) Efficiency: Percent of initial parole hearings held a minimum of thirty days prior to the inmate's projected release date 90%

Subtotal 365.9

JUVENILE PAROLE BOARD:

(1) Juvenile parole:

The purpose of the juvenile parole board program is to provide fair and impartial hearings through reviews to incarcerated youth so they can mainstream into society as law-abiding citizens.

Appropriations:

- (a) Personal services and employee benefits 327.1 327.1
- (b) Contractual services 5.4 5.4
- (c) Other 42.7 42.7

Authorized FTE: 6.00 Permanent

Performance measures:

- (a) Output: Percent of increase in the number of parole hearings 10%
- (b) Output: Percent of total residents placed on the hearing agenda by juvenile parole board staff 40%
- (c) Output: Percent of facilities' population paroled 60%
- (d) Outcome: Percent of residents paroled who successfully complete the conditions of their parole 60%

Subtotal 375.2

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. This includes quality hiring and in-service training of correctional officers, protecting the public from escape risks and protecting prison staff, contractors and inmates from violence exposure to the extent possible within budgetary resources.

Appropriations:

(a)	Personal services and				
	employee benefits	72,496.2	5,048.7	75.0	77,619.9
(b)	Contractual services	30,949.6			30,949.6
(c)	Other	68,129.3	6,238.8	150.0	74,518.1

Authorized FTE: 1,683.00 Permanent; 18.00 Term

If Senate Bill 600 of the first session of the forty-seventh legislature or similar legislation allowing a thirty-day good behavior sentence reduction for technical parole violators is not enacted, two hundred seventy-seven thousand four hundred dollars (\$277,400) is appropriated from the general fund operating reserve to the corrections department.

The general fund appropriations to the inmate management and control program of the corrections department include thirty million four hundred forty-nine thousand nine hundred dollars (\$30,449,900) for medical services, a comprehensive medical contract and other health-related expenses.

The appropriations in the inmate management and control program allow for the implementation of the federal Fair Labor Standards Act provisions allowing the payment of overtime after eighty-four hours in a fourteen-day period for correctional officers.

Seven hundred fifty thousand dollars (\$750,000) is appropriated from the appropriation contingency fund to the state board of finance for disbursement to the corrections department. Disbursement is contingent upon certification by the department to the board of finance that inmate population growth exceeded the growth assumed within the fiscal year 2006 appropriation. The corrections department shall present to the secretary of finance and administration justification for requesting disbursement of funds from this appropriation and demonstrate that all austerity measures have been taken to internally manage inmate population growth.

The general fund appropriations to the inmate and management control program of the corrections department include six hundred thousand dollars (\$600,000) to provide a salary increase inclusive of employee benefits and associated administrative costs for correctional officers employed by private contractors housing a population of not less than ninety percent state male or female inmates.

Performance measures:

- (a) Outcome: Percent turnover of correctional officers 15%
- (b) Outcome: Percent of female offenders successfully released in accordance with their scheduled release date 95%
- (c) Output: Percent of inmates testing positive or refusing the random monthly drug test <=5%
- (d) Output: Graduation rate of correctional officer cadets from the

corrections department training academy 78%

(e) Output: Number of cadets entering corrections department training academy 200

(f) Output: Percent of participants in the residential program for women dually diagnosed with mental illness and substance abuse issues and women dually diagnosed who have children 85%

(g) Efficiency: Daily cost per inmate, in dollars \$88.27

(2) Inmate programming:

The purpose of the inmate programming program is to provide motivated inmates the opportunity to participate in appropriate programs and services so they have less propensity toward inmate violence while incarcerated and the opportunity to acquire living skills and links to community support systems that can assist them on release.

Appropriations:

(a)	Personal services and				
	employee benefits	6,864.6	280.3	323.6	7,468.5
(b)	Contractual services	1,054.2		283.0	1,337.2
(c)	Other	2,006.1	5.5	.3	66.9
					2,078.8

Authorized FTE: 125.50 Permanent; 11.50 Term

The general fund appropriations to the inmate programming program of the corrections department include one million four hundred fifty thousand dollars (\$1,450,000) to provide residential treatment, mental health, substance abuse, parenting and reintegration services for women under the supervision of the probation and parole division and their children as appropriate.

Performance measures:

(a) Outcome: Recidivism rate of the success for offenders after release program by thirty-six months 40%

(b) Output: Number of inmates who successfully complete general equivalency diploma 143

(c) Output: Average number of inmates enrolled in cognitive education,

pre-release planning and literacy skills per year 700

(d) Output: Percentage of reception diagnostic center intake inmates
who receive substance abuse screening 99%

(e) Output: Annual number of inmates enrolled in adult basic education 1,650

(f) Output: Number of inmates enrolled into the success for offenders
after release program 500

(3) Corrections industries:

The purpose of the corrections industries program is to provide training and work experience opportunities for inmates in order to instill a quality work ethic and to prepare them to perform effectively in an employment position and to reduce idle time of inmates while in prison.

Appropriations:

(a)	Personal services and employee benefits	2,022.2	2,022.2
(b)	Contractual services	27.1	27.1
(c)	Other	4,044.4	4,044.4
(d)	Other financing uses	100.0	100.0

Authorized FTE: 33.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Profit and loss ratio break even

(b) Outcome: Percent of inmates employed 7.4%

(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 emphasis on high-risk offenders, to better ensure the probability of them becoming law-abiding citizens to protect the public from undue risk and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration.

Appropriations:

(a) Personal services and

	employee benefits	12,943.0	1,059.0	541.5	14,543.5
(b)	Contractual services	80.4		62.5	142.9
(c)	Other	7,028.7	434.1	7,462.8	

Authorized FTE: 322.00 Permanent; 14.00 Term

No more than one million dollars (\$1,000,000) of the general fund appropriation to the community offender management program of the corrections department shall be used for detention costs for parole violators.

Performance measures:

- (a) Outcome: Percent of out-of-office contacts per month with offenders on high and extreme supervision on standard caseloads 90%
- (b) Quality: Average standard caseload per probation and parole officer 92
- (c) Quality: Average specialized program caseload per probation and parole officer 30
- (d) Quality: Average intensive supervision program caseload per probation and parole officer 20

(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 nonresidential service settings and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration without undue risk to the public.

Appropriations:

(a)	Personal services and				
	employee benefits	727.2	50.0		777.2
(b)	Contractual services	92.8			92.8
(c)	Other	2,797.7	100.0	2,897.7	
(d)	Other financing uses	80.0			80.0

Authorized FTE: 17.00 Permanent

The appropriations for the community corrections/vendor-run program of the corrections department are appropriated to the community corrections grant fund.

The general fund appropriation to the community corrections/vendor-run program of the corrections department in the other financing uses category includes eighty thousand dollars (\$80,000) to expand housing assistance for male and female parolees, provided by a corrections vendor located in Albuquerque or Santa Fe.

Performance measures:

(a) Output: Number of successful completions per year from male

residential treatment center at Fort Stanton 74

(b) Output: Number of terminations per year from male residential

treatment center at Fort Stanton 10

(c) Output: Number of transfers or other noncompletions per year from

male residential treatment center at Fort Stanton 12

(6) Program support:

The purpose of program support is to provide quality administrative support and oversight to the department operating units to ensure a clean audit, effective budget, personnel management and cost-effective management information system services.

Appropriations:

(a)	Personal services and			
	employee benefits	5,357.0	16.5 210.2	5,583.7
(b)	Contractual services	202.9		202.9
(c)	Other	933.1		933.1
(d)	Other financing uses		1,228.7	1,228.7

Authorized FTE: 93.00 Permanent

The other state funds appropriation to the program support program of the corrections department in the other financing uses category includes one million two hundred twenty-eight thousand seven hundred dollars (\$1,228,700) for the corrections department building fund.

Performance measures:

(a) Quality: Percent of employee files that contain performance

appraisal development plans completed and submitted within
the evaluation period 95%

Subtotal 234,111.1

CRIME VICTIMS REPARATION COMMISSION:

(1) Victim compensation:

The purpose of the victim compensation program is to provide financial assistance and information to victims of violent crime in New Mexico so they can receive services to restore their lives.

Appropriations:

(a)	Personal services and		
	employee benefits	732.8	732.8
(b)	Contractual services	205.5	205.5
(c)	Other	809.2 738.5	1,547.7

Authorized FTE: 15.00 Permanent

Performance measures:

(a) Efficiency: Average number of days to process applications <150

(2) Federal grant administration:

The purpose of the federal grant administration program is to provide funding and training to nonprofit providers and public agencies so they can provide services to victims of crime.

Appropriations:

(a)	Personal services and		
	employee benefits	199.9	199.9
(b)	Contractual services	18.9	18.9
(c)	Other	3,572.0	3,572.0
(d)	Other financing uses	794.5	794.5

Authorized FTE: 4.00 Term

Subtotal 7,071.3

DEPARTMENT OF PUBLIC SAFETY:

(1) Law enforcement:

The purpose of the law enforcement program is to provide the highest quality of law enforcement services to the public and ensure a safer state.

Appropriations:

(a)	Personal services and employee benefits	47,705.3	727.0	9,021.2	3,154.3	60,607.8
(b)	Contractual services	1,360.5	216.4	19.5	148.1	1,744.5
(c)	Other	11,264.8	1,523.0	2,160.6	1,238.0	16,186.4
(d)	Other financing uses		40.0			40.0

Authorized FTE: 1,024.00 Permanent; 58.00 Term; 31.10 Temporary

The internal services funds/interagency transfers appropriations to the law enforcement program of the department of public safety include seven million eight hundred ninety-four thousand dollars (\$7,894,000) from the state road fund for the motor transportation division.

Any unexpended or unencumbered balance in the department of public safety remaining at the end of fiscal year 2006 made from appropriations from the state road fund shall revert to the state road fund.

Performance measures:

(a) Outcome: Ratio of New Mexico traffic death rate to national death

rate on highways per one hundred million vehicle miles

driven and averaged over five years 1.27

(b) Outcome: Ratio of serious commercial motor vehicle crashes per one

hundred million miles driven and averaged over five years 26.1

(c) Outcome: Ratio of New Mexico alcohol-related deaths to national

alcohol-related deaths per one hundred million vehicle

miles driven and averaged over five years 1.42

(d) Outcome: Ratio of New Mexico illegal-drug-related deaths to national

illegal-drug-related deaths per one hundred thousand

population and averaged over five years 1.66

(e) Output: Number of driving-while-intoxicated arrests per year 3,510

(f) Output: Number of repeat driving-while-intoxicated arrests per year 2,340

(2) Public safety support:

The purpose of the public safety support program is to provide statewide training, criminal record services, forensic and emergency management support to law enforcement, government agencies and the general public to maintain and improve overall public safety in New Mexico.

Appropriations:

(a)	Personal services and employee benefits	2,245.8	1,581.7	620.0	4,447.5
(b)	Contractual services	304.6	295.0	.4	600.0
(c)	Other	142.0	480.0	478.2	1,100.2
(d)	Other financing uses			147.6	147.6

Authorized FTE: 50.00 Permanent; 11.00 Term

The other state funds appropriation to the public safety support program of the department of public safety includes five hundred twenty-five thousand dollars (\$525,000) from fees paid for criminal background checks in fiscal year 2006, contingent upon enactment of House Bill 324 or similar legislation of the first session of the forty-seventh legislature. If such legislation is not enacted five hundred twenty-five thousand dollars (\$525,000) is appropriated to the department of public safety from the appropriation contingency fund.

Performance measures:

(a) Outcome: Percent of crime laboratory compliance compared with

American society of crime laboratory director's standards 100%

(b) Output: Number of unprocessed deoxyribonucleic acid cases 0

(c) Output: Number of unprocessed firearms cases 0

(d) Output: Number of unprocessed fingerprint files 50,000

(e) Output: Number of unprocessed criminal background checks 0

(3) Information technology:

The purpose of the information technology program is to ensure access to information and to provide reliable and timely information technology services to the department of public safety programs, law enforcement and other government agencies in their commitment to build a safer, stronger New Mexico.

Appropriations:

(a)	Personal services and			
	employee benefits	1,908.7		1,908.7
(b)	Contractual services	40.0		40.0
(c)	Other	595.2	595.2	

Authorized FTE: 33.00 Permanent

Performance measures:

(a) Outcome: Percent of operability for all mission-critical software

applications residing on agency servers 99%

(4) Office of emergency management:

The purpose of the office of emergency management program is to provide for and coordinate an integrated, statewide, comprehensive emergency management system for New Mexico including all agencies, branches and levels of government for the citizens of the state.

Appropriations:

(a)	Personal services and				
	employee benefits	830.0	94.2	774.6	1,698.8
(b)	Contractual services	105.0	27.0	343.0	475.0
(c)	Other	138.7	95.8	2,438.6	2,673.1
(d)	Other financing uses			24,200.0	24,200.0

Authorized FTE: 7.00 Permanent; 25.00 Term

Performance measures:

(a) Outcome: Percent compliance with fifty-four emergency management

accreditation program standards endorsed by federal

Emergency Management Act 95%

(5) Accountability and compliance support:

The purpose of the accountability and compliance support program is to provide quality legal, administrative, financial, technical and auditing services to department of public safety programs in their commitment to building a safer, stronger New Mexico and to ensure the fiscal integrity and responsibility of those programs.

Appropriations:

(a) Personal services and

employee benefits	3,691.5	102.4	52.7	448.3	4,294.9
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(b) Contractual services	131.1		21.4		152.5
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(c) Other	2,081.5	35.4	9.1	3,967.5	6,093.5
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Authorized FTE: 72.00 Permanent; 10.00 Term

Subtotal					127,005.7
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TOTAL PUBLIC SAFETY	292,062.5		25,736.4	12,247.3	51,191.8
381,238.0					

H. TRANSPORTATION

DEPARTMENT OF TRANSPORTATION:

(1) Programs and infrastructure:

The purpose of the programs and infrastructure program is to plan, design, operate, insure and manage highway projects and transportation programs that provide a safe and sustainable multi-modal transportation infrastructure.

Appropriations:

(a) Personal services and

employee benefits		17,628.5		3,799.7	21,428.2
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(b) Contractual services		73,911.1		171,251.8	245,162.9
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(c) Other	52,162.5		128,789.7		180,952.2
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Authorized FTE: 388.00 Permanent; 12.00 Term; 1.00 Temporary

The other state funds and federal funds appropriations to the programs and infrastructure program of the department of transportation pertaining to prior fiscal years may be extended into fiscal year 2006, but not to exceed three hundred sixty million dollars (\$360,000,000).

The other state funds appropriations to the programs and infrastructure program of the department of transportation include eighteen million one hundred sixty-nine thousand eight hundred dollars (\$18,169,800) for a state-funded construction program.

The federal funds appropriation to the programs and infrastructure program of the department of transportation includes five million three hundred and sixty thousand dollars (\$5,360,000) and the other state funds appropriation includes one million forty-four thousand eight hundred dollars (\$1,044,800) for a transportation management system, an offender history database, an administrative office of the courts interlock database, a statewide deployment of roadside information elements, an integration of data from the administrative office of the courts and the traffic safety bureau, a statewide traffic record and evaluation pilot program, a statewide advanced traveler information system and a roadway information system and an upgrade of the desktop statewide transportation improvement program. The department of finance and administration shall authorize the expenditure of the funds for the purposes specified upon receiving certification and supporting documentation from the state chief information officer that indicates compliance with the information technology commission project certification process. All hardware and software purchases funded through the appropriations shall be procured using consolidated purchasing led by the state chief information officer and purchasing division of the general services department to achieve economies of scale and to provide the state with the best unit price.

Performance measures:

- (a) Outcome: Percent of front occupant seat belt use by the public 92%
- (b) Outcome: Number of traffic fatalities per hundred million vehicle miles traveled 1.85
- (c) Output: Annual number of riders on park and ride 175,000
- (d) Output: Revenue dollars per passenger on park and ride \$1.60
- (e) Quality: Percent of final cost-over-bid amount 4%
- (f) Quality: Ride quality index for new construction ≥ 4.7

(2) Transportation and highway operations:

The purpose of the transportation and highway operations program is to provide construction, maintenance, repair and improvements to the state's highway infrastructure to preserve roadway integrity and maintain open highway access throughout the state system.

Appropriations:

(a)	Personal services and			
	employee benefits	74,006.3	8,816.5	82,822.8
(b)	Contractual services	48,878.0	948.0	49,826.0
(c)	Other	90,778.1	524.0	91,302.1

Authorized FTE: 1,921.00 Permanent; 5.00 Term; 48.20 Temporary

The other state funds and federal funds appropriations to the transportation and highway operations program of the department of transportation pertaining to prior fiscal years may be extended into fiscal year 2006, but not to exceed forty million dollars (\$40,000,000).

The federal funds appropriation to the transportation and operations program of the department of transportation includes eighty thousand dollars (\$80,000) and the other state funds appropriation includes two hundred ninety-one thousand dollars (\$291,000) to implement a fiber optic infrastructure and a national modeling and analysis program. The department of finance and administration shall authorize the expenditure of the funds for the purposes specified upon receiving certification and supporting documentation from the state chief information officer that indicates compliance with the information technology commission project certification process. All hardware and software purchases funded through the appropriations shall be procured using consolidated purchasing led by the state chief information officer and purchasing division of the general services department to achieve economies of scale and to provide the state with the best unit price.

Performance measures:

(a) Outcome: Number of combined systemwide miles in deficient condition <=2,500

(b) Output: Number of statewide improved pavement surface miles 5,000

(3) Program support:

The purpose of the program support program is to provide business services that support management, development and operation of highway and transportation programs.

Appropriations:

(a)	Personal services and			
	employee benefits	22,030.8	1,317.1	23,347.9
(b)	Contractual services	3,371.5	44.0	3,415.5
(c)	Other	17,606.4	.9	17,607.3
(d)	Other financing uses	7,894.0		7,894.0

Authorized FTE: 289.00 Permanent; 8.00 Term; 1.30 Temporary

Performance measures:

(a) Outcome: Percent of vacancy rate in all programs 5%

Subtotal 723,758.9

TOTAL TRANSPORTATION 408,267.2 315,491.7 723,758.9

I. OTHER EDUCATION

PUBLIC EDUCATION DEPARTMENT:

The public education department is responsible for providing a public education to all students. The secretary of education is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the department is charged. To do this the department is focusing on leadership and support, productivity, building capacity, accountability, communication and fiscal responsibility.

Appropriations:

(a)	Personal services and employee benefits	10,378.7	253.6	6,795.5	17,427.8
(b)	Contractual services	351.6	57.2	8,666.8	9,075.6
(c)	Other	905.9	360.9	1,193.7	2,460.5
(d)	Other financing uses			288.5	288.5

Authorized FTE: 197.20 Permanent; 94.00 Term; 2.60 Temporary

Performance measures:

- (a) Outcome: Percent of fiscal year 2005 appropriated education reform initiatives completed on time and within budget 100%
- (b) Outcome: Percent of educators accessing the status of their licensure application via the internet and telephone
- (c) Outcome: Percent of teachers' adequately informed and trained on the preparation of the licensure advancement professional dossiers 80%
- (d) Outcome: Percent of customers (districts and/or schools) interacting with the public education department that report satisfaction with their telephone communications with the New Mexico public education department 100%
- (e) Outcome: Percent of criterion reference tests required by the No

Child Left Behind Act and New Mexico state statute will be

developed and ready for distribution to school districts 100%

(f) Outcome: Percent of fiscal year 2003 audit findings resolved and not
repeated in the fiscal year 2004 audit 15%

(g) Outcome: Percent of fiscal year 2003 audit findings resolved and not
repeated in fiscal year 2005 audit 100%

(h) Outcome: Completion of fiscal corrective action plan in fiscal year
2005 90%

Subtotal 29,252.4

APPRENTICESHIP ASSISTANCE:

Appropriations:

(a) Other 650.0 650.0

Subtotal 650.0

REGIONAL EDUCATION COOPERATIVES:

Appropriations:

(a) Northwest: 1,593.0 1,593.0

(b) Northeast: 125.0 2,165.0 2,290.0

(c) Lea county: 3,378.0 3,378.0

(d) Pecos valley: 1,929.0 2,328.0 4,257.0

(e) Southwest: 500.0 4,000.0 4,500.0

(f) Central: 2,000.0 2,006.0 4,006.0

(g) High plains: 1,571.0 1,741.0 3,312.0

(h) Clovis: 100.0 1,417.0 1,517.0

(i) Ruidoso: 2,059.0 5,189.0 7,248.0

Subtotal 32,101.0

PUBLIC EDUCATION DEPARTMENT SPECIAL APPROPRIATIONS:

Appropriations:

(a)	Beginning teacher induction	900.0	900.0
(b)	Core curriculum framework	381.6	381.6
(c)	Indian Education Act	2,500.0	2,500.0
(d)	Family and Youth Resource Act	1,500.0	1,500.0
(e)	Teacher loan for service	186.5	186.5
(f)	Kindergarten plus	400.0	400.0
(g)	Graduation reality and dual-role skills program	1,000.0	1,000.0

The general fund appropriation to the public education department for the core curriculum framework includes one hundred thirty-one thousand six hundred dollars (\$131,600) for teacher professional development on teaching advanced placement and pre-advanced placement courses through a joint powers agreement with New Mexico highlands university.

The general fund appropriation to the public education department for the Family and Youth Resource Act shall fund family and youth services pursuant to the Family and Youth Resource Act.

The general fund appropriation to the public education department for teacher loan for service shall be transferred to the commission on higher education.

Subtotal 6,868.1

PUBLIC SCHOOL FACILITIES AUTHORITY:

The purpose of the public school facilities oversight program is to oversee public school facilities in all eighty-nine school districts to ensure correct and prudent planning, building and maintenance using state funds and to ensure adequacy of all facilities in accordance with public education department approved educational programs.

Appropriations:

(a)	Personal services and employee benefits	3,782.1	3,782.1
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(b)	Contractual services	255.0	255.0
(c)	Other	1,276.0	1,276.0

Authorized FTE: 55.00 Permanent

~~[The other state funds appropriation to the public school facilities authority in the personal services and employee benefits and other categories includes five hundred ninety thousand six hundred sixty-eight dollars (\$590,668) for nine permanent full-time equivalent positions and associated costs, contingent upon approval of the public school capital outlay council.] [LINE-ITEM VETO]~~

Performance measures:

(a) Explanatory: Change in statewide public school facility condition index

measured at December 31 of prior calendar year compared

with prior year

Subtotal 5,313.1

TOTAL OTHER EDUCATION 19,154.3 14,268.8 40,761.5 74,184.6

J. 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 section, with the exception of the policy development and institutional financial oversight program of the commission on higher education, 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 2006 shall not revert to the general fund.

COMMISSION ON HIGHER EDUCATION:

(1) Policy development and institutional financial oversight:

The purpose of the policy development and institutional financial oversight program is to provide a continuous process of statewide planning and oversight within the commission's statutory authority for the higher education partners to ensure both the efficient use of state resources and progress in implementing the public agenda.

Appropriations:

(a)	Personal services and				
	employee benefits	2,105.3	40.0	558.3	2,703.6

(b)	Contractual services	35.1		508.2	543.3
(c)	Other	900.0	30.0	283.0	2,503.9 3,716.9
(d)	Other financing uses	8,285.0		3,057.2	11,342.2

Authorized FTE: 28.00 Permanent; 9.50 Term

The general fund appropriation to the policy development and institutional financial oversight program of the commission on higher education in the personal services and employee benefits category includes four hundred thousand dollars (\$400,000) and four permanent full-time-equivalent positions contingent upon passage of House Bill 745 or Senate Bill 677 or similar legislation of the first session of the forty-seventh legislature establishing a department of higher education.

By September 1, 2005, the commission on higher education shall report time series data to the office of the governor, public education department, department of finance and administration and legislative finance committee on performance measures and targets for recruitment, enrollment, retention and graduation rates for Native American and Hispanic students. The commission on higher education shall provide an action plan by institution to achieve targeted results.

Any unexpended or unencumbered balance in the policy development and institutional financial oversight program remaining at the end of fiscal year 2006 from appropriations made from the general fund shall revert to the general fund.

Performance Measures:

(a) Efficiency: Percent of properly completed capital infrastructure draws

released to the state board of finance within thirty days

of receipt from the institutions 90%

(b) Output: Number of outreach services and events provided to

secondary schools and students related to college

readiness, college preparation curriculum and financial aid 100

(2) Student financial aid:

The purpose of the student financial aid program is to provide access, affordability and opportunities for success in higher education to students and their families so that all New Mexicans can benefit from post-secondary education and training beyond high school.

Appropriations:

(a)	Other	23,263.6	31,154.5	486.7	54,904.8
(b)	Other financing uses		100.0		100.0

	purposes	157,088.9	128,695.6	6,325.0	292,109.5
(b)	Athletics	2,684.1	24,777.5	111.3	27,572.9
(c)	Educational television	1,278.7	3,836.5	2,194.3	7,309.5
(d)	Other - main campus		165,349.2	105,585.7	270,934.9

Performance measures:

(a) Outcome: Percent of full-time, first-time, degree-seeking freshmen

retained to second year 76%

(b) Output: Number of post-baccalaureate degrees awarded 1,300

(c) Outcome: External dollars for research and public service, in

millions \$114.4

(d) Output: Number of undergraduate transfer students from two-year

colleges 1,590

(e) Outcome: Percent of full-time, first-time, degree-seeking freshmen

completing an academic program within six years 42.5%

(2) Gallup branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 8,517.8 6,774.9 3,854.5 19,147.2

(b) Nurse expansion 34.9 34.9

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 42%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 55%

(c) Output: Number of students enrolled in the area vocational schools
program 452

(d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 79.87%

(3) Los Alamos branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general
purposes 2,268.8 2,356.0 161.2 4,786.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 65%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 65%

(c) Output: Number of students enrolled in the small business
development center program 580

(d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 73.61%

(4) Valencia branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 4,429.2 4,055.8 2,465.3 10,950.3

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 55%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 68%

(c) Output: Number of students enrolled in the adult basic education

program 1,150

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 72.4%

(5) Taos branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 1,776.3 3,136.8 551.9 5,465.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 57%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 64%

(c) Output: Number of students enrolled in the concurrent enrollment

program 494

(d) Outcome: Percent of first-time, full-time, degree-seeking students
 enrolled in a given fall term who persist to the following
 spring term 74.65%

(6) Research and public service projects:

Appropriations:

(a)	Judicial selection	72.8		72.8
(b)	Judicial education center	89.6		89.6
(c)	Spanish resource center	105.9		105.9
(d)	Southwest research center	1,460.7		1,460.7
(e)	Substance abuse program	148.2		148.2
(f)	Native American intervention	185.9		185.9
(g)	Resource geographic information system	125.4		125.4
(h)	Natural heritage program	76.9		76.9
(i)	Southwest Indian law clinic	117.9	117.9	
(j)	BBER census and population analysis	241.9	4.4	246.3
(k)	New Mexico historical review	80.2		80.2
(l)	Ibero-American education consortium	161.5		161.5
(m)	Youth education recreation program	136.5		136.5
(n)	Advanced materials research	65.3		65.3

(o)	Manufacturing engineering program	623.2	623.2	
(p)	Hispanic student center	119.8	119.8	
(q)	Wildlife law education	71.0	71.0	
(r)	Science and engineering women's career	21.7	21.7	
(s)	Youth leadership development	72.0	72.0	
(t)	Morrissey hall research	53.0	53.0	
(u)	Disabled student services	218.7	218.7	
(v)	Minority graduate recruitment and retention	159.9	159.9	
(w)	Graduate research development fund	86.5	86.5	
(x)	Community-based education	405.9	405.9	
(y)	Corrine Wolfe children's law center	65.5	65.5	
(z)	Mock trials program	22.8	22.8	

(7) Health sciences center:

The purpose of the instruction and general program is to provide education services designated to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Medical school instruction and general purposes	45,612.5	27,000.0	1,450.0	74,062.5
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(b)	Office of medical investigator	3,310.0	1,130.0	5.0	4,445.0
(c)	Emergency medical services academy	790.1	500.0		1,290.1
(d)	Children's psychiatric hospital	5,451.1	12,000.0		17,451.1
(e)	Hemophilia program	534.6			534.6
(f)	Carrie Tingley hospital	4,024.8	10,700.0		14,724.8
(g)	Out-of-county indigent fund	1,242.4			1,242.4
(h)	Specialized perinatal care	442.3			442.3
(i)	Newborn intensive care	3,106.9	930.0		4,036.9
(j)	Pediatric oncology	592.4	300.0		892.4
(k)	Young children's health center	254.6	950.0	1,204.6	
(l)	Pediatric pulmonary center	181.0			181.0
(m)	Area health education centers	227.1	350.0	577.1	
(n)	Grief intervention program	160.3			160.3
(o)	Pediatric dysmorphology	141.2			141.2
(p)	Locum tenens	460.4	1,550.0		2,010.4
(q)	Disaster medicine program	100.4			100.4
(r)	Poison control center	1,431.0	120.0	120.0	1,671.0
(s)	Fetal alcohol study	165.7			165.7
(t)	Telemedicine	428.7	1,650.0	500.0	2,578.7

(u)	Nurse-midwifery program	377.4		377.4
(v)	College of nursing expansion	1,418.2		1,418.2
(w)	Other - health sciences	202,200.0	65,400.0	267,600.0
(x)	Cancer center	2,692.9 18,250.0	4,675.0	25,617.9
(y)	Children's cancer camp	100.0		100.0
(z)	Oncology	100.0		100.0
(aa)	Lung and tobacco-related illnesses	1,000.0		1,000.0
(bb)	Genomics, biocomputing and environmental health research	1,528.9		1,528.9
(cc)	Los pasos program	51.0		51.0
(dd)	Trauma specialty education	408.2		408.2
(ee)	Pediatrics specialty education	408.1		408.1
(ff)	Native American health center	300.0		300.0
(gg)	Donated dental services	25.0		25.0

The general fund appropriation to the university of New Mexico for the donated dental services program is to contract with a provider to administer a program of donated dental services.

Performance measures:

- (a) Outcome: University of New Mexico inpatient satisfaction rate 78.1%
- (b) Output: Number of university of New Mexico patients participating in cancer research and treatment center clinical trials 215
- (c) Output: Number of post-baccalaureate degrees awarded 275
- (d) Outcome: External dollars for research and public service, in

millions \$236

(e) Outcome: Pass rates for step three of the United States medical

licensing exam on the first attempt 99

Subtotal 1,070,150.5

NEW MEXICO STATE UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

purposes	101,772.7	66,289.6	11,788.4	179,850.7
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(b) Athletics	2,951.3	6,173.6	37.0	9,161.9
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(c) Educational television	1,141.5	332.8	656.1	2,130.4
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(d) Other - main campus		68,354.7	81,710.0	150,064.7
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Performance measures:

(a) Outcome: Percent of first-time, full-time, degree-seeking freshmen

retained to second year 75%

(b) Outcome: External dollars for research and creative activity, in

millions \$175.8

(c) Output: Number of teacher preparation programs available at New

Mexico community college sites 5

(d) Outcome: Number of undergraduate transfer students from two-year

colleges 1,028

(e) Outcome: Percent of first-time, full-time, degree-seeking freshmen

completing programs within six years 52%

(2) Alamogordo branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	5,467.2	4,179.6	1,957.8	11,604.6
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(b) Nurse expansion	28.4			28.4
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 43%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 56%

(c) Output: Number of students enrolled in the small business

development center program 1,000

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 77.2%

(3) Carlsbad branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	3,552.3	3,541.8	2,205.0	9,299.1
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(b) Nurse expansion	35.7			35.7
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Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 55%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 82%
- (c) Output: Number of students enrolled in the contract training program 225
- (d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 71.53%

(4) Dona Ana branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

- (a) Instruction and general
purposes 14,071.1 11,009.8 8,383.9 33,464.8
- (b) Nurse expansion 105.3 105.3

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 39%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 66%
- (c) Output: Number of students enrolled in the adult basic education
program 4,900
- (d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 81%

(5) Grants branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	2,720.8	1,977.9	1,331.5	6,030.2
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years	46%
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(b) Outcome: Percent of graduate students placed in jobs in New Mexico 68%

(c) Output: Number of students enrolled in the community services

program	1,180
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(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following spring term	72.49%
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(6) Department of agriculture:

Appropriations: 8,581.3 6,272.2 3,234.5 18,088.0

(7) Research and public service projects:

Appropriations:

(a) Agricultural experiment

station	12,753.2	2,812.2	9,866.5	25,431.9
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(b) Cooperative extension

service	9,805.1	5,881.4	5,512.0	21,198.5
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(c) Water resource research 420.5 454.5 265.0 1,140.0

(d)	Coordination of Mexico programs	90.0		90.0	
(e)	Indian resources development	368.1	16.0		384.1
(f)	Waste management education program	491.8	259.8	1,696.0	2,447.6
(g)	Campus security	89.0		89.0	
(h)	Carlsbad manufacturing sector development program	347.3			347.3
(i)	Manufacturing sector development program	376.0	32.0		408.0
(j)	Alliances for underrepresented students	344.0	226.7		570.7
(k)	Arrowhead center for business development	72.0			72.0
(l)	Viticulturist	72.0		72.0	
(m)	Nurse expansion	425.7			425.7

New Mexico State University shall develop a feasibility study and strategic plan, including infrastructure requirements for the agriculture science center at Farmington.

Subtotal 472,540.6

NEW MEXICO HIGHLANDS UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

	purposes	23,492.9	10,955.0	5,010.0	39,457.9
(b)	Athletics	1,364.1	180.0	1,544.1	

Performance measures:

- (a) Outcome: Percent of first-time, full-time freshmen retained to second year 53%
- (b) Outcome: Percent of graduating seniors indicating "satisfied" or "very satisfied" with the university on student satisfaction survey 93%
- (c) Outcome: Percent of total funds generated by grants and contracts 31%
- (d) Output: Number of undergraduate transfer students from two-year colleges 250
- (e) Output: Percent of first-time, full-time, degree-seeking freshmen completing programs within six years 24%

(2) Research and public service projects:

Appropriations:

(a)	Upward bound	96.8	27.0	483.0	606.8
(b)	Advanced placement	278.2	60.0		338.2
(c)	Native American recruitment and retention	42.0			42.0
(d)	Diverse populations study		206.7	345.0	2,036.0
(e)	Visiting scientist	17.2			17.2
(f)	Spanish program	288.0			288.0
	Subtotal			44,881.9	

WESTERN NEW MEXICO UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	14,416.3	4,323.8	384.8	19,124.9
(b)	Athletics	1,519.5	163.2	1,682.7	
(c)	Extended services instruction	1,275.2		1,275.2	

Performance measures:

- (a) Outcome: Percent of first-time, full-time freshmen retained to second year 54%
- (b) Output: Number of graduates receiving teacher licensure 150
- (c) Outcome: External dollars to be used for programs to promote student success, in millions \$3.7
- (d) Output: Number of undergraduate transfer students from two-year colleges 150
- (e) Output: Percent of first-time, full-time, degree-seeking students completing programs within six years 23%

(2) Research and public service projects:

Appropriations:

(a)	Educational television	122.1		122.1	
(b)	Child development center	554.4	406.6		961.0
(c)	North American free trade agreement	14.7		14.7	

(d) Nurse expansion 142.7 142.7

Subtotal 23,323.3

EASTERN NEW MEXICO UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	21,629.2	7,500.0	2,300.0	31,429.2
(b)	Athletics	1,638.0	300.0	1,938.0	
(c)	Educational television	1,032.7	500.0	100.0	1,632.7
(d)	Extended services instruction	600.0		600.0	
(e)	Other - main campus		9,500.0	8,000.0	17,500.0

Performance measures:

(a) Outcome: Percent of first-time freshmen retained to second year 62%

(b) Efficiency: Ratio of full-time-equivalent students to full-time-equivalent instruction and general staff 6.2:1

(c) Outcome: Number of external dollars supporting research and student success, in millions \$8.6

(d) Output: Number of undergraduate transfer students from two-year colleges 360

(e) Output: Percent of full-time, degree-seeking freshmen completing their program within six years 32%

(2) Roswell branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general purposes	12,653.1	9,350.0	10,200.0	32,203.1
(b)	Ruidoso off-campus center	756.9	1,000.0		1,756.9
(c)	Nurse expansion	71.0		71.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours successful after three years 61%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 75%
- (c) Efficiency: Percent of programs having stable or increasing enrollments 80%
- (d) Outcome: Percent of first-time, full-time, degree-seeking students enrolled in a given fall term who persist to the following spring term 75.88%

(3) Research and public service projects:

Appropriations:

(a)	Center for teaching excellence	250.5		250.5	
(b)	Blackwater Draw site and museum	86.3		86.3	
(c)	Assessment project	128.0			128.0
(d)	Social work	146.7			146.7

(e)	Job training for physically and mentally challenged	22.8	22.8
(f)	Airframe mechanics	69.8	69.8
(g)	Nurse expansion	42.0	42.0
Subtotal			87,877.0

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	23,726.2	8.8	23,735.0
(b)	Athletics	159.8	172.9	332.7

Performance measures:

- (a) Outcome: Percent of first-time freshmen retained to second year 75%
- (b) Output: Unduplicated number of students registered in master of
science teaching program 132
- (c) Outcome: External dollars for research and creative activity, in
millions \$64
- (d) Output: Number of undergraduate transfer students from two-year
colleges 40
- (e) Output: Percent of first-time, full-time, degree-seeking freshmen
completing their program within six years 42%

(2) Research and public service projects:

Appropriations:

(a)	Research and other programs			18,000.0		18,000.0
(b)	Bureau of mines	3,733.9	4,215.2	800.0		8,749.1
(c)	Petroleum recovery research center	1,859.0	1,898.8	3,500.0		7,257.8
(d)	Bureau of mine inspection	282.9	319.1		250.0	852.0
(e)	Energetic materials research center	759.2	856.9	20,000.0		21,616.1
(f)	Science and engineering fair	307.5	148.1			455.6
(g)	Institute for complex additive systems analysis			514.2	583.3	20,000.0 21,097.5
(h)	Cave and karst research	313.4	385.0		1,000.0	1,698.4
(i)	Geophysical research center	849.6	959.9		15,000.0	16,809.5
(j)	Homeland security center	235.4	265.9		20,000.0	20,501.3

The general fund appropriation to the New Mexico institute of mining and technology for the bureau of mines includes one hundred thousand dollars (\$100,000) from federal Mineral Lands Leasing Act receipts.

Subtotal 141,105.0

NORTHERN NEW MEXICO COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

	purposes	7,985.6	650.0	2,500.0	11,135.6
(b)	Nurse expansion	28.5			28.5

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 71%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 70%

(c) Output: Number of students enrolled in the adult basic education

program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 66.2%

(2) Research and public service projects:

Appropriations:

(a)	Northern pueblos institute	53.8	62.0	115.8
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Subtotal			11,279.9	
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SANTA FE COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes	9,163.5	19,600.0	3,600.0	32,363.5
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(b)	Nurse expansion	35.6	35.0	70.6
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Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 45%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 77%
- (c) Output: Number of students enrolled in the contract training program 2,000
- (d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 71.78%

(2) Research and public service projects:

Appropriations:

- (a) Small business development
centers 3,142.3 3,300.0 900.0 7,342.3
 - (b) Sign language services 19.7 20.0 39.7
- Subtotal 39,816.1

TECHNICAL-VOCATIONAL INSTITUTE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

- (a) Instruction and general
purposes 47,700.1 36,900.0 4,200.0 88,800.1
- (b) Other 4,500.0 15,700.0 20,200.0

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 44%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 82%

(c) Output: Number of students enrolled in distance education program 2,400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 79.3%

Subtotal 109,000.1

LUNA VOCATIONAL TECHNICAL INSTITUTE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 7,052.7 235.0 947.0 8,234.7

(b) Nurse expansion 36.1 300.0 336.1

(c) Other 2,700.0 2,355.0 5,055.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 73%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 50%

(c) Output: Number of students enrolled in the small business

development center program 324

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 66.3%

Subtotal 13,625.8

MESALANDS COMMUNITY COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general					
	purposes	2,364.8	379.5	440.0	507.4	3,691.7
(b)	Other	1,400.0			1,400.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 40.2%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 54.3%

(c) Output: Number of students enrolled in the small business
development center program 61

(d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 67.4%

Subtotal 5,091.7

NEW MEXICO JUNIOR COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general					
	purposes	7,001.8	5,878.0	4,018.0	1,419.0	18,316.8
(b)	Athletics	35.9	35.7		71.6	
(c)	Nurse expansion	72.7	72.2			144.9

(d) Other 4,116.0 4,116.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 65%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 62%

(c) Output: Number of students enrolled in distance education program 2,400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 73.11%

Subtotal 22,649.3

SAN JUAN COLLEGE:

(1) Main campus:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 18,999.1 5,098.7 3,558.7 27,656.5

(b) Other 96.5 96.5

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 55%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 65%

(c) Output: Number of students enrolled in the service learning program 360

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81.95%

(2) Research and public service projects:

Appropriations:

(a)	Dental hygiene program	188.7	196.5	385.2
(b)	Oil and gas job training program	92.6		92.6
(c)	Nurse expansion	339.3	339.3	678.6
	Subtotal		28,909.4	

CLOVIS COMMUNITY COLLEGE:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit post-secondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general purposes	9,957.4	1,728.0	1,512.0	13,197.4
(b)	Nurse expansion	70.6			70.6
(c)	Other	432.0	540.0	972.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 44%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 59%

(c) Output: Number of students enrolled in the concurrent enrollment

program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 70.04%

Subtotal 14,240.0

NEW MEXICO MILITARY INSTITUTE:

The purpose of the New Mexico military institute is to provide college-preparatory instruction for students in a residential, military environment culminating in a high school diploma or associate's degree.

Appropriations:

(a) Instruction and general

purposes 17,456.1 440.0 17,896.1

(b) Other 5,613.9 5,613.9

Performance measures:

(a) Output: Percent of full-time-equivalent student capacity enrolled

each fall term 95%

(b) Outcome: Average American college testing score for graduating high

school seniors 21.4

(c) Quality: Number of faculty development events 65

(d) Efficiency: Percent of cadets receiving scholarship or financial aid 67%

Subtotal 23,510.0

NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED:

The purpose of the New Mexico school for the blind and visually impaired program is provide the training, support and resources necessary to prepare blind and visually impaired children of New Mexico to participate fully in their families, communities and the work force and to lead independent, productive lives.

Appropriations:

(a) Instruction and general

purposes 164.6 9,913.7 182.3 10,260.6

Performance measures:

- (a) Outcome: Percent of students achieving at least seventy percent of annual individualized education program goals at main campus 80%
 - (b) Quality: Number of staff proficient in Braille on main campus 52
 - (c) Efficiency: Number of students per teacher at main campus 5:1
 - (d) Outcome: Percent of students achieving at least seventy percent of annual individualized education program goals in the early childhood program 80%
 - (e) Output: Number of students served through outreach programs 165
- Subtotal 10,260.6

NEW MEXICO SCHOOL FOR THE DEAF:

The purpose of the school for the deaf program is to provide a comprehensive, fully accessible and language-rich learning environment where children who are deaf or hard of hearing can reach their maximum potential.

Appropriations: 1,983.5 8,746.2 600.0 11,329.7

Performance measures:

- (a) Outcome: Percent of students in grades three to twelve demonstrating academic improvement across curriculum domains 75%
 - (b) Outcome: Rate of transition of graduates to post-secondary education, vocational-technical training schools, junior colleges, work training or employment 100%
 - (c) Quality: Percent of parents satisfied with the educational services from New Mexico school for the deaf 90%
 - (d) Quality: Number of teachers and support staff participating in a two-year intensive staff development program in bilingual (American sign language and English) education methodologies N/A
- Subtotal 11,329.7

TOTAL HIGHER EDUCATION 691,118.5 1,007,353.8 4,781.0 499,648.4 2,202,901.7

K. PUBLIC SCHOOL SUPPORT

Except as otherwise provided, unexpended and unencumbered balances of appropriations made in this subsection shall not revert at the end of fiscal year 2006.

PUBLIC SCHOOL SUPPORT:

The purpose of public school support is to carry out the mandate to establish and maintain a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state.

(1) State equalization guarantee distribution:

Appropriations: 1,967,762.3 1,300.0 1,969,062.3

The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the secretary of the public education department. The secretary of the public education department shall establish a preliminary unit value to establish budgets for the 2005-2006 school year and then, upon verification of the number of units statewide for fiscal year 2006 but no later than January 31, 2006, the secretary of the public education department may adjust the program unit value.

The general fund appropriation for the state equalization guarantee distribution includes fifty-one million eight hundred thousand dollars (\$51,800,000) to implement the forty thousand dollar (\$40,000) minimum salary for level two and level three-A teachers. To allocate to each school district and charter school the amount needed to provide the required minimum salary for all eligible level two and level three-A teachers, the secretary of the public education department shall establish a unit value for fiscal year 2006 without including the fifty-one million eight hundred thousand dollars (\$51,800,000) in the calculation. After verifying the amount needed by each school district and charter school, the secretary of the public education department shall use the fifty-one million eight hundred thousand dollars (\$51,800,000) to adjust program cost to allocate the verified amount to each school district and charter school.

The secretary of the public education department, in collaboration with the department of finance and administration office of educational accountability, shall ensure all level two and level three-A teachers receiving salary increases under the three-tiered minimum salary have been evaluated under the tiered licensure evaluation system and have the professional competencies of level two and level three-A teachers. The secretary of the public education department shall withhold from the public school district distribution funding for minimum salaries for any teacher that has not been evaluated. ~~[The secretary of the public education department shall report the findings to the legislative education study committee and legislative finance committee by July 1, 2005.] [LINE-~~

ITEM VETO]

The general fund appropriation for the state equalization guarantee distribution includes one million nine hundred thousand dollars (\$1,900,000) for raising the minimum salaries of educational assistants to twelve thousand dollars (\$12,000) effective July 1, 2005. If House Bill 137 or similar legislation of the first session of the forty-seventh legislature is enacted, the one million nine hundred thousand dollars (\$1,900,000) will be applied to the implementation of the tiered licensure system for educational assistants.

To fund elementary fine arts programs for fiscal year 2006, the public education department shall distribute the general fund appropriation based on a cost differential of .05 multiplied by a 0.8 full-time-equivalent MEM.

The general fund appropriation for the state equalization guarantee distribution contains sufficient funding to provide a three-quarter percent increase in the employer contribution to the educational retirement fund.

For the 2005-2006 school year, the state equalization guarantee distribution contains sufficient funding for school districts implementing a formula-based program for the first time. Those districts shall use current year membership in the calculation of program units for the new formula-based program.

The general fund appropriation to the state equalization guarantee distribution reflects the deduction of federal revenues pursuant to Paragraph (2) of Subsection C of Section 22-8-25 NMSA 1978 that includes payments commonly known as "impact aid funds" pursuant to 20 USCA 7701 et seq., and formerly known as "PL874 funds".

The general fund appropriation to the public school fund shall be reduced by the amounts transferred to the public school fund from the current school fund and from the federal Mineral Lands Leasing Act receipts otherwise unappropriated.

Prior to the approval of school district and charter school budgets for fiscal year 2006, the secretary of the public education department shall verify that each local school board is providing a one and one-quarter percent salary increase for teachers not receiving an increase as a result of the three-tiered minimum salaries, all instructional staff and all other certified and noncertified employees, and bringing all level two and three-A teachers and those teachers moving from level one to level two to a minimum salary increase of forty thousand dollars (\$40,000).

The general fund appropriation to the state equalization guarantee distribution includes six million two hundred fifty-two thousand five hundred dollars (\$6,252,500) for a one and one-quarter percent salary increase for teachers not receiving an increase as a result of the three-tiered minimum salaries and two million three hundred eighty-one thousand nine hundred dollars (\$2,381,900) for instructional staff and five million three hundred seventy-two thousand seven hundred dollars (\$5,372,700) for all other certified and noncertified employees effective July 1, 2005.

Any unexpended or unencumbered balance in the distributions authorized remaining at the end of fiscal year 2006 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

(a) Outcome: Percent of fourth-grade students who achieve proficiency or

above on the criterion-referenced assessments in reading

and language arts 61%

(b) Outcome: Percent of eighth-grade students who achieve proficiency or

above on the criterion-referenced assessments in reading

and language arts 65%

(c) Outcome: Percent of fourth-grade students who achieve proficiency or above on the criterion-referenced assessments in mathematics 67%

(d) Outcome: Percent of eighth-grade students who achieve proficiency or above on the criterion-referenced assessments in mathematics 62%

(e) Quality: Percent of classes being taught by "highly qualified" teachers in high-poverty schools 90%

(f) Quality: Percent of classes being taught by "highly qualified" teachers in all schools 92%

(g) Quality: Percent of stakeholders who rate their involvement with public elementary schools as positive 91%

(h) Quality: Percent of stakeholders who rate their involvement with public middle schools as positive 88%

(i) Quality: Percent of stakeholders who rate their involvement with public high schools as positive 85%

(j) Explanatory: Percent of American Indian language classes being taught in public schools that serve American Indian students

(2) Transportation distribution:

Appropriations: 99,954.0 99,954.0

The general fund appropriation for the transportation distribution includes sufficient funding to provide a one and one-quarter percent salary increase for transportation employees effective July 1, 2005.

The general fund appropriation for the transportation distribution includes sufficient funding to provide a three-quarter percent increase in the employer contribution to the educational retirement fund.

(3) Supplemental distribution:

Appropriations:

(a)	Out-of-state tuition	380.0	380.0
(b)	Emergency supplemental	2,000.0	2,000.0

Any unexpended or unencumbered balance in the supplemental distributions of the public education department remaining at the end of fiscal year 2006 from appropriations made from the general fund shall revert to the general fund.

Subtotal 2,071,396.3

FEDERAL FLOW THROUGH:

Appropriations 352,000.0 352,000.0
 Subtotal 352,000.0

INSTRUCTIONAL MATERIAL FUND:

Appropriations: 30,500.0 30,500.0

The appropriation to the instructional materials fund is made from the federal Minerals Land Leasing Act (30 USCA 181, et seq.) receipts.

Subtotal 30,500.0

EDUCATIONAL TECHNOLOGY FUND:

Appropriations: 5,000.0 5,000.0
 Subtotal 5,000.0

INCENTIVES FOR SCHOOL IMPROVEMENT FUND:

Appropriations: 1,600.0 1,600.0
 Subtotal 1,600.0

TOTAL PUBLIC SCHOOL SUPPORT 2,107,196.3 1,300.0 352,000.0 2,460,496.3

GRAND TOTAL FISCAL YEAR 2006

APPROPRIATIONS 4,640,947.4 2,023,764.4 963,117.7 4,133,805.9 11,761,635.4

Chapter 33 Section 5 Laws 2005

Section 5. **SPECIAL APPROPRIATIONS.**--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified. Unless otherwise indicated, the appropriation may be expended in fiscal years 2005 and 2006. Unless otherwise indicated, any unexpended or unencumbered balance of the appropriations remaining at the end of fiscal year 2006 shall revert to the appropriate fund.

[(1) LEGISLATIVE COUNCIL SERVICE:200.0 200.0

~~For a public school funding formula study, including costs to contract with one or more experts. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.]~~

(2) COURT OF APPEALS: 140.0 140.0

For imaging and retro-conversion of backlogged microfilmed documents.

(3) ADMINISTRATIVE OFFICE OF

THE COURTS: 500.0 500.0

For statewide court building security needs.

(4) ADMINISTRATIVE OFFICE OF

THE COURTS: 1,000.0 1,000.0

~~For information technology equipment upgrades. [The appropriation is contingent on the department of finance and administration and the state chief information officer developing a methodology for information technology equipment replacement and developing a mechanism to include funding for this equipment in the base budget request.][LINE-ITEM VETO]~~

(5) ADMINISTRATIVE OFFICE OF THE

COURTS: 250.0 250.0

For jury and witness fees and court appointed attorneys.

(6) SECOND JUDICIAL DISTRICT ATTORNEY: 125.0 125.0

To buyout furniture lease.

(7) FOURTH JUDICIAL DISTRICT ATTORNEY:

The period of time for expending the three hundred seventy-five thousand dollars (\$375,000) appropriated from the general fund contained in Subsection F of Section 2 of Chapter 83 of Laws 2003 for prosecution of criminal cases related to the Santa Rosa prison riots is extended through fiscal year 2006, for the same purpose.

~~(8) ADMINISTRATIVE OFFICE OF THE~~

~~DISTRICT ATTORNEYS: 100.0 100.0~~

~~For emergency expert witness fees.][LINE-ITEM VETO]~~

(9) ADMINISTRATIVE OFFICE OF THE

DISTRICT ATTORNEYS: 699.0 699.0

For expenditure in fiscal year 2006 for personal services and employee benefits and other costs related to the initiation of new judgeships. The appropriation is contingent on enacting House Bill 901 or similar legislation of the first session of the forty-seventh legislature.

(10) ATTORNEY GENERAL: 295.0 295.0

For the prosecution of methamphetamine cases and a term full-time-equivalent attorney.

(11) ATTORNEY GENERAL: 250.0 250.0

For Otero mesa litigation.

(12) ATTORNEY GENERAL:

The period of time for expending the four million nine hundred ninety thousand dollars (\$4,990,000) appropriated from the general fund in Subsection 8 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) for the attorney general to enter into cooperative agreements with the state engineer, interstate stream commission and New Mexico department of environment in preparing for potential litigation with Texas on water issues is extended through fiscal year 2006, for the same purpose.

(13) ATTORNEY GENERAL:

The period of time for expending the three million dollars (\$3,000,000) appropriated from the general fund operating reserve in Subsection 9 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) contingent on certification by the attorney general to the state board of finance that the appropriation made in Subsection 8 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) has been expended and additional funds are required to prepare for potential litigation with Texas on water issues contingent on the state board of finance certifying the need is extended through fiscal year 2006, for the same purpose.

(14) TAXATION AND REVENUE DEPARTMENT:

The period of time for expending the two million three hundred thousand dollars (\$2,300,000) appropriated from the general fund in Subsection 14 of Section 5 of Chapter 114 of Laws 2004 for the tax administration program to enhance tax collection efforts is extended through fiscal year 2006, for the same purpose.

(15) TAXATION AND REVENUE DEPARTMENT:

The period of time for expending the two hundred thirty thousand dollars (\$230,000) appropriated from the general fund in Subsection 15 of Section 5 of Chapter 114 of Laws 2004 for revising motor vehicle division agent agreements in order to standardize agent contracts, operating procedures and accountability and maximize state revenues is extended through fiscal year 2006, for the same purpose.

(16) TAXATION AND REVENUE DEPARTMENT:

The period of time for expending the three hundred eighty-one thousand two hundred dollars (\$381,200) appropriated from the general fund in Subsection 16 of Section 5 of Chapter 114 of Laws 2004 for revising the traffic citation process, clearing out backlogs, collecting overdue fines and maximizing revenues is extended through fiscal year 2006, for the same purpose.

(17) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 800.0 800.0

For the weatherization program.

(18) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 250.0 250.0

For schools outreach.

(19) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 2,000.0 2,000.0

For deposit into the drinking water state revolving loan fund for a twenty percent match to leverage a sixteen million dollar (\$16,000,000) grant from the federal environmental protection agency.

(20) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 50.0 50.0

For implementation by Torrance county of the Estancia basin regional water plan.

(21) DEPARTMENT OF FINANCE

AND ADMINISTRATION: 4,000.0 4,000.0

For ~~[transfer to the pre-kindergarten fund, for]~~ a voluntary pre-kindergarten program for expenditure in fiscal years 2005, 2006 and 2007. The department of finance and administration shall provide an expenditure plan for review by the legislative finance committee and legislative education study committee by July 1, 2005. Priority for funding shall be given to supplement public, tribal and private early childhood programs that are: (1) licensed as of July 1, 2005 (as applicable); (2) serving communities that have the highest percentage of public elementary schools that are not meeting the proficiency component required for calculating adequate yearly progress; and (3) serving children, at least sixty-six percent of whom live within the attendance zone of a Title 1 elementary school. The public education department and the children, youth and families department shall develop evaluation criteria to determine if the program results in improved student readiness for schools using scientific methods. ~~[The appropriation is contingent on enacting House Bill 337 or similar legislation of the first session of the forty-seventh legislature.]~~ *[LINE-ITEM VETO]*

(22) NEW MEXICO SENTENCING COMMISSION: 200.0 200.0

For a comprehensive workload study.

(23) PUBLIC DEFENDER DEPARTMENT: 640.0 640.0

For case support.

(24) PUBLIC DEFENDER DEPARTMENT: 550.0 550.0

For expenditure in fiscal year 2006 for personal services and employee benefits and other costs related to the initiation of new judgeships. The appropriation is contingent on enacting House Bill 901 or similar legislation of the first session of the forty-seventh legislature.

(25) PUBLIC DEFENDER DEPARTMENT: 450.0 450.0

For compensation increases for contract public defenders.

(26) PUBLIC DEFENDER DEPARTMENT: 300.0 300.0

For providing a fee structure for contracting representation of defendants in death penalty cases.

(27) PUBLIC DEFENDER DEPARTMENT:

The period of time for expending the eight hundred seventy thousand dollars (\$870,000) appropriated from the general fund in Subsection 27 of Section 5 of Chapter 114 of Laws 2004 for criminal cases related to the Santa Rosa prison riots is extended through fiscal year 2006, for the same purpose.

(28) OFFICE OF THE CHIEF INFORMATION

OFFICER: 150.0 150.0

For a rate study at the general services department.

(29) STATE COMMISSION OF PUBLIC

RECORDS:

The period of time for expending the eleven thousand dollars (\$11,000) appropriated from internal services funds/interagency transfers in Section 4 of Chapter 114 of Laws 2004 for historical records, preservation, access and related programs is extended through December 31, 2005, for the same purpose.

(30) TOURISM DEPARTMENT: 1,500.0 1,500.0

For advertising, promotion and outreach, including cooperative advertising. One hundred thousand dollars (\$100,000) is contingent on maximizing statewide advertising efforts with the state parks division of the energy, minerals and natural resources department and reporting results of the collaboration with the state parks division to the legislative finance committee by September 1, 2005, and one hundred thousand dollars (\$100,000) is contingent on maximizing advertising efforts with the cultural affairs department and reporting results of the collaboration with the cultural affairs department to the legislative finance committee by September 1, 2005.

(31) TOURISM DEPARTMENT: 150.0 150.0

For an Indian tourism program.

(32) ECONOMIC DEVELOPMENT DEPARTMENT: 500.0 500.0

For rail yard relocation.

(33) ECONOMIC DEVELOPMENT DEPARTMENT: 300.0 300.0

For military base planning. The appropriation is contingent upon a New Mexico military base being targeted for closure by the federal base realignment and closure commission.

(34) ECONOMIC DEVELOPMENT DEPARTMENT: 1,000.0 1,000.0

For the economic development partnership, contingent on certification by the department of finance and administration that the economic development partnership has secured one hundred thousand dollars (\$100,000) in private funding pursuant to Subsection C of Section 53-7A-5 NMSA 1978.

(35) ECONOMIC DEVELOPMENT DEPARTMENT:

The period of time for expending the one million five hundred thousand dollars (\$1,500,000) appropriated from the general fund in Subsection 40 of Section 6 of Chapter 64 of Laws 2001 for environmental impact studies, acquiring land and water, developing a proposal and other activities related to the southwest regional spaceport is extended through fiscal year 2006, for the same purpose.

(36) ECONOMIC DEVELOPMENT DEPARTMENT:

The period of time for expending the five million dollars (\$5,000,000) appropriated from the general fund in Subsection 37 of Section 5 of Chapter 114 of Laws 2004 for the x-prize project space vehicle air show and competition is extended through fiscal year 2006, for the same purpose.

(37) ECONOMIC DEVELOPMENT DEPARTMENT:

The period of time for expending the two hundred thousand dollars (\$200,000) appropriated from the general fund in Subsection 35 of Section 5 of Chapter 114 of Laws 2004 for hydrogen and fuel cell technologies is extended through fiscal year 2006, for the same purpose.

(38) PUBLIC REGULATION COMMISSION: 150.0 150.0

For engineering, design and construction of fire-fighting wastewater lagoons at the New Mexico firefighter training academy.

(39) PUBLIC REGULATION COMMISSION: 75.0 75.0

For engineering, design and construction of a women's shower and locker facility at the New Mexico firefighter training academy.

(40) PUBLIC REGULATION COMMISSION: 15.0 15.0

For engineering safety evaluation of the burn building and other training props at the New Mexico firefighter training academy.

~~[(41) PUBLIC REGULATION COMMISSION: 295.0 295.0]~~

~~For engineering and design of classrooms and an auditorium at the New Mexico firefighter training academy.][LINE-ITEM VETO]~~

The period of time for expending the one million three hundred ten thousand dollars (\$1,310,000) appropriated from the general fund in Subsection 69 of Section 5 of Chapter 114 of Laws 2004 for the water administration technical engineering resource system data base is extended through fiscal year 2006, for the same purpose.

(67) STATE ENGINEER:

The period of time for expending the nine hundred twenty-five thousand dollars (\$925,000) appropriated from the general fund in Subsection 71 of Section 5 of Chapter 114 of Laws 2004 for compliance with federal mandates is extended through fiscal year 2006, for the same purpose.

(68) STATE ENGINEER:

The period of time for expending the three hundred ninety thousand dollars (\$390,000) appropriated from the irrigation works construction income fund in Subsection 69 of Section 5 of Chapter 114 of Laws 2004 for the water administration technical engineering resource system database is extended through fiscal year 2006, for the same purpose.

(69) STATE ENGINEER:

The period of time for expending the one million three hundred thousand dollars (\$1,300,000) appropriated from the general fund in Subsection 72 of Section 5 of Chapter 114 of Laws 2004 for adjudications of water rights on the Pecos river and Rio Grande is extended through fiscal year 2006, for the same purpose.

~~[(70) STATE ENGINEER:~~

~~The period of time for expending the one hundred thousand dollars (\$100,000) appropriated from the trust fund in Subsection E of Section 3 of Chapter 83 of Laws 2003 for adjudications of water rights on the Pecos river and Rio Grande is extended through fiscal year 2006, for the same purpose.][LINE-ITEM VETO]~~

(71) STATE ENGINEER:

The period of time for expending the thirty million dollars (\$30,000,000) appropriated from the tax stabilization reserve to the department of finance and administration in Subsection A of Section 2 of Chapter 109 of Laws 2002 for protecting, enhancing or conserving New Mexico's water resources is extended through fiscal year 2006, for the same purpose.

(72) STATE ENGINEER:

The period of time for expending the twenty million dollars (\$20,000,000) appropriated from the general fund in Subsection 76 of Section 5 of Chapter 114 of Laws 2004 for the purchase of land and appurtenant water rights or rights to the delivery of water pursuant to Chapter 94 of Laws 2002 is extended through fiscal year 2006, for the same purpose.

(73) STATE ENGINEER:

The period of time for expending the one million five hundred thousand dollars (\$1,500,000) appropriated from the general fund in Subsection 29 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) to administer the Pecos river supreme court decree is extended through fiscal year 2006, for the same purpose.

(100) DEPARTMENT OF PUBLIC SAFETY:

The period of time for expending the two hundred thousand dollars (\$200,000) appropriated from the general fund in Subsection 89 of Section 5 of Chapter 114 of Laws 2004 for reducing the criminal background check backlog is extended through fiscal year 2006, for the same purpose.

(101) DEPARTMENT OF PUBLIC SAFETY:

The period of time for expending the two hundred twenty-five thousand dollars (\$225,000) appropriated from the general fund in Subsection 87 of Section 5 of Chapter 114 of Laws 2004 for the crime laboratory to contract with private forensic laboratories for serological, deoxyribonucleic acid and trace evidence analysis related to sexual offenses is extended through fiscal year 2006, for the same purpose.

(102) DEPARTMENT OF TRANSPORTATION: 200.0 200.0

For providing Santa Ana drainage in Sandoval county. The appropriation is from the rubberized asphalt fund.

(103) DEPARTMENT OF TRANSPORTATION: 1,721.0 1,721.0

For the costs of acquiring right-of-way for and the design and construction of an interchange at exit 102 on interstate 40. The appropriation is from the rubberized asphalt fund.

(104) PUBLIC EDUCATION DEPARTMENT: 7,000.0 7,000.0

For the public education department and public school districts' costs in student assessment and criterion-reference test development in fiscal years 2005, 2006, 2007 and 2008. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008, shall revert to the general fund.

(105) PUBLIC EDUCATION DEPARTMENT: 600.0 600.0

For the implementation of the uniform chart of accounts in fiscal years 2005, 2006 and 2007. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007, shall revert to the general fund.

(106) PUBLIC EDUCATION DEPARTMENT: 400.0 400.0

For continued implementation of the three-tiered evaluation system for teachers. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(107) PUBLIC EDUCATION DEPARTMENT: 300.0 300.0

For developing a licensure and evaluation system for professional instruction support providers. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of

Laws 2004. The appropriation is contingent on enactment of House Bill 83 or similar legislation of the first session of the forty-seventh legislature.

(108) PUBLIC EDUCATION DEPARTMENT: 100.0 100.0

For the prueba de español para la certificación program.

(109) PUBLIC EDUCATION DEPARTMENT: 5,000.0 5,000.0

From the appropriation contingency fund to augment emergency supplemental funds for distribution by the public education department to public school districts experiencing budget shortfalls resulting from the public school funding formula distribution for small districts, unanticipated growth, fixed costs, fuel costs and emergency expenses after the supplemental emergency fund balance has been used. The public education department will validate public school district requests and may transfer the funds from the appropriation contingency fund after certification to and approval by the board of finance.

(110) PUBLIC EDUCATION DEPARTMENT: 1,000.0 1,000.0

For transfer to the charter school stimulus fund.

(111) PUBLIC EDUCATION DEPARTMENT: 40.0 40.0

For maintenance of the state student identification number system.

(112) PUBLIC EDUCATION DEPARTMENT: 2,400.0 2,400.0

For transfer to the teacher professional development fund to be used to fund re: learning, regional educational technology assistance, strengthening quality in schools, service learning, golden apple, closing the achievement gap, leadership academy and other professional development programs. [~~In fiscal year 2006, the public education department shall evaluate programs funded through the teacher professional development fund and provide a report to the legislative education study committee by November 2005.~~]

(113) PUBLIC EDUCATION DEPARTMENT: 1,000.0 1,000.0

For transfer to the school library fund.

(114) PUBLIC EDUCATION DEPARTMENT:

The period of time for expending the one million eight hundred thousand dollars (\$1,800,000) appropriated from the general fund in Subsection 113 of Section 5 of Chapter 114 of Laws 2004 for implementation of the uniform chart of accounts is extended through fiscal year 2006, for the same purpose.

~~(115) COMMISSION ON HIGHER EDUCATION: 6,000.0 6,000.0~~

For transfer to the faculty endowment fund pursuant to Section 21-1-27.1 NMSA 1978 for distribution to all four year, public, post-secondary institutions on a competitive basis upon each demonstrating all prior state appropriation allocations for faculty endowments have been utilized. Further, the appropriation is intended to provide a one hundred thousand dollar (\$100,000) set aside for faculty endowments for each

of the public, comprehensive regional institutions, specifically New Mexico Highlands University, Eastern New Mexico University and Western New Mexico University.][*LINE-ITEM VETO*]

~~[(116) COMMISSION ON HIGHER EDUCATION: 1,000.0 1,000.0~~

~~For the legislative endowment scholarship fund contingent upon fund balances being invested by the state investment council on behalf of the commission on higher education pursuant to Subsection G of Section 6-8-7 NMSA 1978.][*LINE-ITEM VETO*]~~

~~[(117) COMMISSION ON HIGHER EDUCATION: 20,000.0 20,000.0~~

~~To provide a one-time supplement for infrastructure improvements of public, post secondary institutions and special schools to be allocated according to a distribution formula based on the facilities condition index. The commission shall seek prior review by the legislative finance committee of the funding allocation plan and relevant accountability mechanisms prior to approval and release of funds by the department of finance and administration.][*LINE-ITEM VETO*]~~

~~[(118) COMMISSION ON HIGHER EDUCATION: 4,500.0 4,500.0~~

~~To provide a one-time investment in public, post secondary libraries with funding to be allocated according to the library inflationary factor.][*LINE-ITEM VETO*]~~

(119) UNIVERSITY OF NEW MEXICO: 400.0 400.0

For participation by the New Mexico health sciences center in a health information data exchange in Bernalillo and Taos counties.

(120) NEW MEXICO STATE UNIVERSITY: 1,950.0 1,950.0

For non-native phreatophyte eradication, monitoring, revegetation and rehabilitation projects including five hundred thousand dollars (\$500,000) for soil and water conservation districts projects. The appropriation is contingent upon the New Mexico department of agriculture including performance and outcome measures in its contracts to increase performance oversight and fiscal accountability and presenting a report on the program's purposes, activities and outcomes to the department of finance administration, the state engineer and the legislative finance committee prior to October 1, 2005. The appropriation is further limited to projects aligned with the New Mexico statewide policy and strategic plan for non-native phreatophyte/watershed management.

(121) NEW MEXICO HIGHLANDS UNIVERSITY: 1,250.0 1,250.0

For retiring previously incurred loans.

(122) NEW MEXICO INSTITUTE OF MINING AND

TECHNOLOGY: 1,000.0 1,000.0

To support the technology research collaborative.

(123) NEW MEXICO INSTITUTE OF MINING AND

TECHNOLOGY: 300.0 300.0

For research and testing of aerosol technology as it relates to anti-terrorism and enhances homeland security.

(124) NEW MEXICO INSTITUTE OF MINING AND

TECHNOLOGY: 275.0 275.0

The appropriation includes two hundred thousand dollars (\$200,000) for development of processes to enhance recovery of crude oil and natural gas and seventy-five thousand dollars (\$75,000) for a crude oil and natural gas well log library.

(125) NEW MEXICO INSTITUTE OF MINING AND

TECHNOLOGY: 300.0 300.0

For the creation of hydrologic maps of critical regions in New Mexico.

(126) NEW MEXICO MILITARY INSTITUTE: 250.0 250.0

To the legislative scholarship fund for the General Richard T. Knowles legislative scholarship program.

(127) COMPUTER SYSTEMS ENHANCEMENT

FUND: 19,002.0 19,002.0

For information technology systems projects.

(128) COMPUTER SYSTEMS ENHANCEMENT

FUND: 6,650.0 6,650.0

For information technology systems projects. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

TOTAL SPECIAL APPROPRIATIONS: 115,157.3 4,101.0 119,258.3

Chapter 33 Section 6 Laws 2005

Section 6. SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS.--The following amounts are appropriated from the general fund, or other funds as indicated, for expenditure in fiscal year 2005 for the purposes specified. Disbursement of these amounts shall be subject to certification by the agency to the department of finance and administration and the legislative finance committee that no other funds are available in fiscal year 2005 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 2005 shall revert to the appropriate fund.

(1) ADMINISTRATIVE OFFICE OF THE

COURTS: 602.8 602.8

For jury and witness fees and court appointed attorneys.

(2) ADMINISTRATIVE OFFICE OF THE

COURTS: 410.0 410.0

For judiciary-wide shortfalls in group insurance costs.

(3) EIGHTH JUDICIAL DISTRICT COURT: 15.7 15.7

For funding an over-obligation of federal grants in fiscal year 2003.

(4) BERNALILLO COUNTY METROPOLITAN

COURT: 346.3 346.3

For shortfalls in group health insurance and workers' compensation costs.

(5) PUBLIC SCHOOLS INSURANCE AUTHORITY: 3,108.0 3,108.0

For shortfalls in the risk program.

(6) RETIREE HEALTH CARE AUTHORITY: 950.0 950.0

For partial restoration of the program support budget.

(7) GENERAL SERVICES DEPARTMENT: 500.0 500.0

For shortfalls in the aviation bureau of the transportation services division.

(8) SECRETARY OF STATE: 110.0 110.0

For unforeseen costs incurred as a result of the Ralph Nader lawsuit.

(9) TOURISM DEPARTMENT: 150.0 150.0

For the New Mexico sports authority.

(10) GAMING CONTROL BOARD: 102.0 102.0

For personal services and employee benefits.

(11) ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 120.0 120.0

For personal services and employee benefits.

document filing and other document management functions. Three hundred thousand dollars (\$300,000) of this appropriation shall be allocated to the metropolitan court to coordinate this project with the second judicial district court.

(3) TAXATION AND REVENUE

DEPARTMENT: 750.0
750.0

For the motor vehicle division to complete the planning and modeling phases of the motor vehicle division systems re-engineering project. This appropriation includes two term full-time-equivalent positions. The project deliverables shall be aligned with changes to motor vehicle division statutes.

(4) TAXATION AND REVENUE

DEPARTMENT:

The period of time for expending the five hundred seventy thousand dollars (\$570,000) appropriated from the computer systems enhancement fund contained in Subsection 2 of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) as extended by Subsection 1 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 5 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to perform project planning, data modeling for a centralized data warehouse and infrastructure consolidation to replace the oil and natural gas administrative revenue database and selection of technologies for use by the petroleum industry and end-users of the taxation and revenue department, the commissioner of public lands, and the energy, minerals and natural resources department. One hundred ninety thousand dollars (\$190,000) of the appropriation is from the state lands maintenance fund.

(5) EDUCATIONAL RETIREMENT BOARD: 300.0
300.0

To complete the replacement of the educational retirement accounting system used to administer retirement benefits for educational employees of the state of New Mexico. This appropriation is from the educational retirement fund. The educational retirement board shall provide periodic status reports to the legislative finance committee and the state chief information officer. The period of time for expending the two million dollars (\$2,000,000) appropriated from the educational retirement fund contained in Subsection 11 of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) as extended by Subsection 7 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 16 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006, and the period of time for expending the seven hundred fifty thousand dollars (\$750,000) appropriated from the educational retirement fund contained in Subsection 16 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to complete implementation of an off-the-shelf solution for managing educational retirement membership information.

(6) GENERAL SERVICES DEPARTMENT:

The period of time for expending the one million dollars (\$1,000,000) appropriated from the computer systems enhancement fund contained in Subsection 7 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for developing and publishing a state information technology consolidation plan and initial activities. A statewide information technology consolidation plan shall include a road map for implementing the future vision and estimated costs for specific initiatives to manage enterprise technical services such as servers, databases, networks and mainframe migration. The

general services department is the lead agency and shall coordinate the consolidation plan and implementation activities with the state chief information officer.

(7) GENERAL SERVICES DEPARTMENT:

The period of time for expending the two million dollars (\$2,000,000) appropriated from the computer systems enhancement fund contained in Subsection 11 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for continuing implementation of a single, statewide, integrated telecommunications backbone for state government. The general services department shall serve as lead agency for this project. Funding is contingent upon submission of a telecommunications architecture plan by the general services department to the information technology commission, the information technology oversight committee, the legislative finance committee and the department of finance and administration. The telecommunications architecture plan shall be in accordance with the state information architecture, the information technology consolidation plan, and the enterprise-wide information security program and approved by the state chief information officer. The telecommunications architecture plan shall include a cost and savings analysis by agency. The state-owned digital microwave telecommunications system shall be used at all locations possible to enhance statewide telecommunications and leverage state-owned resources without incurring additional costs. The general services department shall provide monthly written reports to the chief information officer. Funds for this appropriation shall not be used to pay for independent consultant services. Funds for this appropriation shall be limited to the purchase of telecommunications circuits and related hardware and software that are in accordance with the telecommunications architecture plan.

(8) NEW MEXICO SENTENCING

COMMISSION:	250.0
250.0	

To enhance the justice information system to include data exchange query capability and portal maintenance. This appropriation is contingent upon an approved plan that details the final solution for funding and ownership of the justice information system.

(9) PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:	6,285.9
6,285.9	

To complete the implementation of the retirement information online system. This appropriation is from the public employees retirement income fund. Five million four hundred ninety-four thousand seven hundred dollars (\$5,494,700) of this appropriation is re-appropriated from an unspent fund balance that reverted to the public employees retirement income fund contained in Subsection 8 of Section 7 of Chapter 76 of Laws 2003. This appropriation is contingent upon project re-certification by the information technology commission. This appropriation includes four term full-time-equivalent positions.

(10) SECRETARY OF STATE:	112.0
112.0	

To complete the implementation of trademarks, agricultural lien and campaign reporting modules of the secretary of state knowledgebase application.

(11) PUBLIC REGULATION COMMISSION:	650.0
650.0	

To implement secretary of state knowledgebase computer software developed by the state of North Carolina for managing corporate registrations to enable enhanced reporting, electronic processing of certified document requests, cash management and electronic payment services for corporations. This appropriation is contingent on demonstrating that the new system does not automate outdated agency business practices.

(12) PUBLIC REGULATION COMMISSION:

The period of time for expending the one million dollars (\$1,000,000) appropriated from the agents surcharge fund contained in Subsection 10 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 19 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to replace the existing insurance management information system with a system that is web-based, complies with the national association of insurance commissioners requirements and includes all the recommendations included in the independent validation and verification audit report. The appropriation includes one term full-time-equivalent position. This project shall follow architecture guidelines and standards published by the statewide portal project team to ensure consistent access and electronic payments via the internet, technical architecture, design and presentation to the user.

(13) STATE FAIR COMMISSION:

The period of time for expending the three hundred fifty thousand dollars (\$350,000) appropriated from state fair funds contained in Subsection 20 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to upgrade the computer network infrastructure at the state fairgrounds to a wireless network that will enable data communication between buildings lacking computer network wiring.

(14) GAMING CONTROL BOARD: 2,200.0
2,200.0

To implement a new central gaming monitoring system with appropriate security. The gaming control board shall implement procedures to ensure that legacy systems that do not interface with the proposed system are allowed sufficient time to become compliant and undue hardship is not imposed on owners and licensees of these legacy systems. This appropriation is contingent upon the gaming control board providing a report which indicates (1) a favorable result from their pilot project being conducted with the new gaming machines (2) verification that the new system also supports the old gaming machines and (3) identification of significant savings opportunities such as the use of save smart for equipment hardware purchases.

(15) AGING AND LONG-TERM SERVICES DEPARTMENT:

The period of time for expending the two hundred twenty-five thousand dollars (\$225,000) appropriated from the general fund contained in Subsection 36 of Section 5 of Chapter 4 of Laws 2002 (1st E.S.) as extended by Subsection 11 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 22 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for computer hardware, software, network infrastructure, a web server and training for planning service areas and senior citizen centers.

(16) HUMAN SERVICES DEPARTMENT: 1,000.0 6,200.0
7,200.0

To convert the current human services systems into the layered structure specified in the social services architecture plan. This appropriation includes two term full-time-equivalent positions. This appropriation is

contingent upon an approved social services architecture plan and a federally approved advance planning document.

(17) HUMAN SERVICES DEPARTMENT:

The period of time for expending the seven million eight hundred thousand dollars (\$7,800,000) appropriated from the computer systems enhancement fund and four million five hundred thousand dollars (\$4,500,000) in federal funds contained in Subsection 4 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 15 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to enable healthcare and human services agencies to comply with the federal Health Insurance Portability and Accountability Act information security rules. The period of time for expending the seven hundred thousand dollars (\$700,000) appropriated from the general fund and two million one hundred thousand dollars (\$2,100,000) in federal funds contained in Subsection 13 of Section 6 of Chapter 76 of Laws 2003 as extended by Subsection 25 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for the medical assistance program for computer system enhancements to enable healthcare and human services agencies to comply with the federal Health Insurance Portability and Accountability Act information security rules. The period of time for expending the three hundred thousand dollars (\$300,000) appropriated from the computer systems enhancement fund and two million four hundred thousand dollars (\$2,400,000) in federal funds contained in Subsection 23 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for automating the process of reviewing medicaid claims for fraud and abuse. The human services department shall provide the legislative finance committee and the department of finance and administration with quarterly reports on medicaid claims recovered as a result of the new software. This appropriation is contingent upon a solution that is based on a design that can be used with future medicaid systems the state may choose to adopt.

(18) HUMAN SERVICES DEPARTMENT:

The period of time for expending the one million two hundred thousand dollars (\$1,200,000) appropriated from the computer systems enhancement fund and eight hundred thousand dollars (\$800,000) in federal funds contained in Subsection 6 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 for implementing a multi-agency system for imaging and archiving documents electronically to improve access, integration and accuracy of information. The human services department shall serve as lead agency utilizing a multi-agency steering committee consisting of, at a minimum, the state commission of public records and the taxation and revenue department. The portion of this appropriation related to the human services department is contingent upon receiving written approval from the federal funding agency.

(19) HUMAN SERVICES DEPARTMENT:

The period of time for expending the five hundred thousand dollars (\$500,000) appropriated from the computer systems enhancement fund contained in Subsection 8 of Section 8 of Chapter 64 of Laws 2001 as extended by Subsection 10 of Section 7 of Chapter 4 of Laws 2002 (1st E.S.) as extended by Subsection 5 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 14 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to develop a statewide, integrated, interoperable and interactive state immunization information system capable of sharing data with all entities that gather and maintain health-related data. This appropriation is contingent upon receiving written approval from the federal funding agency.

(20) LABOR DEPARTMENT:

12,500.0 12,500.0

The appropriation for twelve million five hundred thousand dollars (\$12,500,000) in unexpended federal Reed Act funds contained in Subsection 13 of Section 7 of Chapter 76 of Laws 2003 is re-appropriated as follows: one million dollars (\$1,000,000) to complete the implementation of the unemployment insurance claims re-engineering project and the remainder to complete the implementation of the unemployment insurance tax system. The period of time for expending the six hundred thousand dollars (\$600,000) in federal Reed Act and Economic Security Recovery Act of 2001 funds contained in Subsection 15 of Section 7 of Chapter 76 Laws 2003 is extended through fiscal year 2006 to replace a document scanning system used for unemployment tax administration.

(21) LABOR DEPARTMENT: 3,500.0
3,500.0

To meet federal accounting and reporting requirements not addressed by the base component of the statewide human resources, accounting and reporting system project. The appropriation is from the Economic Security and Recovery Act of 2001 (H.R. 3090) and Section 903 of the Social Security Act, as amended, also known as federal Reed Act, and made available to the New Mexico labor department.

(22) DEPARTMENT OF HEALTH: 750.0 750.0

To implement an integrated medical billing solution addressing all department of health billing and claim functions. This project shall standardize claim submission and comply with the Health Insurance Portability and Accountability Act. This appropriation is contingent upon an approved social services architecture plan.

(23) DEPARTMENT OF HEALTH: 1,000.0 900.0
1,900.0

To implement a single, integrated laboratory information management system. This appropriation is contingent upon an approved social services architecture plan.

(24) DEPARTMENT OF HEALTH:

The period of time for expending the one million dollars (\$1,000,000) appropriated from the computer systems enhancement fund contained in Subsection 27 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to implement an electronic web-enabled vital records system to enhance turnaround time for producing birth and death certificates and enhance quality of data submitted to federal contract agencies. This appropriation is contingent upon publication of an analysis of commercial solutions available to support this request.

(25) DEPARTMENT OF HEALTH:

The period of time for expending the five hundred thousand dollars (\$500,000) appropriated from the computer systems enhancement fund contained in Subsection 16 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 28 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to complete implementation of the pharmacy inventory management component of the integrated client data system. The system shall comply with the federal Health Insurance Portability and Accountability Act. The department of health shall provide monthly written reports to the state chief information officer and to the legislative finance committee. The department of health is authorized to transfer funds from this project to other projects to comply with the federal Health Insurance Portability and Accountability Act.

[(26) HEALTH POLICY COMMISSION: 250.0
250.0

~~To study automated patient record systems.]~~

(27) CHILDREN, YOUTH AND

FAMILIES DEPARTMENT: 500.0
500.0

To develop and publish a social services architecture plan. This plan shall provide a framework to coordinate the development of future human services systems projects, promote sharing of components and reduce duplication of data. This appropriation shall also be used to implement a directory of social services resources as requested by the health policy commission. The appropriations for the human services department and the department of health are contingent upon completion and approval of this architecture plan.

(28) CORRECTIONS DEPARTMENT: 200.0
200.0

To implement load-balanced internet servers and a clustered database for the criminal management information system.

(29) CORRECTIONS DEPARTMENT:

The period of time for expending the four hundred thousand dollars (\$400,000) appropriated from the computer systems enhancement fund contained in Subsection 29 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to transition the criminal management information system to a web-based application developed through a consortium of western states. The system will be designed to improve data collection, viewing and use by department constituents and other public safety, judicial and law enforcement entities. Funds for this appropriation shall be used to ensure knowledge transfer from the software vendor to the corrections department to enable internal state support of this application system in the future. The period of time for expending the four hundred thousand dollars (\$400,000) appropriated from the computer systems enhancement fund contained in Subsection 19 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 29 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to implement modifications to the current criminal management information system. Modifications performed with this appropriation extension shall be developed in such a manner as to ensure these changes are converted to the newly planned system at no additional development cost.

(30) DEPARTMENT OF PUBLIC SAFETY: 2,900.0
2,900.0

To implement an automated fingerprint imaging system and to replace the interim distributed imaging system. This appropriation is contingent upon the department of public safety publishing a plan to use fee revenue to first resolve the backlog of paper forms.

(31) DEPARTMENT OF PUBLIC SAFETY: 500.0
500.0

To replace obsolete wiring and associated equipment, but not to include network servers, at state police district offices.

(32) DEPARTMENT OF PUBLIC SAFETY: 1,500.0
1,500.0

To purchase and install mobile computers in state police and motor transportation officers' vehicles. This appropriation is contingent on an approved plan to include future purchasing of mobile computers as standard equipment for these vehicles along with items such as vehicle communications and radar equipment.

(33) DEPARTMENT OF PUBLIC SAFETY:

The period of time for expending the seven hundred thousand dollars (\$700,000) appropriated from the computer systems enhancement fund contained in Subsection 8 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to implement an enterprise-wide information security program. The information security program is to include a single security architecture with common goals, methods, standards and policies. The information security program will be led by a single chief information security officer using a multi-agency steering committee coordinated through the office of homeland security.

(34) DEPARTMENT OF PUBLIC SAFETY:

The period of time for expending the eight hundred thousand dollars (\$800,000) appropriated from the computer systems enhancement fund contained in Subsection 20 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 30 of Section 8 of Chapter 114 of Laws 2004 is extended through fiscal year 2006 to stabilize the agency computer network and to address operating and security vulnerabilities identified through an independent assessment performed by the New Mexico institute of mining and technology in December 2002.

(35) PUBLIC EDUCATION DEPARTMENT: 6,650.0
6,650.0

For implementation of the systems architecture recommended by the decision support architecture consortium to meet state and federal reporting requirements, including the requirements of the No Child Left Behind Act in fiscal years 2005, 2006 and 2007. This appropriation includes four term full-time-equivalent positions. This appropriation is contingent on the public education department demonstrating performance through development of a strategic project plan, assigning of additional staff totally dedicated to the project and providing periodic status reports to the state chief information officer. The appropriation is from the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

~~[(36) PUBLIC SCHOOL-~~

~~FACILITIES AUTHORITY: _____ 500.0 _____
_____ 500.0~~

~~To develop and implement a scalable, web-based system to manage facilities' operation and maintenance for public school districts. This appropriation is contingent upon receiving one million five hundred thousand dollars (\$1,500,000) from the public school capital outlay fund.][LINE-ITEM VETO]~~

~~[(37) COMMISSION ON HIGHER _____~~

EDUCATION: _____ 2,100.0
_____ 2,100.0

For the New Mexico institute of mining and technology to upgrade the infrastructure of the commission on higher education communication system network to provide high-speed internet connectivity via a fiber-optic network. One hundred thousand dollars (\$100,000) of this appropriation shall be allocated to New Mexico highlands university to install a regional computer network communications hub for higher educational institutions in northern New Mexico.][*LINE-ITEM VETO*]

~~[(38) COMMISSION ON HIGHER~~ _____

EDUCATION: _____ 2,500.0
_____ 2,500.0

~~To consolidate the state's multiple disperse remote learning distribution centers. The New Mexico institute of mining and technology shall be the lead agency for this project.][*LINE-ITEM VETO*]~~

TOTAL DATA PROCESSING

APPROPRIATIONS _____ 32,737.90
23,100.0 55,837.90

Chapter 33 Section 8 Laws 2005

Section 8. COMPENSATION APPROPRIATIONS.--

A. Twelve million seven hundred nineteen thousand six hundred dollars (\$12,719,600) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 2006 to provide salary increases subject to satisfactory job performance. The salary increases shall be effective the first full pay period after July 1, 2005, and distributed as follows:

(1) two hundred eighty-nine thousand dollars (\$289,000) to provide a one and three quarter percent salary increase pursuant to the provisions of Section 34-1-9 NMSA 1978 to the chief justice of the supreme court; the justices 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 hearing officers and special commissioners;

(2) one million fifty thousand and three hundred dollars (\$1,050,300) to provide judicial permanent employees whose salaries are not set by statute with a one and three quarter percent salary increase;

(3) fifty-five thousand five hundred dollars (\$55,500) to provide a five percent salary increase to district attorneys;

(4) nine hundred thirteen thousand five hundred dollars (\$913,500) to provide all district attorney permanent employees, other than elected district attorneys, with a one and three quarter percent salary increase and an additional three and one quarter percent salary increase for all staff attorneys within the district attorney office;

(5) seven million eight hundred thirty-seven thousand one hundred dollars (\$7,837,100) to provide incumbents in agencies governed by the Personnel Act, other than commissioned officers of the department of public safety, with a one and three quarter percent salary increase and an additional three and one quarter percent salary increase for all attorneys within the public defender department;

(6) five hundred sixty thousand dollars (\$560,000) to provide executive exempt employees, including attorney general employees and workers' compensation judges, with a one and three quarter percent salary increase;

(7) one million four hundred eighty-six thousand dollars (\$1,486,000) to provide commissioned officers of the department of public safety with a five percent salary increase in accordance with the New Mexico state police career pay system and the Personnel Act;

(8) one hundred six thousand six hundred dollars (\$106,600) to provide teachers in the department of health, corrections department, children, youth and families department and commission for the blind with a one and three quarter percent salary increase;

(9) one hundred and seventy-one thousand six hundred dollars (\$171,600) to provide permanent legislative employees, including permanent employees of the legislative council service, legislative finance committee, legislative education study committee, legislative maintenance department, the house and senate, and house and senate leadership staff with a one and three quarter percent salary increase; and

(10) two hundred fifty thousand dollars (\$250,000) to provide probation and parole officers of the corrections department with a minimum additional salary increase of three and one quarter percent.

B. Thirteen million eight hundred ninety-three thousand three hundred dollars (\$13,893,300) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 2006 to provide faculty and staff of four- and two-year post-secondary educational institutions with a two percent compensation increase. The compensation increase shall be effective the first full pay period after July 1, 2005.

C. The department of finance and administration shall distribute a sufficient amount to each agency to provide the appropriate increase for those employees whose salaries are received as a result of the general fund appropriations in the General Appropriation Act of 2005. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

D. For those state employees whose salaries are referenced in or received as a result of non-general fund appropriations in the General Appropriation Act of 2005, 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 section and such amounts are appropriated for expenditure in fiscal year 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the appropriate fund.

Chapter 33 Section 9 Laws 2005

Section 9. **ADDITIONAL FISCAL YEAR 2005 BUDGET ADJUSTMENT AUTHORITY.**--During fiscal year 2005, subject to review and approval by the department of finance and administration,

pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, in addition to the budget adjustment authority in the General Appropriation Act of 2004:

A. the second judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from duplication fees, pre-trial services program and metropolitan criminal coordinating council up to one hundred fifty thousand dollars (\$150,000);

B. the third judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from duplication fees up to fifty thousand dollars (\$50,000);

C. the fifth judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from duplication fees up to thirty thousand dollars (\$30,000);

D. the ninth judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from duplication fees up to twenty thousand dollars (\$20,000);

E. the eleventh judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from other sources and duplication fees up to forty-five thousand dollars (\$45,000);

F. the Bernalillo county metropolitan court may request budget increases from internal services funds/interagency transfers and other state funds for early intervention programs, pre-adjudication services, post-adjudication services and driving-while-intoxicated drug court up to two hundred thousand dollars (\$200,000);

G. the second judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds up to two hundred thousand dollars (\$200,000);

H. the attorney general may request budget increases up to five hundred thousand dollars (\$500,000) in the legal services program from settlement funds and may request increases from internal services funds/interagency transfers for the prosecution of criminal cases related to the Santa Rosa prison riots;

I. the taxation and revenue department may request program transfers from other programs to the motor vehicle program;

J. the general services department may request budget increases from internal services funds/interagency transfers and other state funds for information technology enterprise licenses; the risk management division may request budget increases from the group self-insurance fund for the purpose of purchasing and administering health care coverage; the group self-insurance fund shall be reimbursed no later than June 30, 2007; and the transportation services division may request budget increases from cash balances up to three million five hundred thousand dollars (\$3,500,000) for the replacement of state central fleet vehicles;

K. the educational retirement board may request budget increases from other state funds up to three hundred fifty thousand dollars (\$350,000) for the purpose of actuarial-related studies in support of legislation and the governor's educational retirement board task force;

L. the public defender department may request budget increases up to one million dollars (\$1,000,000) from internal services funds/interagency transfers and other state funds;

M. the regulation and licensing department may request program transfers up to one hundred seventy-five thousand dollars (\$175,000) to the construction industries and manufactured housing program;

N. the public regulation commission may request internal services funds/interagency transfers up to one hundred ten thousand dollars (\$110,000) from the training academy use fee fund for the public safety program to purchase self-rescuing equipment and may request budget transfers to and from the personal services and employee benefits category and between programs in all categories up to three hundred fifty thousand dollars (\$350,000) to cover budget shortfalls;

O. the department of cultural affairs may request budget increases from internal services funds/interagency transfers and other state funds up to seven hundred sixteen thousand dollars (\$716,000);

P. the department of game and fish may request program transfers up to two hundred fifty thousand dollars (\$250,000) and may request budget increases from internal services funds/interagency transfers and other state funds up to one hundred fifty thousand dollars (\$150,000) for costs related to eagle nest lake dam;

Q. the oil and gas conservation program of the energy, minerals and natural resources department may request budget increases up to one hundred thousand dollars (\$100,000) from the assessment of penalties for violations of the Oil and Gas Act;

R. the office of the state engineer may request budget increases from internal services funds/interagency transfers up to two million six hundred thousand dollars (\$2,600,000) into the hydrographic income fund, two million six hundred thousand dollars (\$2,600,000) into the improvement of the Rio Grande income fund and four million four hundred thousand dollars (\$4,400,000) into the irrigation works construction fund;

S. the income support division of the human services department may request a budget transfer in the temporary assistance for needy families program from support services to cash assistance; the income support division may request budget increases from other state funds up to two million three hundred thousand dollars (\$2,300,000) in the temporary assistance for needy families program, income support administration and general assistance; and the program support and income support divisions may request budget increases from other state funds up to one million five hundred thousand dollars (\$1,500,000) to correct the agency cost allocation;

T. the labor department may request budget increases up to seven hundred thousand dollars (\$700,000) from the public works apprentice and training fund for distribution to the New Mexico apprenticeship programs and may request program transfers from the unemployment insurance and program support programs of up to fifteen percent of Reed Act funds to the labor market services program;

U. the workers' compensation administration may request budget increases up to twenty thousand dollars (\$20,000) per catastrophic claim from the uninsured workers fund to pay medical and workers' compensation benefits payments;

V. the department of health may request program transfers to cover budget shortfalls for programs and facilities if the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved pursuant to this subsection, will not increase or decrease the total annual appropriation to a program from all funding sources by more than five percent, may request budget increases from other state funds from medicaid re-basing efforts, and may request budget increases from other state funds from land grant permanent income fund and distribution of state land office rental revenues up to one million four hundred thousand dollars (\$1,400,000);

W. the department of environment may request program transfers up to five hundred thousand dollars (\$500,000) to cover budget shortfalls;

X. the corrections department may request budget increases from other state funds from the land grant permanent income fund up to one million dollars (\$1,000,000) to cover budget shortfalls and may request program transfers among program support, inmate programming and community offender management, provided that the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved will not increase or decrease the total annual appropriation to a program from all funding sources by more than seven and one-half percent;

Y. the department of public safety may request budget increases from internal services funds/interagency transfers and other state funds for records fees collected in excess of those budgeted, may request budget increases up to three hundred fifty thousand dollars (\$350,000) from fingerprint fee revenues collected in excess of those budgeted to address a backlog and continue processing fingerprint cards, may request budget increases up to one hundred thirty-five thousand six hundred dollars (\$135,600) from revenues collected in excess of those budgeted from legislative council services for security provided during the 2005 legislative session, may request budget increases up to twenty-nine thousand three hundred dollars (\$29,300) from revenues collected in excess of those budgeted from the state fair commission for security provided during the 2004 state fair, and may request budget increases up to seventy-five thousand dollars (\$75,000) from revenues collected in excess of those budgeted from the advance training fund.

Chapter 33 Section 10 Laws 2005

Section 10. CERTAIN FISCAL YEAR 2006 BUDGET ADJUSTMENTS AUTHORIZED.--

A. As used in this section and Section 9 of the General Appropriation Act of 2005:

(1) "budget category" means an item or an aggregation of related items that represents the object of an appropriation. Budget categories include personal services and employee benefits, contractual services, other and other financing uses;

(2) "budget increase" means an approved increase in expenditures by an agency from a specific source;

(3) "category transfer" means an approved transfer of funds from one budget category to another budget category, provided that a category transfer does not include a transfer of funds between divisions; and

(4) "program transfer" means an approved transfer of funds from one program of an agency to another program of that agency.

B. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, those budget adjustments specified in this section are authorized for fiscal year 2006.

C. In addition to the specific category transfers authorized in Subsection E of this section and unless a conflicting category transfer is authorized in Subsection E of this section, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other.

D. Unless a conflicting budget increase is authorized in Subsection E of this section, a program with internal services funds/interagency transfers appropriations or other state funds appropriations that collects money in excess of those appropriated may request budget increases in an amount not to exceed five percent of its internal services funds/interagency transfers or other state funds appropriation contained in Section 4 of the General Appropriation Act of 2005. To track the five percent transfer limitation, agencies shall report cumulative budget adjustment request totals on each budget adjustment request submitted. The department of finance and administration shall certify agency reporting of these cumulative totals.

E. In addition to the budget adjustment authority otherwise provided in the General Appropriation Act of 2005, the following agencies may request specified budget adjustments:

(1) the New Mexico compilation commission may request budget increases from other state funds for publishing costs associated with subscriptions, supreme court opinions and other publications;

(2) the administrative office of the courts may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal services funds/interagency transfers from the New Mexico sentencing commission for the justice information sharing project;

(3) the second judicial district court may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal services funds/interagency transfers and other state funds for duplication fees, pretrial services and the metropolitan criminal justice coordinating council;

(4) the fourth judicial district court may request budget increases from internal services funds/interagency transfers and other state funds for funds received from duplication fees and tapes;

(5) the eleventh judicial district court may request budget increases up to thirty-three thousand five hundred dollars (\$33,500) from internal services funds/interagency transfers and other state funds for drug courts;

(6) the Bernalillo county metropolitan court may request budget increases up to two hundred thousand dollars (\$200,000) from internal services funds/interagency transfers and other state funds for early intervention programs, pre-adjudication services, post-adjudication services and driving-while-intoxicated drug court;

(7) the district attorneys and administrative office of the district attorneys may request category transfers to and from other financing uses for the purpose of supporting the administrative office of the district attorneys information technology plan;

(8) the first judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes and may request budget increases from internal services funds/interagency transfers up to one hundred thousand dollars (\$100,000) to prosecute tax crimes statewide;

(9) the second judicial district attorney may request budget increases from other state funds up to fifty thousand dollars (\$50,000) for attorney bar dues and training and may request budget increases from internal services funds/interagency transfers and other state funds up to three hundred thousand dollars (\$300,000) for personal services and employee benefits and contractual services;

(10) the sixth judicial district attorney may request budget increases up to one hundred thousand dollars (\$100,000) from internal services funds/interagency transfers and other state funds;

(11) the seventh judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes;

(12) the eighth judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes and may request budget increases from internal services funds/interagency transfers and other state funds up to seventy-five thousand dollars (\$75,000);

(13) the eleventh judicial district attorney-division I may request budget increases from internal services funds/interagency transfers and other state funds up to fifty thousand dollars (\$50,000);

(14) the eleventh judicial district attorney-division II may request budget increases from internal services funds/interagency transfers and other state funds up to four hundred thousand dollars (\$400,000) for funds received from any political subdivision of the state or from Indian tribes to assist in the prosecution of crimes within McKinley county;

(15) the thirteenth judicial district attorney may request budget increases from internal services funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes;

(16) the administrative office of the district attorneys may request budget increases from other state funds up to thirty thousand dollars (\$30,000) for costs associated with the district attorneys' training conference and other operating expenses in furtherance of the business office and may request budget increases from miscellaneous revenue collected from non-district attorney employee registration fees up to two thousand dollars (\$2,000) to pay for conference-related expenses;

(17) the attorney general may request budget increases up to five hundred fifty thousand dollars (\$550,000) from settlement funds in the legal services program and may request increases from internal services funds/interagency transfers for the prosecution of criminal cases related to the Santa Rosa prison riots;

(18) the state investment council may request budget increases from other state funds up to two million dollars (\$2,000,000) for investment manager fees and custody fees, provided that

this amount may be exceeded if the department of finance and administration approves a certified request from the state investment council that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance and may request transfers to any other category except that only five hundred thousand dollars (\$500,000) of the money appropriated for investment manager fees in the contractual services category may be transferred;

(19) the public school insurance authority may request budget increases from internal services funds/interagency transfers and other state funds for the benefits and risk programs;

(20) the retiree health care authority may request budget increases from internal services funds/interagency transfers and other state funds for the benefits program;

(21) the general services department may request budget increases from internal services funds/interagency transfers for employee group benefits and risk management funds if it collects revenue in excess of appropriated levels and may request budget increases from internal services funds/interagency transfers in an amount not to exceed ten percent of its appropriation for the information technology, communications, building office space management and maintenance and transportation services programs if it collects revenue in excess of appropriated levels;

(22) the educational retirement board may request budget increases from other state funds for investment manager fees and custody fees, provided that the department of finance and administration approves a certified request from the educational retirement board that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance and may request category transfers, except that funds authorized for investment manager fees and custody services within the contractual services category of the administrative services division of the educational retirement board shall not be transferred;

~~[(23) the New Mexico sentencing commission may request budget increases from internal services funds/interagency transfers and other state funds up to twenty five thousand dollars (\$25,000) from fees for the national conference of state sentencing commissions;][LINE-ITEM VETO]~~

(24) the public defender department may request budget increases from internal services funds/interagency transfers and other state funds;

(25) the public employees retirement association may request budget increases from other state funds for investment manager fees and custody fees, provided that the department of finance and administration approves a certified request from the public employees retirement association that additional increases from other state funds are required for increased management fees and custody fees derived from asset growth and performance; may request category transfers, except that funds authorized for investment manager fees within the contractual services category of the administrative division of the public employees retirement association and for custody services within the contractual services category of the administrative division of the public employees retirement association shall not be transferred; and may request budget increases from internal services funds/interagency transfers and other state funds; and the maintenance division of the public employees retirement association may request budget increases from other state funds to meet emergencies or unexpected physical plant failures that might impact the health and safety of workers;

(26) the tourism department may request budget increases from other state funds from earnings of sales for the tourism enterprise fund and may request budget increases from other state funds up to thirty thousand dollars (\$30,000) for the continued operation of the Santa Fe visitors' center, the New Mexico magazine program may request budget increases from other state funds from

earnings on sales, and the New Mexico clean and beautiful program may request budget increases from the special revenue fund for grants to communities for litter reduction programs;

(27) the economic development department may request program transfers up to five hundred thousand dollars (\$500,000) to assist New Mexico communities with their economic development strategic planning and marketing needs;

(28) the boards and commissions of the regulation and licensing department may request category transfers to and from personal services and employee benefits, contractual services, other and other financing uses;

(29) the public regulation commission state fire marshal's office may request budget increases from the training academy use fee fund;

(30) the state fair commission may request budget increases from unforeseen internal services funds/interagency transfers and other state funds;

(31) the department of cultural affairs may request budget increases from internal services funds/interagency transfers and other state funds for archaeological services;

(32) the oil and gas conservation program of the energy, minerals and natural resources department may request budget increases from funds received in the oil and gas reclamation fund to close abandoned wells; the healthy forests, state parks and energy efficiency and renewable energy programs of the energy, minerals and natural resources department may request budget increases from the New Mexico youth conservation corps fund for projects approved by the New Mexico youth conservation corps commission; the oil and gas conservation program of the energy, minerals and natural resources department may request budget increases up to fifty thousand dollars (\$50,000) from internal services funds/interagency transfers for funds received from the department of environment for the water quality program; the oil and gas conservation program of the energy minerals and natural resources department may request transfers to and from the other financing uses category to transfer funds to the department of environment for the underground injection program;

(33) the office of the state engineer may request budget increases from other state funds and internal services funds/interagency transfers up to three million dollars (\$3,000,000) for the eagle nest dam rehabilitation, may request budget increases up to six hundred thousand dollars (\$600,000) from internal services funds/interagency transfers to contractual services from the irrigation works construction fund for operation and maintenance costs in the Roswell basin, and may request budget increases up to one million dollars (\$1,000,000) from internal services funds/interagency transfers from the attorney general's office to prepare for anticipated water litigation;

(34) the New Mexico commission on the status of women may request budget increases from other state funds for the statutorily mandated recognition program for women;

(35) the Martin Luther King, Jr. commission may request budget increases from other state funds;

(36) the aging and long-term services department may request budget increases up to sixty thousand dollars (\$60,000) from other state funds to sponsor the annual conference on aging; any unexpended or unencumbered balances remaining from registration fees from the aging conference at the end of fiscal year 2006 shall not revert to the general fund;

(37) the human services department may request budget increases in the contractual services category from other state funds up to three million dollars (\$3,000,000) for the purpose of paying the revenue maximization contractor;

(38) the labor department or administering entity may request budget increases and program transfers of Workforce Investment Act funding from local boards provided that the cumulative effect of the adjustments does not exceed the formula distribution of funds determined by the federal government and that the transfer is in compliance with federal Workforce Investment Act program requirements; the labor department may request program transfers up to three hundred thousand dollars (\$300,000) from penalty and interest funds in program support to the compliance program; and the office of workforce training and development may request budget increases from federal Workforce Investment Act funds;

(39) the division of vocational rehabilitation may request budget increases from other state funds to maintain services to clients;

(40) the miners' hospital of New Mexico may request budget increases from other state funds;

(41) the department of health may request budget increases from other state funds from medicaid rate re-basing efforts and may request category transfers to and from other financing uses in the developmentally disabled community services program for developmental disabilities medicaid waiver expenses;

(42) the department of environment may request budget increases from other state funds to budget responsible party payments, may request budget increases from the corrective action fund to pay claims, and may request budget increases from the hazardous waste emergency fund;

(43) the office of the natural resources trustee may request budget increases from internal services funds/interagency transfers and other state funds up to two million four hundred thousand dollars (\$2,400,000) for restoration projects and may request budget increases from a contingent general fund appropriation for restoration at the South Valley superfund site, equal to any fines for damages resulting from this settlement;

(44) the department of corrections may request budget increases from internal services funds/interagency transfers in excess of the five percent limitation to implement the transition center programs in conjunction with the department of health and for costs associated with the inmate forestry work camp and may request program transfers if the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved pursuant to this subsection, will not increase or decrease the total annual appropriation to a program from all funding sources by more than five percent;

(45) the crime victims' reparation commission may request budget increases from other state funds for victim reparation services;

(46) the department of public safety may request budget increases from the concealed handgun carry revenues and balances to address the enforcement of the Concealed Handgun Carry Act, may request budget increases from the state forfeiture fund to address the enforcement of the Controlled Substances Act, and may request category transfers to and from other financing uses for administration of homeland security grants;

(47) the department of transportation may request program transfers from the program support and transportation and highway operations programs to the programs and infrastructure program not to exceed three million dollars (\$3,000,000) from the state road fund to meet additional federal fund opportunities for any amount over three percent of its federal funds appropriation contained in Section 4 of the General Appropriation Act of 2004;

(48) the public school facilities authority may request budget increases for project management expenses pursuant to the Public School Capital Outlay Act; and

(49) the commission on higher education may request transfers to and from the other financing uses category.

F. The department of military affairs, the department of public safety and the energy, minerals and natural resources department may request budget increases from the general fund as required by an executive order declaring a disaster or emergency.

Chapter 33 Section 11 Laws 2005

Section 11. APPROPRIATION REDUCTION.--

A. The state budget division of the department of finance and administration shall reduce agency general fund appropriations set out in Section 4 of the General Appropriation Act of 2005 by three million two hundred thousand dollars (\$3,200,000) to reflect general fund savings in fiscal year 2006 pursuant to Section 147 of Chapter 126 of Laws 2004 [as follows:

(1) ADMINISTRATIVE OFFICE OF THE COURTS: fourteen thousand five hundred dollars (\$14,500);

(2) ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS: twelve thousand one hundred dollars (\$12,100);

(3) ATTORNEY GENERAL: thirteen thousand dollars (\$13,000);

(4) TAXATION AND REVENUE DEPARTMENT: three hundred seventy thousand five hundred dollars (\$370,500);

(5) DEPARTMENT OF FINANCE AND ADMINISTRATION: seventy five thousand four hundred (\$75,400);

(6) PUBLIC DEFENDER DEPARTMENT: thirty one thousand dollars (\$31,000);

(7) GOVERNOR: thirteen thousand one hundred dollars (\$13,100);

(8) PERSONNEL BOARD: nineteen thousand two hundred dollars (\$19,200);

(9) TOURISM DEPARTMENT: fifty one thousand dollars (\$51,000);

(10) ECONOMIC DEVELOPMENT DEPARTMENT: sixteen thousand two hundred dollars (\$16,200);

(11) REGULATION AND LICENSING DEPARTMENT: fifty eight thousand nine hundred dollars (\$58,900);

- ~~(12) PUBLIC REGULATION COMMISSION: seventeen thousand four hundred dollars (\$17,400);~~
- ~~(13) DEPARTMENT OF CULTURAL AFFAIRS: sixty five thousand two hundred dollars (\$65,200);~~
- ~~(14) ENERGY, MINERALS AND NATURAL RESOURCES: sixty five thousand five hundred dollars (\$65,500);~~
- ~~(15) STATE ENGINEER: forty five thousand one hundred dollars (\$45,100);~~
- ~~(16) AGING AND LONG TERM SERVICES DEPARTMENT: eighteen thousand four hundred dollars (\$18,400);~~
- ~~(17) HUMAN SERVICES DEPARTMENT: four hundred two thousand five hundred dollars (\$402,500);~~
- ~~(18) DEPARTMENT OF HEALTH: six hundred thirty seven thousand two hundred dollars (\$637,200);~~
- ~~(19) DEPARTMENT OF ENVIRONMENT: sixty two thousand three hundred dollars (\$62,300);~~
- ~~(20) CHILDREN, YOUTH AND FAMILIES DEPARTMENT: two hundred fourteen thousand nine hundred dollars (\$214,900);~~
- ~~(21) DEPARTMENT OF MILITARY AFFAIRS: sixteen thousand three hundred dollars (\$16,300);~~
- ~~(22) CORRECTIONS DEPARTMENT: five hundred twenty one thousand one hundred dollars (\$521,100);~~
- ~~(23) DEPARTMENT OF PUBLIC SAFETY: one hundred thirty seven thousand one hundred dollars (\$137,100);~~
- ~~(24) PUBLIC EDUCATION DEPARTMENT: two hundred eighty one thousand five hundred dollars (\$281,500);~~
- ~~(25) COMMISSION ON HIGHER EDUCATION: forty thousand six hundred dollars (\$40,600).~~

~~B. In addition to the reductions made pursuant to Subsection A of this section, the department of finance and administration shall reduce general fund appropriations made to executive agencies in Section 4 of the General Appropriation Act of 2005 by two million dollars (\$2,000,000) to reflect projected savings for those agencies pursuant to contracts that were being negotiated under Section 147 of Chapter 126 of Laws 2004 on February 7, 2005, but not yet effective on that date.][LINE-~~

~~ITEM VETO]~~

~~[C. By May 1, 2005, the state budget division of the department of finance and administration shall report to the legislative finance committee:~~

~~_____ (1) the allocation of the reductions made in Subsection A of this section to specific programs and the methodology applied to determine the allocation; and~~

~~_____ (2) the agencies to which the reductions were made pursuant to Subsection B of this section, the specific programs for which appropriations were reduced and the methodology used to determine the agencies and programs.][LINE-ITEM VETO]~~

Chapter 33 Section 12 Laws 2005

Section 12. **TRANSFER AUTHORITY.** -- If revenues and transfers to the general fund as of the end of fiscal year 2005 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 obligation from the unencumbered balance remaining in the general fund operating reserve in a total not to exceed forty million dollars (\$40,000,000)

Chapter 33 Section 13 Laws 2005

Section 13. **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.

HAFC/House Bills 2, 3, 4, 5, 6 & 48, aa

Approved March 17, 2005

LAWS 2005, CHAPTER 34

AN ACT

MAKING GENERAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES BY STATE AGENCIES.

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

Chapter 34 Section 1 Laws 2005

Section 1. **FISCAL YEAR 2006 GENERAL FUND APPROPRIATIONS.**--Unless otherwise specified, the appropriations contained in this act are from the general fund and may be expended in fiscal year 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund or specified other funding source.

Chapter 34 Section 2 Laws 2005

~~[Section 2. **LEGISLATIVE APPROPRIATIONS.**--Seventy-five thousand dollars (\$75,000) is appropriated to the legislative council service to plan, design, purchase and install equipment to webcast legislative sessions.][LINE-ITEM VETO]~~

Chapter 34 Section 3 Laws 2005

Section 3. **JUDICIAL APPROPRIATIONS.**--

A. To the administrative office of the courts, the following amounts are appropriated for the following purposes:

(1) twelve thousand dollars (\$12,000) for microwave and internet technology upgrades and maintenance at the Carrizozo magistrate court;

(2) seventy-three thousand one hundred dollars (\$73,100) for a court clerk and DWI clerk in the Otero magistrate district;

(3) one hundred eighty thousand dollars (\$180,000) for drug courts;

(4) seventy thousand dollars (\$70,000) for statewide court programs for children;

(5) two hundred forty-five thousand dollars (\$245,000) for the neutral corner program;

(6) one hundred thousand dollars (\$100,000) for the court-appointed special advocate program in the fifth and other judicial districts; and

(7) twelve thousand dollars (\$12,000) for mediation services in abuse and neglect cases in the fifth judicial district.

B. To the second judicial district court, two hundred fifty thousand dollars (\$250,000) is appropriated to staff an adult mental health program.

C. To the fourth judicial district court, two hundred thousand dollars (\$200,000) is appropriated for a hearing officer or special commissioner and two associated staff.

D. To the sixth judicial district court, two hundred twenty-five thousand dollars (\$225,000) is appropriated for the juvenile justice continuum of services.

E. To the eleventh judicial district court, the following amounts are appropriated for the following purposes:

(1) seventy-five thousand dollars (\$75,000) for salaries and operating expenses for the court in Farmington;

~~[(2) eighty thousand dollars (\$80,000) for additional staff and salary adjustments in Aztec;] and [LINE-ITEM VETO]~~

(3) fifty thousand dollars (\$50,000) for contractual services in the court in Gallup.

F. To the twelfth judicial district court, one hundred twenty-seven thousand eight hundred dollars (\$127,800) is appropriated for operating expenses, contractual services and microfilming services.

G. To the second judicial district attorney, thirty thousand dollars (\$30,000) is appropriated for a truancy program.

H. To the third judicial district attorney, one hundred seventy thousand dollars (\$170,000) is appropriated for additional staff.

I. To the fourth judicial district attorney, sixty thousand dollars (\$60,000) is appropriated for staff.

~~J. To the fifth judicial district attorney, one hundred thousand dollars (\$100,000) is appropriated for operating expenses, including one secretarial position, and other expenses.][LINE-ITEM VETO]~~

K. To the ninth judicial district attorney, twenty-five thousand dollars (\$25,000) is appropriated for salaries and benefits.

L. To the eleventh judicial district attorney division 2, thirty thousand dollars (\$30,000) is appropriated for a domestic violence attorney.

M. To the eleventh judicial district attorney division 2, seventy-five thousand dollars (\$75,000) is appropriated for prosecution of DWI criminal offenses.

~~N. To the twelfth judicial district attorney, seventy-nine thousand one hundred dollars (\$79,100) is appropriated for an additional senior trial attorney and secretary.][LINE-ITEM VETO]~~

Chapter 34 Section 1 Laws 2005

Section 4. GENERAL CONTROL APPROPRIATIONS.--

A. To the department of finance and administration, the following amounts are appropriated for the following purposes:

(1) fifty thousand dollars (\$50,000) for the office of peace, contingent upon House Bill 280 or similar legislation of the first session of the forty-seventh legislature becoming law;

(2) twenty thousand dollars (\$20,000) for the water and wastewater project grant fund;

(3) four hundred thousand dollars (\$400,000) for rodeo programs;
and

(4) five hundred thirty thousand dollars (\$530,000) for salary adjustments for state police and magistrate court employees.

B. To the local government division of the department of finance and administration, the following amounts are appropriated for the following purposes:

(1) thirty thousand dollars (\$30,000) for computer clubhouses in Bernalillo and Santa Fe counties;

(2) thirty thousand dollars (\$30,000) for after-school programming through Albuquerque's family and community services department for the Santa Barbara-Martineztown area;

(3) sixty thousand dollars (\$60,000) to contract with a program that will provide for the collection and distribution of free or reduced-cost food and necessities to low-income residents of McKinley county;

~~[(4) one hundred thousand dollars (\$100,000) for electronic monitoring of San Juan county inmates;]~~[[LINE-ITEM VETO]

(5) seventy-five thousand dollars (\$75,000) for the mentoring program of southeastern New Mexico, serving Chaves, Eddy, Lea, Roosevelt, Curry and Lincoln counties;

(6) one hundred thousand dollars (\$100,000) for a literacy program in Grants;

(7) seventeen thousand dollars (\$17,000) for start-up and operational expenses of the Alto Lakes special zoning district in Lincoln county;

(8) seventy-five thousand dollars (\$75,000) for the Alto Lakes water and sanitation district;

(9) twenty thousand dollars (\$20,000) to operate a teen court program in Hobbs;

(10) thirty thousand dollars (\$30,000) for operations of the southeastern council of governments;

(11) forty thousand dollars (\$40,000) for the mid-region council of governments to conduct a study on the feasibility of incorporating the south valley of Bernalillo county;

(12) forty-five thousand dollars (\$45,000) for operations of the acequia commission;

(13) two hundred thousand dollars (\$200,000) to reduce the domestic violence dismissal rate in the second judicial district;

(14) one hundred fifty thousand dollars (\$150,000) for a youth outreach program in Santa Fe;

(15) thirty-five thousand dollars (\$35,000) for a teen court in Santa Fe;

(16) fifty thousand dollars (\$50,000) for a water conservation and drought management plan for Tatum; and

(17) fifty thousand dollars (\$50,000) for a permanent water harvesting demonstration project in the Santa Fe railyard park and plaza.

C. To the state board of finance, twenty-eight thousand dollars (\$28,000) is appropriated to repay the state board of finance loan to the hidden valley mutual domestic water association.

D. To the public defender department, the following amounts are appropriated for the following purposes:

(1) one hundred seventy-five thousand dollars (\$175,000) for contractual services in Gallup;

(2) sixty thousand dollars (\$60,000) for alternative sentencing services for public defender clients in McKinley and Cibola counties; and

(3) one hundred thousand dollars (\$100,000) to establish a public defender program for Native Americans in Gallup.

E. To the state commission of public records, the following amounts are appropriated for the following purposes:

(1) ten thousand dollars (\$10,000) for the New Mexico history scholars program;

(2) forty thousand dollars (\$40,000) for the office of the state historian's web site; and

(3) thirty-five thousand dollars (\$35,000) to continue the survey of state-owned property within former common lands of community land grants, to research the chain of title of those properties and to provide an estimate of the cost of completing the survey and research.

F. To the secretary of state, twenty-five thousand dollars (\$25,000) is appropriated to implement a Native American voting rights program in Sandoval county.

Chapter 34 Section 5 Laws 2005

Section 5. COMMERCE AND INDUSTRY APPROPRIATIONS.--

A. To the tourism department, the following amounts are appropriated for the following purposes:

(1) fifty thousand dollars (\$50,000) for the intertribal ceremonial office, contingent upon House Bill 481 or similar legislation of the first session of the forty-seventh legislature becoming law;

(2) fifty thousand dollars (\$50,000) to conduct a tourism conference at Santa Ana pueblo;

(3) one hundred thousand dollars (\$100,000) to promote the Albuquerque tricentennial celebration;

(4) eighty-five thousand dollars (\$85,000) for Gallup outdoor tourism training;

(5) fifty thousand dollars (\$50,000) to promote Santa Fe fiestas;

(6) three hundred thousand dollars (\$300,000) for the sports authority, contingent on House Bill 58 or similar legislation of the first session of the forty-seventh legislature becoming law; and

(7) one hundred twenty-five thousand dollars (\$125,000) for an outreach program promoting art and culture-related events.

B. To the economic development department, the following amounts are appropriated for the following purposes:

(1) eighty thousand dollars (\$80,000) to support a statewide organization that promotes work place mentor relationships between middle and junior high school students and business persons in the community;

(2) sixty-seven thousand dollars (\$67,000) for the south valley incubator center;

(3) one hundred thousand dollars (\$100,000) for a science and engineering fair in Albuquerque;

(4) fifty thousand dollars (\$50,000) for the Hobbs mainstreet program;

(5) one hundred thousand dollars (\$100,000) for the Lovington mainstreet program;

(6) sixty thousand dollars (\$60,000) for a collaboration with the university of New Mexico school of planning and architecture for activities and administration of the New Mexico mainstreet program;

(7) five thousand dollars (\$5,000) for matching funds and grants for rural communities through the rural development response council program;

(8) fifty thousand dollars (\$50,000) to develop an economic development plan for the Chimayo chile agricultural industry and to preserve and conserve the Chimayo chile strain;

(9) seventy thousand dollars (\$70,000) for a film about the Santa Fe Indian market;

(10) twenty-five thousand dollars (\$25,000) for a timber harvesting and processing economic development program in Mora county; and

(11) one hundred eighty thousand dollars (\$180,000) for the office of international trade, contingent on Senate Bill 35 or similar legislation of the first session of the forty-seventh legislature becoming law.

C. To the regulation and licensing department, one hundred thousand dollars (\$100,000) is appropriated for animal sheltering services, contingent on Senate Bill 414 or similar legislation of the first session of the forty-seventh legislature becoming law.

D. To the state fire marshal, the following amounts are appropriated for the following purposes:

(1) twenty-five thousand dollars (\$25,000) for the Pueblo volunteer fire department;

(2) twenty-five thousand dollars (\$25,000) for the Ilfeld volunteer fire department; and

(3) twenty-five thousand dollars (\$25,000) for the Rowe volunteer fire department.

Chapter 34 Section 6 Laws 2005

Section 6. **AGRICULTURE, ENERGY AND NATURAL RESOURCES
APPROPRIATIONS.--**

A. To the cultural affairs department, the following amounts are appropriated for the following purposes:

(1) one hundred thousand dollars (\$100,000) for the national Hispanic cultural center radio station;

(2) seventy-six thousand dollars (\$76,000) to provide symphony music programs and concerts in Roswell;

(3) one hundred thousand dollars (\$100,000) for educational programs at a science center and children's museum in Albuquerque;

~~[(4) two hundred thousand dollars (\$200,000) for the historic preservation division to contract for an analysis of the economic impact of the New Mexico income tax credit on the preservation of cultural properties;]~~*[LINE-ITEM VETO]*

(5) fifty thousand dollars (\$50,000) to implement a youth operatic education program in Santa Fe;

(6) one hundred twenty thousand dollars (\$120,000) for a youth education in the performing arts program in Santa Fe county;

(7) fifty thousand dollars (\$50,000) for a full-time- equivalent position at Coronado state monument;

(8) fifty thousand dollars (\$50,000) for a community weaving program in Dona Ana county;

(9) twenty thousand dollars (\$20,000) for a master plan for commemorating the centennial of New Mexico's admission to statehood;

(10) forty-five thousand dollars (\$45,000) for a campaign to promote tourism at El Camino Real international heritage center in conjunction with the festival of the cranes at the bosque del Apache refuge;

(11) twenty thousand dollars (\$20,000) to expand museum outreach services to assist public and private museums throughout the state;

(12) fifty thousand dollars (\$50,000) to move an art exhibit from New Mexico to the United Nations for temporary display;

(13) one hundred twenty-five thousand dollars (\$125,000) for theatrical events at the Albuquerque tricentennial celebration;

(14) eighty thousand dollars (\$80,000) for a visual and performing arts education program for primary, secondary and post-secondary students in Otero county, using local cultural resources;

(15) twenty thousand dollars (\$20,000) for the Blacks in the West symposium;

(16) thirty-five thousand dollars (\$35,000) for a feasibility study for museum networks;

(17) one hundred thousand dollars (\$100,000) for sustained technical assistance for Espanola museums;

(18) two hundred thousand dollars (\$200,000) for a youth dance program; and

(19) to the library division:

(a) one hundred ten thousand dollars (\$110,000) to contract with a statewide nonprofit adult literacy organization to provide basic literacy services in areas underserved by existing adult basic education and literacy programs;

(b) thirty thousand dollars (\$30,000) for programs at the Anthony public library;

(c) thirty-two thousand dollars (\$32,000) for programs at the valley community library in Dona Ana county;

~~[(d) fifteen thousand dollars (\$15,000) for the library youth reading program;]~~[[LINE-ITEM VETO]

(e) ten thousand dollars (\$10,000) for a native language authors conference;

(f) twenty thousand dollars (\$20,000) to sponsor a national poetry slam event in Albuquerque;

(g) fifty thousand dollars (\$50,000) to develop archival library systems; and

(h) two hundred thousand dollars (\$200,000) for the literacy program.

B. To the energy, minerals and natural resources department, the following amounts are appropriated for the following purposes:

(1) two hundred sixty thousand dollars (\$260,000) to improve forest health and fire safety in the east mountains of Bernalillo county;

(2) twenty-five thousand dollars (\$25,000) for research and development of reverse osmosis technologies to recycle water from oil and gas exploration; and

(3) one hundred fifty thousand dollars (\$150,000) for renewable energy programs.

C. To the state land office, fifty thousand dollars (\$50,000) is appropriated for the natural resource revenue recovery task force.

D. To the state engineer, the following amounts are appropriated for the following purposes:

(1) sixty thousand dollars (\$60,000) for operational expenses for the San Jose mutual domestic water consumers association;

(2) one hundred thousand dollars (\$100,000) for the Animas valley watershed hydrographic survey; and

(3) eighty-five thousand dollars (\$85,000) to create a water district for the Santa Fe river system and appoint a water master to oversee the apportionment of the waters of the district.

E. To the interstate stream commission, the following amounts are appropriated for the following purposes:

(1) twenty-five thousand dollars (\$25,000) to study the use of salt basin water; and

(2) twenty-five thousand dollars (\$25,000) to implement the Estancia basin water plan.

Chapter 34 Section 7 Laws 2005

Section 7. HEALTH AND HUMAN SERVICES APPROPRIATIONS.--

A. To the Indian affairs department, the following amounts are appropriated for the following purposes:

(1) one hundred fifty thousand dollars (\$150,000) to contract for domestic violence shelter services for Native American women and children in Albuquerque;

(2) fifty thousand dollars (\$50,000) to provide case management services to victims of radiation exposure or their surviving families;

(3) sixty thousand dollars (\$60,000) to fund youth development programs, including the youth leadership project at the Tohatchi chapter;

(4) fifty thousand dollars (\$50,000) to provide services and outreach for Native American victims of domestic violence and sexual assault and to train people who provide those services;

(5) one hundred thousand dollars (\$100,000) to sponsor a conference on multicultural interactions and attitudes about diversity;

(6) twenty thousand dollars (\$20,000) to implement a community education project in the four corners area to teach and promote cultural understanding and highlight traditional Native American arts and crafts;

(7) twenty-five thousand dollars (\$25,000) to conduct a Native American voters alliance conference; and

(8) twenty-five thousand dollars (\$25,000) to fund youth development programs, including the youth leadership project at the Tohatchi chapter of the Navajo Nation.

B. To the aging and long-term services department, the following amounts are appropriated for the following purposes:

(1) twenty-five thousand dollars (\$25,000) for Alzheimer's disease services;

(2) twenty-five thousand dollars (\$25,000) for operational expenses at the Pecos senior center;

(3) twenty-five thousand dollars (\$25,000) for operational expenses at the San Miguel senior center;

(4) twenty-five thousand dollars (\$25,000) for operational expenses at the Mora senior center;

(5) twenty-five thousand dollars (\$25,000) for operational expenses at the Talpa senior center;

(6) fifty thousand dollars (\$50,000) to provide elderly intervention specialists who will visit elderly persons in remote areas of the Navajo Nation in New Mexico on a biweekly basis to assist them with health-related issues;

- (7) five thousand dollars (\$5,000) for the Vaughn senior citizen program;
- (8) ten thousand dollars (\$10,000) for the RSVP program;
- (9) twenty thousand dollars (\$20,000) for the Roosevelt county senior companion program;
- (10) twenty thousand dollars (\$20,000) for the Santa Rosa senior citizen program;
- (11) twenty thousand dollars (\$20,000) for the Puerto de Luna senior citizen program;
- (12) sixty-seven thousand five hundred dollars (\$67,500) for Des Moines senior services;
- (13) thirty thousand dollars (\$30,000) for Harding county senior services;
- (14) one thousand five hundred dollars (\$1,500) for Amistad senior services;
- (15) six thousand dollars (\$6,000) for San Jon senior services;
- (16) seventy-five thousand dollars (\$75,000) for the south valley multipurpose family service center;
- (17) fifty thousand dollars (\$50,000) for a federal demonstration project known as "naturally occurring retirement communities" and to contract with a collaboration of community service providers to provide a coordinated array of services to elderly persons seeking to remain in their own homes during the demonstration project;
- (18) two hundred twenty-five thousand dollars (\$225,000) for a senior citizens emergency assistant agent and other operations for the Meadowlark senior center in Rio Rancho; and
- (19) twenty-five thousand dollars (\$25,000) for senior centers in Grant county.

C. To the human services department, the following amounts are appropriated for the following purposes:

~~[(1) one hundred five thousand dollars (\$105,000) to provide state matching funds for eligible family formation programs authorized under the temporary~~

~~assistance for needy families programs in Bernalillo and Dona Ana counties;][LINE-ITEM VETO]~~

(2) eighty thousand dollars (\$80,000) to expand access to programs and services for homeless persons statewide;

(3) fifteen thousand dollars (\$15,000) for a homeless program in Socorro; and

(4) one hundred thousand dollars (\$100,000) to distribute commodity food supplements to senior citizens and others suffering food insecurity in southern counties of the state.

D. To the labor department, five thousand dollars (\$5,000) is appropriated for the unemployment insurance task force, contingent upon House Bill 858 or similar legislation of the first session of the forty-seventh legislature becoming law.

E. To the vocational rehabilitation division, the following amounts are appropriated for the following purposes:

(1) forty-eight thousand dollars (\$48,000) to match federal funds for the tele-work program;

(2) two hundred seventy-four thousand dollars (\$274,000) for the technology assistance loan program; and

(3) seventy-five thousand dollars (\$75,000) for the handicapped worker program in San Juan county.

F. To the developmental disabilities planning council, ten thousand dollars (\$10,000) is appropriated for the statewide referral task force and for the "211" information and referral system.

G. To the department of health, the following amounts are appropriated for the following purposes:

(1) one hundred ten thousand dollars (\$110,000) for services through the women's health services facility in Santa Fe;

(2) fifty thousand dollars (\$50,000) for services through the Esperanza battered women's shelter in Santa Fe;

(3) sixty thousand dollars (\$60,000) for rape crisis services in Santa Fe county;

(4) fifty thousand dollars (\$50,000) for rape crisis services in Bernalillo county;

(5) twenty thousand dollars (\$20,000) for equestrian program services for developmentally disabled children and adults in Dexter;

(6) one hundred thousand dollars (\$100,000) for stroke detection equipment;

(7) one hundred thousand dollars (\$100,000) to establish stroke centers in hospitals statewide, create stroke prevention and treatment protocols, establish a stroke registry and implement a public education campaign;

(8) eighty thousand dollars (\$80,000) for case management services for medically fragile children;

(9) five hundred twenty thousand dollars (\$520,000) for suicide prevention programs;

(10) forty thousand dollars (\$40,000) for mental health services in Dona Ana county;

(11) ten thousand dollars (\$10,000) for community-based cancer patient support services;

(12) one hundred fifty thousand dollars (\$150,000) to review, establish and monitor public health and social service delivery programs for low-income and indigent residents in Bernalillo county;

(13) two hundred thousand dollars (\$200,000) for detoxification and behavioral health care services for persons in Farmington and the surrounding area who have substance abuse problems;

(14) twenty-five thousand dollars (\$25,000) for services at the San Miguel medical center;

(15) twenty-five thousand dollars (\$25,000) for the Pecos ambulance;

(16) twenty-five thousand dollars (\$25,000) for the Mora medical center;

(17) thirty thousand dollars (\$30,000) for ambulance services for Mora county;

(18) thirty-five thousand dollars (\$35,000) for ambulance services for Cuba;

(19) twenty-five thousand dollars (\$25,000) to implement an expanded diabetes education program in northwest New Mexico;

(20) ten thousand dollars (\$10,000) for an outpatient program for substance abuse clients in Taos, Colfax and Union counties;

(21) fifty thousand dollars (\$50,000) to contract with community-based health and human services organizations for services to the indigent in Las Cruces;

(22) twenty-five thousand dollars (\$25,000) for Fort Bayard medical center operations;

(23) twenty-five thousand dollars (\$25,000) for special olympics;

(24) sixty thousand dollars (\$60,000) for association of retarded citizens programs;

(25) fifteen thousand dollars (\$15,000) for the very special arts program;

(26) fifty thousand dollars (\$50,000) for health care services at the rural primary care clinics in Otero county;

(27) thirty-five thousand dollars (\$35,000) for alcohol and substance abuse treatment services in Talpa;

(28) one hundred thousand dollars (\$100,000) to work with the corrections department and a network of primary care clinics to develop a model of training and service delivery using interactive telemedicine for screening and treatment of hepatitis C;

(29) one hundred ten thousand dollars (\$110,000) to gather data on gambling addiction in the state and conduct a study to determine the incidence of suicides and bankruptcies that involve gambling debt or compulsive gambling behavior;

(30) twenty thousand dollars (\$20,000) to establish a clinical teaching institute for nurses to support ongoing leadership development and to promote mentoring of best practices;

(31) fifty thousand dollars (\$50,000) for services to low-income, uninsured, high-risk pregnant women in Dona Ana county; and

(32) eighty-five thousand dollars (\$85,000) to expand screening tests for newborn infants for detection of congenital diseases.

H. To the department of environment, the following amounts are appropriated for the following purposes:

(1) one hundred thousand dollars (\$100,000) to abate asbestos and remediate other hazardous materials from water and sewer lines on Mesa road in Belen; and

(2) fifty thousand dollars (\$50,000) to match federal funds for a water reclamation study in Gallup.

I. To the veterans' services department, the following amounts are appropriated for the following purposes:

(1) fifty thousand dollars (\$50,000) to establish an outreach program to assist Native American veterans to obtain information and file for state and federal benefits offered to veterans residing on tribal lands;

(2) fifty thousand dollars (\$50,000) for services to homeless veterans; and

(3) five thousand dollars (\$5,000) for the honor guard at the Santa Fe national cemetery.

J. To the children, youth and families department, the following amounts are appropriated for the following purposes:

(1) twenty-five thousand dollars (\$25,000) to support and expand the activities of the youth council;

(2) fifty thousand dollars (\$50,000) to provide support for professionally trained early childhood teachers and early childhood programs;

(3) thirty thousand dollars (\$30,000) for a preschool program in the north valley of Albuquerque for children with early birthdays and minimal or no preschool experience;

(4) one hundred fifty thousand dollars (\$150,000) to provide child care, health care and services for homeless children in the south valley of Albuquerque;

(5) fifty thousand dollars (\$50,000) for preschool services for developmentally disabled children in Roswell;

(6) ten thousand dollars (\$10,000) to provide a program to assist grandparents raising at-risk grandchildren in Dona Ana and southern Otero counties;

(7) one hundred thousand dollars (\$100,000) for a domestic violence shelter in Lincoln county;

(8) fifty thousand dollars (\$50,000) to establish a satellite system for professional development and early childhood training programs in rural communities;

(9) thirty-three thousand dollars (\$33,000) for after-school programs in the south valley;

(10) sixty-eight thousand dollars (\$68,000) for a youth summer job program for Grants and Milan;

(11) thirty-five thousand dollars (\$35,000) for family strengthening services in Taos county;

(12) thirty-five thousand dollars (\$35,000) for services for homeless abused and neglected youth in Taos county;

(13) forty thousand dollars (\$40,000) for services at the McKinley county juvenile center;

(14) ninety thousand dollars (\$90,000) for the at-home infant care program;

(15) one hundred thousand dollars (\$100,000) for domestic violence prevention and intervention programs statewide;

(16) fifty thousand dollars (\$50,000) to support grandparents raising at-risk grandchildren in Dona Ana and Otero counties;

(17) fifty thousand dollars (\$50,000) for domestic violence shelter operations in Shiprock;

(18) twenty-five thousand dollars (\$25,000) to support the Americorps volunteer program;

(19) fifty thousand dollars (\$50,000) to supplement maintenance payments to parents caring for children in foster care;

(20) twenty thousand dollars (\$20,000) to increase the family development program statewide training and outreach;

(21) ninety-five thousand dollars (\$95,000) for a domestic violence program in Torrance county;

(22) fifty thousand dollars (\$50,000) for a youth leadership mentor program in Chaves county;

(23) one hundred thousand dollars (\$100,000) for a domestic violence shelter in Albuquerque; and

(24) two hundred thousand dollars (\$200,000) for a Native American domestic violence program.

Chapter 34 Section 8 Laws 2005

Section 8. PUBLIC SAFETY APPROPRIATIONS.--

A. To the department of military affairs, the following amounts are appropriated for the following purposes:

(1) one hundred eighty thousand dollars (\$180,000) for supplies and equipment for New Mexico components of the multinational task force in Iraq, task force 134;

(2) thirty thousand dollars (\$30,000) for a drug demand reduction program through the civil air patrol cadet program for at-risk middle schools;

(3) fifty thousand dollars (\$50,000) for the national guard support program; and

(4) fifty thousand dollars (\$50,000) for an after-school educational and developmental program at the Taos national guard armory for at-risk youth between thirteen and seventeen years of age.

B. To the community corrections grant fund, one hundred thirty thousand dollars (\$130,000) is appropriated to expand housing assistance for male and female parolees, to be provided by a corrections vendor located in Albuquerque or Santa Fe.

C. To the department of public safety, the following amounts are appropriated for the following purposes:

(1) seventy-five thousand dollars (\$75,000) for the department to participate in the methamphetamine task force in San Juan county;

(2) thirty-five thousand dollars (\$35,000) for a rural crime prevention program in Otero county;

(3) seventy-five thousand dollars (\$75,000) for an anti-victimization program and training for women; and

(4) seventy-five thousand dollars (\$75,000) for DWI enforcement in Albuquerque.

Chapter 34 Section 9 Laws 2005

Section 9. PUBLIC EDUCATION DEPARTMENT APPROPRIATIONS.--

The following amounts are appropriated to the public education department for the following purposes:

A. sixty thousand dollars (\$60,000) to provide after-school programs for low-income students who are at risk of academic and social failure;

B. forty-seven thousand dollars (\$47,000) to train parents, teachers, administrators and educational support staff in parental involvement strategies for public schools;

C. eighty thousand dollars (\$80,000) for library and multimedia equipment, furnishings and up-to-date supplies and materials as follows:

(1) Carlsbad, Artesia and Alamogordo school districts, twenty thousand dollars (\$20,000) each; and

(2) Loving and Cloudcroft school districts, ten thousand dollars (\$10,000) each;

D. one hundred eighty thousand dollars (\$180,000) to support the literacy plan, including continuous improvement, professional development and teacher materials at Georgia O'Keeffe elementary school, Desert Ridge middle school, Eisenhower middle school, Dennis Chavez elementary school, Hubert Humphrey elementary school and Double Eagle middle school in the Albuquerque public school district;

E. two hundred eighty thousand dollars (\$280,000) for professional development activities for all staff, school library materials and educational technology in the Des Moines, Grady, House, Logan, Maxwell, Mosquero, Roy and San Jon school districts, to be distributed equally among the districts;

F. fifty thousand dollars (\$50,000) for professional development for public school personnel in programs for three- and four-year-old developmentally delayed and kindergarten through grade three students regarding the educational and related needs of students with autism spectrum disorder;

G. six thousand dollars (\$6,000) for the fiesta educativa parent conference and outreach activities in the Gadsden independent school district;

H. six thousand dollars (\$6,000) for a statewide conference on gangs and drugs to be held in the Gadsden independent school district;

I. fifty thousand dollars (\$50,000) for the Hobbs school district for salaries and other expenses associated with a laptop technician to support the governor's laptop initiative;

J. one hundred thousand dollars (\$100,000) for math and science training for middle school teachers in the Espanola public school district;

K. one hundred thousand dollars (\$100,000) for operational expenses at Espanola military academy charter school;

L. thirty-six thousand seven hundred dollars (\$36,700) for extracurricular activities for the Dexter independent school district;

M. thirty-six thousand seven hundred dollars (\$36,700) for extracurricular activities for the Hagerman independent school district;

N. thirty-six thousand six hundred dollars (\$36,600) for extracurricular activities for the Lake Arthur independent school district;

O. fifty thousand dollars (\$50,000) for a web-based learning project in the Portales municipal school district;

P. fifteen thousand dollars (\$15,000) for library books in the Capitan municipal school district;

Q. twenty thousand dollars (\$20,000) for library books in the Ruidoso municipal school district;

R. twenty thousand dollars (\$20,000) for summer school programs in the Ruidoso municipal school district;

S. twenty thousand dollars (\$20,000) to purchase band instruments to loan to underprivileged students in the Ruidoso municipal school district;

T. twenty thousand dollars (\$20,000) for football and basketball equipment [and travel expenses][*LINE-ITEM VETO*] for Ruidoso middle school in the Ruidoso municipal school district;

U. forty thousand dollars (\$40,000) for the character counts program;

V. one hundred fifty thousand dollars (\$150,000) for professional development for the Valley and Del Norte clusters in the Albuquerque public school district;

W. fifty thousand dollars (\$50,000) for the New Mexico government education fund, contingent upon House Bill 268 or similar legislation of the first session of the forty-seventh legislature becoming law;

X. twenty-five thousand dollars (\$25,000) for the first annual New Mexico youth day at West Mesa high school in the Albuquerque public school district;

Y. fifty thousand dollars (\$50,000) to contract with a program to train and employ for at least a two-year commitment, recent college graduates as teachers in the Gallup-McKinley county public school district;

Z. one hundred fifty thousand dollars (\$150,000) for the smaller learning communities pilot project at Santa Fe and Capital high schools in the Santa Fe public school district;

AA. thirty thousand dollars (\$30,000) to automate the individualized education plan process in the Santa Fe public school district;

BB. fifty thousand dollars (\$50,000) for a model multicultural arts and education program with a formal curriculum in English and Spanish that integrates academic, work and artistic skills;

CC. fifty thousand dollars (\$50,000) to employ nutritionists to assist school districts, contingent upon House Bill 721 or similar legislation of the first session of the forty-seventh legislature becoming law;

DD. thirty-five thousand dollars (\$35,000) for the Summerbridge academy in the Taos municipal school district;

EE. seventy-five thousand dollars (\$75,000) for a bilingual education position on the coaching staff at west Las Vegas high school;

FF. seventy-five thousand dollars (\$75,000) for professional development in literacy strategies for teachers in the Jemez valley public school district;

GG. fifty thousand dollars (\$50,000) for training in prevention and intervention strategies in substance abuse and child abuse for teachers in the Pojoaque valley school district;

~~[HH. three hundred thirty thousand dollars (\$330,000) for a pilot project for free admission to school athletic events, contingent on House Bill 1039 or similar~~

~~legislation of the first session of the forty-seventh legislature becoming law;][LINE-ITEM VETO]~~

II. eighty-two thousand dollars (\$82,000) for a Saturday school program in the Grants-Cibola county school district for students who are placed in detention or suspended for behavior that impedes the education of other students;

JJ. fifty thousand dollars (\$50,000) for a restorative justice program at Amy Biehl charter high school in the Albuquerque public school district;

KK. twenty thousand dollars (\$20,000) for extracurricular activities at Goddard high school in the Roswell independent school district;

LL. twenty thousand dollars (\$20,000) for extracurricular activities at Roswell high school in the Roswell independent school district;

MM. twenty thousand dollars (\$20,000) for agriculture-related extracurricular activities in the Capitan municipal school district;

NN. five hundred thousand dollars (\$500,000) for breakfast for elementary students;

OO. five hundred thousand dollars (\$500,000) for obesity programs;

PP. one million five hundred thousand dollars (\$1,500,000) for physical education classes~~[, contingent on House Bill 62 or similar legislation of the first session of the forty-seventh legislature becoming law;][LINE-ITEM VETO]~~

QQ. five hundred thousand dollars (\$500,000) for truancy prevention;

RR. two hundred thousand dollars (\$200,000) for advanced placement classes;

SS. three hundred thousand dollars (\$300,000) for a program to train public school employees to recognize and intervene in domestic violence; and

TT. twenty-five thousand dollars (\$25,000) for a summer enrichment program for youth in Truchas, Ojo Sarco and Cordova.

Chapter 34 Section 10 Laws 2005

Section 10. HIGHER EDUCATION APPROPRIATIONS.--

A. To the commission on higher education, the following amounts are appropriated for the following purposes:

(1) thirty thousand dollars (\$30,000) for a half-time faculty member at an institution of higher learning to administer pre-dental clubs;

(2) forty thousand dollars (\$40,000) for Clovis community college to implement an agriculture business curriculum with emphasis on short-term training; and

(3) fifty thousand dollars (\$50,000) for mesalands community college athletics;

(4) two hundred thousand dollars (\$200,000) for the New Mexico junior college western heritage museum;

(5) seventy thousand dollars (\$70,000) for the nurse educators fund, contingent upon House Bill 509 or similar legislation of the first session of the forty-seventh legislature becoming law;

(6) forty thousand dollars (\$40,000) for the New Mexico small business development center at Santa Fe community college to develop a small business development center in Socorro and Catron counties;

(7) seventy-five thousand dollars (\$75,000) for a baseball team at Luna vocational-technical institute;

(8) fifty thousand dollars (\$50,000) to cooperate with the mid-region council of governments to hire an administrative manager and research assistant for the resource center for raza planning at the university of New Mexico school of architecture and planning;

(9) eighty thousand dollars (\$80,000) for Mesalands community college programs;

(10) twenty-three thousand dollars (\$23,000) for Mesalands community college intercollegiate rodeo program;

(11) fifty thousand dollars (\$50,000) for New Mexico junior college southeastern law enforcement academy instruction;

(12) fifty thousand dollars (\$50,000) for New Mexico junior college for interactive television classrooms and to support the regional distance education consortium;

(13) eighty thousand dollars (\$80,000) for San Juan college for the continuation of an educational and recreational center program to help underprivileged youth gain educational and moral values;

(14) fifty thousand dollars (\$50,000) for Clovis community college to expand performing arts and cultural programs;

(15) forty thousand dollars (\$40,000) for the northeastern New Mexico learning center; and

(16) forty thousand dollars (\$40,000) to plan the Rio Rancho learning center.

B. To the board of regents of the university of New Mexico, the following amounts are appropriated for the following purposes:

(1) seven hundred five thousand dollars (\$705,000) to expand enrollment in the school of medicine through a combined bachelor's degree to medical degree program;

(2) two hundred sixty thousand dollars (\$260,000) for the law school library;

(3) thirty thousand dollars (\$30,000) for the navy reserve officer training corps historic building maintenance and improvements;

(4) one hundred thousand dollars (\$100,000) for the assessment, planning and development of the indigenous nations library program at the Zimmerman library;

(5) one hundred four thousand dollars (\$104,000) for el centro de la raza service center within the division of student affairs;

~~[(6) two hundred eighty thousand dollars (\$280,000) for ongoing comprehensive planning programs;]~~ [LINE-ITEM VETO]

(7) forty thousand dollars (\$40,000) for the Corinne Wolfe children's law center to provide training, technical assistance, research assistance and information dissemination in the areas of child abuse, child neglect and juvenile justice;

(8) one hundred fifty-five thousand dollars (\$155,000) for the graduate research development fund;

(9) one hundred fifty thousand dollars (\$150,000) for Latin American student recruitment;

(10) one hundred fifty thousand dollars (\$150,000) to the special programs office to implement college preparatory mentoring programs in the Albuquerque public school district;

(11) one hundred ninety thousand dollars (\$190,000) for programs at the Utton transboundary resources center at the law school;

(12) one hundred eighty-five thousand dollars (\$185,000) for pediatric oncology programs;

(13) one hundred thousand dollars (\$100,000) for instruction and general purposes for the Taos branch campus;

(14) one hundred thousand dollars (\$100,000) for the ENLACE los companeros mentoring program;

(15) fifty thousand dollars (\$50,000) for a post-doctoral fellowship in clinical toxicology at the New Mexico poison control center;

(16) fifty thousand dollars (\$50,000) for the center for regional studies;

(17) fifty thousand dollars (\$50,000) for the health sciences center to participate in a health data exchange in Bernalillo and Taos counties;

(18) one hundred thousand dollars (\$100,000) to operate a young children's medical center in the southeast heights of Albuquerque;

(19) one hundred eighty thousand dollars (\$180,000) to enhance pre-college minority students' mathematics and science skills;

(20) thirty thousand dollars (\$30,000) for the center for Latin American resources and outreach program;

(21) one hundred ten thousand dollars (\$110,000) for the health sciences center special perinatal program;

(22) eighty thousand dollars (\$80,000) for Charlie Morrissey research hall for science, mathematics and robotics distance learning curriculum;

(23) twenty thousand dollars (\$20,000) for integration and coordination of Charlie Morrissey research hall with the African-American performing arts center community research;

(24) thirty thousand dollars (\$30,000) for the African-American student services stay-in-school program;

(25) twenty-five thousand dollars (\$25,000) for statewide consulting on autism and related neurodevelopmental concerns;

(26) seventy-five thousand dollars (\$75,000) for the judicial education center for domestic violence training for judges;

(27) forty thousand dollars (\$40,000) for a water rights ombudsman at the Utton transboundary resources center at the law school;

(28) twenty-two thousand dollars (\$22,000) for the high school mock trial program at the law school; and

(29) twenty thousand dollars (\$20,000) for an African-American student service center within the division of student affairs.

C. To the board of regents of New Mexico state university, the following amounts are appropriated for the following purposes:

(1) one hundred ten thousand dollars (\$110,000) to continue the science, engineering, mathematics and aerospace academy;

(2) two hundred ninety-five thousand dollars (\$295,000) for the equestrian program;

(3) one hundred sixty thousand dollars (\$160,000) to start an aerospace engineering department;

(4) fifty thousand dollars (\$50,000) for an aeronautics and space program;

(5) forty thousand dollars (\$40,000) for nursing education initiatives;

(6) eighty-five thousand dollars (\$85,000) to support the viticulture program;

(7) one hundred thirty-five thousand dollars (\$135,000) for water management research and education programs at agricultural experiment stations and the cooperative extension service;

(8) eighty-five thousand dollars (\$85,000) for the water resources research institute to increase research in water conservation, planning and management;

(9) forty-five thousand dollars (\$45,000) for the New Mexico department of agriculture to match funds for pink bollworm control;

(10) two hundred five thousand dollars (\$205,000) for the agricultural science center in Farmington for a horticulturist and technical support staff

to increase the teaching and research capacity and undertake a comprehensive feasibility study for infrastructure repairs and upgrades;

(11) one hundred thousand dollars (\$100,000) for applied health science scholarships at the Alamogordo and Carlsbad branch campuses;

(12) fifty thousand dollars (\$50,000) for a professional staff position for the agriculture science center at Memorial middle school in the Las Vegas city public school district;

(13) eighty thousand dollars (\$80,000) for the four-H program under the cooperative extension service;

~~[(14) one hundred thousand dollars (\$100,000) for the department of agriculture wildlife services program;][LINE-ITEM VETO]~~

(15) seventy-five thousand dollars (\$75,000) to promote farmers' markets;

(16) eighty-five thousand dollars (\$85,000) to promote the Santa Fe farmers' market;

(17) twenty-five thousand dollars (\$25,000) for pecan tree pest control;

(18) thirty thousand dollars (\$30,000) to develop partnerships with public schools and other educational entities to promote financial and economic literacy;

(19) thirty thousand dollars (\$30,000) for the alliance for underrepresented students;

(20) thirty thousand dollars (\$30,000) for the center for border and indigenous educational leadership;

(21) thirty thousand dollars (\$30,000) for the college assistance migrant program to support educational needs of migrant and seasonal farm workers;

(22) twenty-five thousand dollars (\$25,000) for the specialty crop program at the New Mexico department of agriculture;

(23) twenty-five thousand dollars (\$25,000) for the food and agricultural policy council;

(24) fifty thousand dollars (\$50,000) for the family strengthening and parenting classes for high-risk families with limited economic resources;

(25) twenty thousand dollars (\$20,000) for the bachelor's degree completion program in information and communication technology;

(26) one hundred thousand dollars (\$100,000) to increase the profitability and yield of chile crops and increase the economic sustainability of the New Mexico chile industry;

(27) fifty thousand dollars (\$50,000) for a comprehensive hydrogeologic study of the Sacramento mountains by the Otero soil and water conservation district;

(28) twenty-five thousand dollars (\$25,000) for the agricultural science center in Clovis;

(29) seventy-five thousand dollars (\$75,000) for the agricultural science center in Tucumcari;

(30) thirty thousand dollars (\$30,000) to establish an accredited dental hygiene educational program at the Dona Ana branch;

(31) thirty-five thousand dollars (\$35,000) to expand and enhance the music department and jazz band at the Alamogordo branch;

(32) thirty thousand dollars (\$30,000) to improve mathematics and science skills of economically disadvantaged pre-college students for entry into science and engineering majors;

(33) fifty thousand dollars (\$50,000) to increase the number of students in the teacher education center in Grants and to increase the number of teachers who complete the program;

(34) seventy-five thousand dollars (\$75,000) for the department of agriculture's small farmer initiative; and

(35) fifty thousand dollars (\$50,000) for the department of agriculture to market New Mexico-grown wheat internationally and domestically.

D. To the board of regents of New Mexico highlands university, the following amounts are appropriated for the following purposes:

(1) twenty-five thousand dollars (\$25,000) for upward bound;

(2) one hundred thousand dollars (\$100,000) for a men's wrestling program;

(3) one hundred fifty thousand dollars (\$150,000) for a women's rodeo program;

(4) forty thousand dollars (\$40,000) for international student recruitment;

(5) sixty-three thousand dollars (\$63,000) for the second chance program;

(6) one hundred thousand dollars (\$100,000) to plan and develop a leadership and policy institute; and

(7) fifty thousand dollars (\$50,000) for a pilot project to design and develop a total immersion English language program in Las Vegas and a total immersion Spanish language program in Chihuahua, Mexico.

E. To the board of regents of western New Mexico university, the following amounts are appropriated for the following purposes:

(1) one hundred thousand dollars (\$100,000) for maintenance of the athletic fields;

(2) one hundred eighty-five thousand dollars (\$185,000) for the nursing program;

(3) two hundred twenty-five thousand dollars (\$225,000) to maintain the network for web-based teacher licensure; and

(4) one hundred twenty thousand dollars (\$120,000) for athletics.

F. To the board of regents of eastern New Mexico university, the following amounts are appropriated for the following purposes:

(1) two hundred thousand dollars (\$200,000) for instruction and general purposes;

(2) ninety thousand dollars (\$90,000) for a special services occupational training program;

(3) sixty thousand dollars (\$60,000) to support continuation and expansion of youth violence prevention programs statewide;

(4) eighty-five thousand dollars (\$85,000) for the operations of the Hobbs center for graduate education;

(5) one hundred fifty thousand dollars (\$150,000) for the athletic department;

(6) one hundred thousand dollars (\$100,000) for the men's soccer program;

(7) twenty-five thousand dollars (\$25,000) for interactive television classrooms and support for the regional distance education consortium; and

(8) sixty thousand dollars (\$60,000) to establish a mathematics educational specialist program.

G. To the board of regents of New Mexico institute of mining and technology, the following amounts are appropriated for the following purposes:

(1) two hundred sixty thousand dollars (\$260,000) for counterterrorism research and training in Playas;

(2) one hundred sixty thousand dollars (\$160,000) for the petroleum recovery research center;

(3) one hundred thousand dollars (\$100,000) for the energetic materials research center;

(4) one hundred ten thousand dollars (\$110,000) for the technology research collaborative, contingent on Senate Bill 169 or similar legislation of the first session of the forty-seventh legislature becoming law;

(5) sixty thousand dollars (\$60,000) to support annual decision-makers seminars;

(6) three hundred twenty-five thousand dollars (\$325,000) for the institute for complex additive systems analysis;

(7) one hundred thousand dollars (\$100,000) for the cave karst institute program;

(8) one hundred fifty thousand dollars (\$150,000) to create an aerospace engineering department; and

(9) fifty thousand dollars (\$50,000) for supercomputing training for middle and high school students.

H. To the board of regents of northern New Mexico state school, the following amounts are appropriated for the following purposes:

(1) one hundred ten thousand dollars (\$110,000) to support the dean of the college of education position for the baccalaureate teacher education program;

(2) three hundred thousand dollars (\$300,000) for the teacher education program; and

(3) seventy-seven thousand dollars (\$77,000) to train middle school teachers in mathematics, science and technology.

I. To the board of regents of the New Mexico military institute, two hundred twenty-five thousand dollars (\$225,000) is appropriated for the General Richard T. Knowles legislative scholarship program.

Chapter 34 Section 11 Laws 2005

Section 11. LEGISLATIVE CASH BALANCE APPROPRIATION.--

Seventy-five thousand dollars (\$75,000) is appropriated from legislative council service cash balances to the legislative council service for expenditure in fiscal years 2005 and 2006 for historical and other acquisitions and additional support for the capitol art collection for the state capitol.

Chapter 34 Section 12 Laws 2005

Section 12. **STATE ROAD FUND APPROPRIATION.--**One million five hundred thousand dollars (\$1,500,000) is appropriated from the state road fund to the motor transportation division of the department of public safety for expenditure in fiscal year 2006 for operations at the Santa Teresa port of entry. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the state road fund.

Chapter 34 Section 13 Laws 2005

Section 13. NONRECURRING FISCAL YEAR 2005 APPROPRIATIONS.--

A. The appropriations in this section are from the general fund and may be expended in fiscal years 2005 and 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

B. To the department of finance and administration, the following amounts are appropriated for the following purposes:

(1) one hundred thousand dollars (\$100,000) to pay costs of the annual state high school basketball tournament, including personnel, management, security, custodial, utility and rental costs;

(2) fifty thousand dollars (\$50,000) to study the division of the Albuquerque public school district into two or more school districts;

(3) two hundred fifty thousand dollars (\$250,000) for computer clubhouses in Bernalillo and Santa Fe counties;

(4) two hundred thousand dollars (\$200,000) for technical assistance to the acequia commission and acequias;

(5) three hundred thousand dollars (\$300,000) for a drunkbusters hotline;

(6) five hundred thousand dollars (\$500,000) for gang initiatives;
and

(7) one million dollars (\$1,000,000) for pre-kindergarten services, contingent on House Bill 337 or similar legislation of the first session of the forty-seventh legislature becoming law.

C. To the secretary of state, seventy-five thousand dollars (\$75,000) is appropriated for election reform.

D. To the economic development department, two hundred fifty thousand dollars (\$250,000) is appropriated to contract for manufacturing extension services, contingent on the receipt of money from the national institute of standards and technology to operate a manufacturing center in the state that is approved by that institute.

E. To the cultural affairs department, twenty-five thousand dollars (\$25,000) is appropriated for New Mexico music promotion.

F. To the Indian affairs department, the following amounts are appropriated for the following purposes:

(1) two hundred fifty thousand dollars (\$250,000) for a documentary on Navajo code talkers that places their contributions during World War II within the context of the history of the Navajo Nation before and during the war; and

(2) two hundred fifty thousand dollars (\$250,000) to settle outstanding trespass issues of Native American homes and roads and other access on or across lands held in trust pursuant to the Enabling Act.

G. To the department of health, three hundred thousand dollars (\$300,000) is appropriated for behavioral health services in Dona Ana county and southern New Mexico.

H. To the corrections department, one hundred fifty thousand dollars (\$150,000) is appropriated for an opiate replacement treatment program in correctional facilities, contingent on Senate Bill 426 or similar legislation of the first session of the forty-seventh legislature becoming law.

I. To the public education department, the following amounts are appropriated for the following purposes:

(1) two hundred fifty thousand dollars (\$250,000) for geography education in the public schools;

(2) five hundred thousand dollars (\$500,000) for a virtual high school in the Rio Rancho public school district;

(3) one million dollars (\$1,000,000) for a computerized learning system that aligns public school curricula to the criterion-referenced tests, New Mexico academic content and performance standards, current textbooks and the department voluntary curriculum; and

(4) two hundred thirty-six thousand dollars (\$236,000) for the Cimarron online school pilot project; provided that this appropriation is contingent on House Bill 633 or similar legislation of the first session of the forty-seventh legislature becoming law.

J. To the commission on higher education, the following amounts are appropriated for the following purposes:

(1) five hundred thousand dollars (\$500,000) for New Mexico junior college to continue development of the New Mexico virtual college;

(2) for Luna vocational-technical institute, the following amounts are appropriated for the following purposes:

(a) one hundred fifty thousand dollars (\$150,000) for a summer student advancement institute for high school students that includes core curriculum and advanced placement coursework, career guidance and education and an introduction to post-secondary education; and

(b) one hundred thousand dollars (\$100,000) to establish a student government leadership development program, train students and provide leadership expertise for student leaders;

(3) five hundred thirty thousand dollars (\$530,000) to the New Mexico small business development center at Santa Fe community college to develop and support small business development centers statewide; and

(4) seven hundred fifty thousand dollars (\$750,000) for ENLACE programs at the university of New Mexico, New Mexico state university and Santa Fe community college.

K. To the board of regents of the university of New Mexico, two hundred ninety thousand dollars (\$290,000) is appropriated for the Governor Bruce King archives and reading room.

L. To the board of regents of northern New Mexico state school, two hundred thousand dollars (\$200,000) is appropriated for the teacher education program.

Chapter 34 Section 14 Laws 2005

Section 14. HOUSE BILL 1053 APPROPRIATIONS.--

A. The appropriations in this section are from the general fund for expenditure in fiscal year 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund. The appropriations in this section are contingent on House Bill 1053 or similar legislation of the first session of the forty-seventh legislature becoming law.

B. To the Indian affairs department, the following amounts are appropriated for the following purposes:

(1) fifty thousand dollars (\$50,000) for the Indian pueblo cultural center; and

(2) one hundred thousand dollars (\$100,000) for development of a master plan for the Santa Fe Indian school.

C. To the human services department, forty thousand dollars (\$40,000) is appropriated to continue the hunger task force.

D. To the commission on higher education, four hundred seventy thousand dollars (\$470,000) is appropriated for the New Mexico small business development center at Santa Fe community college to develop and support small business development centers statewide.

E. To the board of regents of New Mexico highlands university, two hundred thousand dollars (\$200,000) is appropriated for a policy and leadership institute.

Chapter 34 Section 15 Laws 2005

Section 15. **APPROPRIATION REDUCTIONS.**--Each general fund appropriation provided for in this act shall be reduced by five percent.

SFC/Senate Bill 190, aa

Approved March 17, 2005

LAWS 2005, CHAPTER 35

AN ACT

RELATING TO REAL ESTATE LICENSURE; CHANGING DEFINED TERMS, INCLUDING THOSE FOR REAL ESTATE BROKERS AND SALESPERSONS; PROVIDING FOR ADDITIONAL COMMISSION POWERS, DISCLOSURE OF LICENSEE DUTIES AND CONSENT FOR SERVICE OF PROCESS; REVISING PROVISIONS FOR MAXIMUM ANNUAL PREMIUM FOR LIABILITY INSURANCE AND FOR REFUND OF LICENSE FEES; REVISING REQUIREMENTS FOR CONTINUING EDUCATION AND QUALIFICATIONS FOR LICENSEES; CREATING THE REAL ESTATE EDUCATION AND TRAINING FUND; MAKING AN APPROPRIATION.

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

Chapter 35 Section 1 Laws 2005

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 an associate broker or a qualifying broker within this state without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker 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."

Chapter 35 Section 2 Laws 2005

Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999, Chapter 127, Section 1, as amended) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS.--

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the qualifying broker's business as a whole or partial vocation;

(4) "broker" or "qualifying broker" means a person who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) leases, rents or auctions or offers to lease, rent or auction real estate;

(c) advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(d) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the broker or qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to brokers, qualifying brokers or associate brokers;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) "client" means a buyer, seller, landlord or tenant who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commission" means the New Mexico real estate commission;

(9) "customer" means a buyer, seller, landlord or tenant who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(10) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(11) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

(12) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible;

(13) "real estate salesperson" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the broker's business as a whole or partial vocation; and

(14) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (4) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by the person, the employees of the owner or lessor or the employees of a qualifying broker acting on behalf of the owner or lessor, with respect to the property owned or leased, if the acts are performed in the regular course of or incident to the management of the property and the investments, except when the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(3) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(4) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(5) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(6) the activities of a salaried employee of a governmental agency acting within the scope of employment; or

(7) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction."

Chapter 35 Section 3 Laws 2005

Section 3. Section 61-29-4 NMSA 1978 (being Laws 1959, Chapter 226, Section 3, as amended by Laws 2003, Chapter 22, Section 1 and by Laws 2003, Chapter 408, Section 30) is amended to read:

"61-29-4. CREATION OF COMMISSION--POWERS AND DUTIES.--There is created the "New Mexico real estate commission". The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as

otherwise provided by law, and it is expressly vested with power and authority to make and enforce rules to carry out the provisions of that article. Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments."

Chapter 35 Section 4 Laws 2005

Section 4. Section 61-29-4.1 NMSA 1978 (being Laws 1985, Chapter 89, Section 1, as amended) is amended to read:

"61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.-- The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice, and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who are sixty-five years of age or older and who have a minimum of twenty years' continuously licensed experience in the selling, leasing or managing of real property, as a condition of his license renewal, shall successfully complete thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee's specialty or expertise."

Chapter 35 Section 5 Laws 2005

Section 5. Section 61-29-4.2 NMSA 1978 (being Laws 2001, Chapter 216, Section 1) is amended to read:

"61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--PROFESSIONAL LIABILITY INSURANCE--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 two hundred dollars (\$200) 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."

Chapter 35 Section 6 Laws 2005

Section 6. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"ADDITIONAL POWERS OF COMMISSION--CRIMINAL BACKGROUND CHECKS.-- The commission may require license applicants, as a condition of licensure, to submit to criminal background checks."

Chapter 35 Section 7 Laws 2005

Section 7. Section 61-29-5 NMSA 1978 (being Laws 1959, Chapter 226, Section 4, as amended) 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 associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, suspended or revoked. This record shall be open to public inspection at all reasonable times."

Chapter 35 Section 8 Laws 2005

Section 8. Section 61-29-6 NMSA 1978 (being Laws 1959, Chapter 226, Section 5) is amended to read:

"61-29-6. MEETING OF THE COMMISSION.--The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president."

Chapter 35 Section 9 Laws 2005

Section 9. 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 qualifying broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(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 transfer 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 booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed twenty dollars (\$20.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office, death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500) and for each renewal thereof, a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the 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 to the commission for the purpose of carrying out the provisions of Section 61-29-4 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."

Chapter 35 Section 10 Laws 2005

Section 10. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended by Laws 2003, Chapter 22, Section 4 and by Laws 2003, Chapter 329, Section 1) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall be a legal resident of the United States and have reached the age of majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate examination approved by the commission and shall:

(1) furnish the commission with a certificate that the applicant 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

(2) furnish the commission with a certificate that the applicant is a duly licensed real estate broker in good standing in another state; provided that the applicant has successfully completed 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. An applicant for a qualifying broker's license shall have been actively engaged in the real estate business as an associate broker or real estate salesperson for at least two of the last five years immediately preceding application for a qualifying broker's license and furnish the commission proof that the applicant has completed successfully one hundred twenty hours of prelicensing courses, including a broker basics course, approved by the commission.

D. A licensee holding a current real estate salesperson's license on the effective date of this 2005 act shall automatically qualify for an associate broker's license without any additional requirements. However, to be eligible to apply for a qualifying broker's license, a real estate salesperson obtaining an associate broker's license pursuant to this subsection shall, in addition to meeting all other requirements for a qualifying broker's license, pass a real estate broker's examination approved by the commission.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency. Corporations, partnerships or associations may hold a qualifying broker's license issued in the name of the corporation, partnership or association; provided that 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 qualifying 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."

Chapter 35 Section 11 Laws 2005

Section 11. 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 qualifying brokers and associate brokers 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 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. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given 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 qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. 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."

Chapter 35 Section 12 Laws 2005

Section 12. Section 61-29-10.2 NMSA 1978 (being Laws 1999, Chapter 127, Section 3, as amended) is amended to read:

"61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE.--

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission."

Chapter 35 Section 13 Laws 2005

Section 13. 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. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying 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 the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's 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 that person's 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 qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

D. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the qualifying broker and each associate broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not 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 the licensee's 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 qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

E. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker 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 the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated by the commission."

Chapter 35 Section 14 Laws 2005

Section 14. 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 a license or may suspend, revoke, limit or condition a license if the applicant or 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 the licensee's principal or other party to the transaction, and then only with that principal's written consent;

(4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's 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 qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying 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 qualifying broker of this state;

(8) failed, if a qualifying 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 the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker 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 qualifying 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 qualifying 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 qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying 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 qualifying broker or an associate broker 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 an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation."

Chapter 35 Section 15 Laws 2005

Section 15. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"NONRESIDENT LICENSEES--CONSENT TO SERVICE.--A nonresident associate broker or qualifying broker shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the nonresident associate broker or qualifying broker 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 service on the

commission of any process or pleadings authorized by the laws of this state, 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 nonresident licensee 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 certified mail to the main office of the nonresident licensee against whom the process or pleadings are directed."

Chapter 35 Section 16 Laws 2005

Section 16. Section 61-29-16 NMSA 1978 (being Laws 1959, Chapter 226, Section 15) is amended to read:

"61-29-16. SUIT BY QUALIFYING OR ASSOCIATE BROKER.--No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker at the time the alleged cause of action arose. In any event, suit against a member of the public as distinguished from any person licensed under Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker."

Chapter 35 Section 17 Laws 2005

Section 17. Section 61-29-18 NMSA 1978 (being Laws 1959, Chapter 226, Section 18) is amended to read:

"61-29-18. INTERPRETATION OF ACT.--Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating qualifying brokers or associate brokers."

Chapter 35 Section 18 Laws 2005

Section 18. Section 61-29-23 NMSA 1978 (being Laws 1980, Chapter 82, Section 4, as amended) is amended to read:

"61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--"

A. When any aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, which loss arose out of any transaction for which a qualifying broker's or an associate broker's license is required and arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate, where the cause of action arose on or after July 1, 1980, that person may, within one year after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment from the real estate recovery fund for the actual damages included in the judgment and unpaid, but not more than ten thousand dollars (\$10,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses caused by any one licensee shall not exceed thirty thousand dollars (\$30,000).

B. A copy of the petition shall be served upon the commission in the manner provided by law for service of a civil summons.

C. The commission shall conduct a hearing on the petition after service of the petition upon the commission. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act;

(3) has obtained a judgment of the kind described in Subsection A of this section, the amount awarded and the amount owing at the date of the petition;

(4) has had execution issued upon the judgment and that the officer executing the writ has made a return showing that the judgment debtor has no property within the state subject to execution. If execution is levied against the property of the judgment debtor, the petitioner shall show that the amount realized on the sale was insufficient to satisfy the judgment and shall set forth the amount realized from the sale and the balance remaining due on the judgment after application of the amount realized;

(5) has made reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment, including partnership assets, licensee's estate or any bond or insurance, and that the petitioner has exercised

reasonable diligence to secure payment of the judgment from the assets of the judgment debtor; and

(6) has a judgment that is not:

(a) covered by any bond, insurance, surety agreement or indemnity agreement;

(b) a loss incurred by a partner, joint venturer, employer, employee or associate of the licensee whose conduct is alleged to have caused the loss; or a corporate officer or director of a corporation in which the judgment debtor is also an officer, director or employee; or

(c) a loss incurred by any business or other entity in which the licensee whose conduct is alleged to have caused the loss has any interest at the time of the conduct alleged to have caused the loss."

Chapter 35 Section 19 Laws 2005

Section 19. Section 61-29-27 NMSA 1978 (being Laws 1980, Chapter 82, Section 8, as amended) is amended to read:

"61-29-27. SUBROGATION.--When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act, revoke, suspend or refuse to renew the license of any qualifying broker or associate broker for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act. Further, the commission may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf."

Chapter 35 Section 20 Laws 2005

Section 20. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"REAL ESTATE EDUCATION AND TRAINING FUND CREATED--PURPOSE--APPROPRIATION.--

A. The "real estate education and training fund" is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education

sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars (\$250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund."

Chapter 35 Section 21 Laws 2005

Section 21. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 19 of this act is January 1, 2006.

B. The effective date of the provisions of Section 20 of this act is July 1, 2005.

SENATE BILL 267, as amended

with certificate of correction

LAWS 2005, CHAPTER 36

AN ACT

RELATING TO FINANCE; AUTHORIZING 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:

Chapter 36 Section 1 Laws 2005

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority

to make loans from the public project revolving fund to the following qualified entities for the following public projects on terms and conditions established by the authority:

1. to the Alamogordo public schools in Otero county for equipment, building and infrastructure projects;
2. to the city of Alamogordo in Otero county for equipment, building, infrastructure and refinancing projects;
3. to the Albuquerque/Bernalillo county water utility authority in Bernalillo county for equipment and infrastructure projects;
4. to the city of Albuquerque in Bernalillo county for equipment, building, refinancing and infrastructure projects;
5. to the Albuquerque public schools in Bernalillo and Sandoval counties for equipment, building, infrastructure and refinancing projects;
6. to the Angel Fire public improvement district in Colfax county for equipment, buildings, infrastructure and refinancing projects;
7. to the Animas public schools in Hidalgo county for equipment, building, infrastructure and refinancing projects;
8. to the Artesia public schools in Eddy and Chaves counties for equipment, building, infrastructure and refinancing projects;
9. to the city of Artesia in Eddy county for equipment, building, infrastructure and refinancing projects;
10. to the city of Aztec in San Juan county for refinancing, equipment, building and infrastructure projects and acquisition of the east Aztec water users association;
11. to the city of Bayard in Grant county for equipment and infrastructure projects;
12. to the Belen consolidated schools in Valencia county for building and infrastructure projects;
13. to the Bernalillo county metropolitan court in Bernalillo county for refinancing projects;
14. to the Bernalillo public schools in Sandoval county for equipment, building, infrastructure and refinancing projects;

15. to the Bloomfield schools in San Juan county for building and infrastructure projects;
16. to the city of Bloomfield in San Juan county for equipment, building, refinancing, land acquisition and infrastructure projects;
17. to the village of Capitan in Lincoln county for equipment acquisition projects;
18. to the Capitan municipal schools in Lincoln county for equipment, building, infrastructure and refinancing projects;
19. to the Carlsbad municipal schools in Eddy county for equipment, building, infrastructure and refinancing projects;
20. to the city of Carlsbad in Eddy county for equipment, building, infrastructure and refinancing projects;
21. to the village of Causey in Roosevelt county for equipment, building and infrastructure projects;
22. to the Central consolidated schools in San Juan county for building, teacherage and infrastructure projects;
23. to the Clayton public schools in Union county for equipment, building, infrastructure and refinancing projects;
24. to the Cloudcroft municipal schools in Otero county for equipment, building, infrastructure and refinancing projects;
25. to the Clovis municipal schools in Curry county for equipment, building, infrastructure and refinancing projects;
26. to the city of Clovis in Curry county for equipment, building, infrastructure and refinancing projects;
27. to Colfax county for equipment, building, infrastructure and refinancing projects in Colfax county;
28. to the village of Columbus in Luna county for equipment acquisition projects;
29. to the Cuba independent schools in Sandoval county for equipment, building, infrastructure, refinancing and teacherage projects;

30. to the Cuba soil and water conservation district in Sandoval county for equipment and infrastructure projects;

31. to Curry county for equipment, building and infrastructure projects in Curry county;

32. to the city of Deming in Luna county for solid waste projects;

33. to the town of Dexter in Chaves county for equipment acquisition projects;

34. to the Dexter consolidated schools in Chaves county for equipment, building, infrastructure and refinancing projects;

35. to the east Rio Arriba soil and water conservation district in Rio Arriba county for equipment acquisition projects;

36. to Eddy county for equipment, building and infrastructure projects in Eddy county;

37. to Eddy county-Atoka volunteer fire department in Eddy county for equipment, building and infrastructure projects;

38. to Eddy county-Joel volunteer fire department in Eddy county for equipment, building and infrastructure projects;

39. to Eddy county-Malaga volunteer fire department in Eddy county for equipment, building and infrastructure projects;

40. to Eddy county-White City volunteer fire department in Eddy county for equipment, building and infrastructure projects;

41. to Elephant Butte in Sierra county for water rights acquisition and water projects;

42. to the town of Elida in Roosevelt county for equipment, building and infrastructure projects;

43. to the city of Espanola in Rio Arriba and Santa Fe counties for equipment, building, infrastructure and refinancing projects;

44. to the Farmington municipal schools in San Juan county for equipment, building, infrastructure and refinancing projects;

45. to the city of Farmington in San Juan county for equipment, building, infrastructure and refinancing projects;

46. to the village of Folsom in Union county for equipment acquisition projects;

47. to the Gadsden independent schools in Dona Ana and Otero counties for equipment, building, infrastructure and refinancing projects;

48. to the city of Gallup in McKinley county for equipment, building, infrastructure and refinancing projects;

49. to the Gallup-McKinley county public schools in McKinley county for equipment, building, infrastructure, refinancing and teacherage projects;

50. to Grant county for equipment, building, infrastructure and refinancing projects in Grant county;

51. to Grant county-Fort Bayard volunteer fire department in Grant county for equipment and vehicle acquisition projects;

52. to Guadalupe county for equipment, building, infrastructure and refinancing projects in Guadalupe county;

53. to the town of Hagerman in Chaves county for equipment acquisition projects;

54. to the Hagerman municipal schools in Chaves county for equipment, building, infrastructure and refinancing projects;

55. to Hatch Valley municipal schools in Dona Ana county for equipment, building, infrastructure and refinancing projects;

56. to the department of health for a building and associated equipment in Albuquerque in Bernalillo county;

57. to Hidalgo county for equipment, building, and infrastructure projects in Hidalgo county;

58. to the city of Hobbs in Lea county for equipment, building, infrastructure and refinancing projects;

59. to the town of Hurley in Grant county for equipment and infrastructure projects;

60. to the Jemez Valley municipal schools in Sandoval county for building and infrastructure projects;

61. to the Las Cruces public schools in Dona Ana county for equipment, building, infrastructure and refinancing projects;

62. to the city of Las Cruces in Dona Ana county for equipment, building, infrastructure and refinancing projects;

63. to La Union in Dona Ana county for infrastructure and water projects;

64. to the Las Vegas public housing authority or Las Vegas, or both, in San Miguel county for equipment, buildings, infrastructure and refinancing projects;

65. to the city of Las Vegas in San Miguel county for equipment, building, infrastructure and refinancing projects;

66. to Lincoln county-Hondo volunteer fire department in Lincoln county for equipment acquisition projects;

67. to the Lincoln solid waste authority in Lincoln county for infrastructure, building, equipment and refinancing projects;

68. to the village of Logan in Quay county for equipment acquisition, building, infrastructure and refinancing projects;

69. to the Lordsburg municipal schools in Hidalgo county for equipment, building, infrastructure and refinancing projects;

70. to Los Alamos county for equipment, building, infrastructure and refinancing projects in Los Alamos county;

71. to the Los Alamos public schools in Los Alamos county for equipment, building, infrastructure and refinancing projects;

72. to the Los Lunas public schools in Valencia county for equipment, building, infrastructure and refinancing projects;

73. to the city of Lovington in Lea county for equipment, building, infrastructure and refinancing projects;

74. to the Magdalena municipal schools in Socorro county for equipment, building, infrastructure and refinancing projects;

75. to the Monticello mutual domestic water consumers association in Sierra county for building, infrastructure and water projects;

76. to Mora county for equipment, building, and infrastructure projects in Mora county;

77. to Mora county-Buena Vista volunteer fire department in Mora county for equipment acquisition projects;

78. to New Mexico highlands university in San Miguel county for equipment, building, refinancing and infrastructure projects;

79. to New Mexico state university in Dona Ana county for equipment, building, infrastructure and refinancing projects;

80. to the Otero county-Dungan volunteer fire department in Otero county for equipment acquisition projects;

81. to the Pojoaque valley public schools in Santa Fe county for equipment, building, infrastructure and refinancing projects;

82. to the city of Raton in Colfax county for refinancing, equipment, building and infrastructure projects;

83. to the Rio Rancho public schools in Sandoval county for building and infrastructure projects;

84. to the city of Rio Rancho in Sandoval county for special assessment district 6, special assessment district 7, building and infrastructure projects;

85. to the city of Rio Rancho in Sandoval county for equipment, building, infrastructure and refinancing projects;

86. to the Roswell independent schools in Chaves county for equipment, building, infrastructure and refinancing projects;

87. to the city of Roswell in Chaves county for equipment, building, infrastructure and refinancing projects;

88. to the Ruidoso municipal schools in Lincoln county for equipment, building, infrastructure and refinancing projects;

89. to the village of Ruidoso in Lincoln county for building projects and a solid waste project;

90. to the village of San Jon in Quay county for equipment and infrastructure projects;

91. to San Miguel county for equipment, building, infrastructure and refinancing projects in San Miguel county;

92. to the San Miguel county-Pecos Canyon volunteer fire department in San Miguel county for equipment acquisition projects;

93. to the village of San Ysidro in Sandoval county for water and wastewater projects and equipment acquisition projects;

94. to the Santa Fe public schools in Santa Fe county for equipment, building, infrastructure and refinancing projects;

95. to Santa Fe county for equipment, building, infrastructure and refinancing projects in Santa Fe county;

96. to Sandoval county for refinancing projects in Sandoval county;

97. to the city of Santa Rosa in Guadalupe county for equipment acquisition projects;

98. to the town of Silver City in Grant county for equipment acquisition projects;

99. to the Socorro consolidated schools in Socorro county for building and infrastructure projects;

100. to Socorro county for equipment and infrastructure projects in Socorro county;

101. to the city of Sunland Park in Dona Ana county for water, wastewater, and water rights acquisition projects;

102. to the town of Taos in Taos county for equipment, building, infrastructure and refinancing projects;

103. to Taos county-Hondo/Seco volunteer fire department in Taos county for equipment acquisition projects;

104. to Tierra y Montes in San Miguel county for building projects;

105. to the Texico municipal schools in Curry and Roosevelt counties for equipment, building, infrastructure and refinancing projects;

106. to Torrance county-Northeast Torrance number five fire district in Torrance county for infrastructure, building and equipment projects;

107. to the Truth or Consequences municipal schools in Sierra county for equipment, building, infrastructure and refinancing projects;

108. to the city of Truth or Consequences in Sierra county for equipment, building, infrastructure and refinancing projects;

109. to the Tucumcari public schools in Quay county for equipment, building, infrastructure and refinancing projects;

110. to the city of Tucumcari in Quay county for equipment, building, refinancing and infrastructure projects;

111. to the village of Tularosa in Otero county for equipment and infrastructure projects;

112. to Union county for equipment, building, infrastructure and refinancing projects in Union county;

113. to the board of regents of the university of New Mexico for the purpose of designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center;

114. to the Ventana West public improvements district in Sandoval county for equipment, building, infrastructure and refinancing projects;

115. to the West Rim mutual domestic water consumers association in Taos county for well projects;

116. to the Albuquerque-Bernalillo county water utility authority in Bernalillo county for water and wastewater projects;

117. to the Animas volunteer fire department in Hidalgo county for equipment and infrastructure projects;

118. to the city of Aztec in San Juan county for land purchase and building projects;

119. to the village of Columbus in Luna county for water projects;

120. to the village of Corrales in Bernalillo and Sandoval counties for equipment, buildings, infrastructure and refinancing projects;

121. to the Cuba soil and water conservation district in Sandoval county for building and refinancing projects;

122. to Curry county for equipment, buildings and infrastructure projects in Curry county;

123. to De Baca county for building, equipment and infrastructure projects in De Baca county;

124. to the Des Moines municipal schools in Union county for equipment, buildings, infrastructure and refinancing projects;

125. to the city of Elephant Butte in Sierra county for water projects;

126. to the Espanola public schools in Rio Arriba and Santa Fe counties for equipment, buildings, infrastructure and refinancing projects;

127. to the town of Estancia in Torrance county for equipment, buildings and infrastructure projects;

128. to the Grant county-Ft. Bayard volunteer fire department in Grant county for equipment projects;

129. to Hidalgo county for equipment and infrastructure projects in Hidalgo county;

130. to the Hondo Valley public schools in Lincoln county for equipment, buildings, infrastructure and refinancing projects;

131. to the Lake Arthur municipal schools in Chaves county for equipment, buildings, infrastructure and refinancing projects;

132. to the Las Vegas city public schools in San Miguel county for equipment, buildings, infrastructure and refinancing projects;

133. to the city of Lordsburg in Hidalgo county for water and wastewater projects;

134. to the Mesa Vista consolidated schools in Taos county for equipment, buildings, infrastructure and refinancing projects;

135. to Mora county for refinancing projects in Mora county;

136. to the Mora independent schools in Mora county for equipment, buildings, infrastructure and refinancing projects;

137. to the village of Mosquero in Harding county for building, equipment and infrastructure projects;

138. to New Mexico junior college in Lea county for building, equipment and infrastructure projects;

139. to the northwest New Mexico regional solid waste authority in McKinley county for equipment projects;

140. to the Pecos independent schools in San Miguel county for equipment, buildings, infrastructure and refinancing projects;

141. to the Raton public schools in Colfax county for equipment, buildings and infrastructure projects;

142. to the village of Roy in Harding county for building, equipment and infrastructure projects;

143. to the Roy municipal schools in Harding county for equipment, buildings, infrastructure and refinancing projects;

144. to the village of San Ysidro in Sandoval county for building, equipment and infrastructure projects;

145. to Sandoval county for building, equipment, infrastructure, water and wastewater projects in Sandoval county;

146. to the Sandoval county fire district 11 in Sandoval county for equipment, buildings and infrastructure projects;

147. to the city of Santa Fe in Santa Fe county for equipment, buildings, infrastructure and refinancing projects;

148. to the Sierra county-Caballo fire department in Sierra county for equipment acquisition projects;

149. to the Silver consolidated schools in Grant county for equipment, buildings, infrastructure and refinancing projects;

150. to Socorro county for building projects in Socorro county;

151. to the Socorro county-Midway hose company in Socorro county for equipment projects;

152. to the city of Texico in Curry county for equipment projects;

153. to the Texico volunteer fire department in Curry county for equipment projects;

154. to the city of Tucumcari in Quay county for water and wastewater projects;

155. to the university of New Mexico-Gallup in McKinley county for equipment, buildings, infrastructure and refinancing projects;

156. to the Vaughn municipal schools in Guadalupe county for equipment, buildings, infrastructure and refinancing projects;

157. to the West Las Vegas public schools in San Miguel county for equipment, buildings, infrastructure and refinancing projects;

158. to the village of Chama in Rio Arriba county for building, equipment and infrastructure projects;

159. to the Pueblo of Acoma in Catron, Cibola and Socorro counties for equipment, building and infrastructure projects;

160. to the Agua Fria mutual domestic water consumers association in Santa Fe for water and wastewater projects;

161. to the village of Angel Fire in Colfax county for equipment, buildings, infrastructure and refinancing projects;

162. to the Arroyo de Agua water association in Rio Arriba county for a water project;

163. to the Bluewater water and sanitation district in Cibola county for a water project;

164. to the village of Capitan in Lincoln county for water, wastewater and infrastructure projects;

165. to the Chaves county-East Grand Plains volunteer fire department in Chaves county for equipment acquisition projects;

166. to the Pueblo of Cochiti in Santa Fe and Sandoval counties for building, equipment and infrastructure projects;

167. to Curry county for refinancing projects in Curry county;

168. to the Eddy county-Sun Country volunteer fire department in Eddy county for equipment, building and infrastructure projects;

169. to the El Rito mutual domestic water consumers association in Rio Arriba county for water and wastewater projects;

170. to the El Valle de Los Ranchos de Taos water and sanitation district in Taos county for water projects;

171. to the energy, minerals and natural resources department for park improvement, education and recreation projects in Albuquerque and Bernalillo county;

172. to the city of Espanola in Rio Arriba and Santa Fe counties for water and wastewater projects;

173. to the town of Estancia in Tarrant county for water and wastewater projects;

174. to the Greater Chimayo mutual domestic water consumers association in Rio Arriba county for water and wastewater projects;

175. to the village of Hatch in Dona Ana county for water and wastewater projects;

176. to the Hidden Valley mutual domestic water consumers association in Sandoval county for water, wastewater and refinancing projects;

177. to the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties for equipment, buildings and infrastructure projects;

178. to the Pueblo of Jemez in Sandoval county for equipment, buildings and infrastructure projects;

179. to the Jicarilla Apache Nation in Rio Arriba and Sandoval counties for equipment, buildings and infrastructure projects;

180. to the Pueblo of Laguna in Bernalillo, Cibola and Valencia counties for equipment, buildings and infrastructure projects;

181. to the Lakeshore water and sanitation district in Sierra county for water and wastewater projects;

182. to the Mescalero Apache Tribe in Otero county for equipment, buildings and infrastructure projects;

183. to the village of Milan in Cibola county for wastewater projects;

184. to the Pueblo of Nambe in Santa Fe county for equipment, buildings and infrastructure projects;

185. to the Navajo Nation in Cibola, McKinley and San Juan counties for equipment, buildings and infrastructure projects;

186. to the border authority for equipment, buildings and infrastructure projects;

187. to the Pueblo of Picuris in Taos county for equipment, buildings and infrastructure projects;

188. to the Pueblo of Pojoaque in Santa Fe county for equipment, buildings and infrastructure projects;

189. to the Polvadera mutual domestic water consumers association in Socorro county for water and wastewater projects;

190. to the village of Questa in Taos county for equipment, buildings, infrastructure and refinancing projects;

191. to the town of Red River in Taos county for equipment, buildings, infrastructure and refinancing projects;

192. to the Sacatosa mutual domestic water consumers association in San Miguel county for water and wastewater projects;

193. to the Pueblo of San Felipe in Sandoval county for equipment, buildings and infrastructure projects;

194. to the Pueblo of San Ildefonso in Rio Arriba county for equipment, buildings and infrastructure projects;

195. to the Pueblo of San Juan in Rio Arriba county for equipment, buildings and infrastructure projects;

196. to the Pueblo of Sandia in Bernalillo and Sandoval counties for equipment, buildings and infrastructure projects;

197. to Sandoval county for water rights purchases for Sandoval county;

198. to the Sandoval county-Regina volunteer fire department in Sandoval county for equipment, buildings and infrastructure projects;

199. to the Pueblo of Santa Ana in Sandoval county for equipment, buildings and infrastructure projects;

200. to the Pueblo of Santa Clara in Rio Arriba county for equipment, buildings and infrastructure projects;

201. to the city of Santa Rosa in Guadalupe county for wastewater projects;

202. to the Pueblo of Santo Domingo in Santa Fe and Sandoval counties for equipment, buildings and infrastructure projects;

203. to Taos county for equipment, buildings, infrastructure and refinancing projects in Taos county;

204. to the Pueblo of Taos in Taos county for equipment, buildings and infrastructure projects;

205. to Taos Ski Valley in Taos county for equipment, building and infrastructure projects;

206. to the Pueblo of Tesuque in Santa Fe county for equipment, buildings and infrastructure projects;

207. to the Timberon water and sanitation district in Otero county for water projects;

208. to the town of Vaughn in Guadalupe county for water and wastewater projects;

209. to the Pueblo of Zia in Sandoval county for equipment, buildings and infrastructure projects;

210. to the Pueblo of Zuni in Cibola and McKinley counties for equipment, buildings and infrastructure projects;

211. to Dona Ana county for equipment, building and infrastructure projects in Dona Ana county;

212. to the Mesquite mutual domestic water consumers and mutual sewage works association in Dona Ana county for water projects;

213. to the city of Sunland Park in Dona Ana county for building, equipment and infrastructure projects; and

214. to the insurance division of the public regulation commission for equipment projects.

Chapter 36 Section 2 Laws 2005

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 2008 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.

Chapter 36 Section 3 Laws 2005

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

HOUSE BILL 95, as amended

with emergency clause

Signed March 18, 2005

LAWS 2005, CHAPTER 37

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE WATER RESOURCES RESEARCH INSTITUTE.

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

Chapter 37 Section 1 Laws 2005

Section 1. WATER RESOURCES RESEARCH INSTITUTE CREATED--
PURPOSE.--

A. The "water resources research institute" is created and shall be a division of New Mexico state university.

B. Participating institutions associated with the water resources research institute shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university. The purposes of the institute are to:

(1) provide research and training in water conservation, planning and management; atmospheric-surface-ground water relations; and water quality;

(2) transfer water information through the use of technical and miscellaneous publications, newsletters, conferences and presentations;

(3) provide expertise, specialized assistance and information to address water problems; and

(4) cooperate with local, state and federal water agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the water resources research institute as the board deems necessary. The reports of the institute may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The water resources research institute may receive appropriations from the legislature through the board of regents of New Mexico state university and may receive any other items of value from public or private sources.

HOUSE BILL 193

LAWS 2005, CHAPTER 38

AN ACT

RELATING TO GAME AND FISH; CREATING A LIABILITY SUSPENSE ACCOUNT; PROVIDING FOR THE REFUND OF HUNTING LICENSE FEES UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR THE TRANSFER OF HUNTING LICENSES UNDER CERTAIN CIRCUMSTANCES.

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

Chapter 38 Section 1 Laws 2005

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--LIABILITY SUSPENSE ACCOUNT.--

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, shall not be transferred to another fund. Prior to depositing money into the game protection fund, the department of game and fish shall ensure that an amount adequate to cover the cost of refunds allowed by the provisions of Chapter 17 NMSA 1978 is held in a liability suspense account. All refunds shall be made from the liability suspense account. Money not needed to cover the cost of refunds shall be deposited in the game protection fund at the end of each month. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the

money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.

B. The state game commission shall have authority to:

(1) establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves or to close large areas to hunting;

(4) purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any

person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges of a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races;

(15) adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the department of game and fish of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or the state veterinarian's designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal; and

(16) as necessary, designate areas of the state in which bear-proof garbage containers are required on public and private lands to reduce potential human-bear interactions.

C. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

D. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

E. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978."

Chapter 38 Section 2 Laws 2005

Section 2. Section 17-3-7 NMSA 1978 (being Laws 1912, Chapter 85, Section 48, as amended) is amended to read:

"17-3-7. BLANK FORMS--LICENSE ISSUED ONLY ON APPLICATION--FALSE STATEMENT VOIDS LICENSE--RECORDS--REPORTS--ACCOUNTING FOR FEES COLLECTED--REFUND OF FEES--TRANSFER OF HUNTING LICENSE.--

A. The director of the department of game and fish shall prescribe and procure the printing of all forms and blanks that may be required to carry out the intent of Chapter 17 NMSA 1978. All necessary blanks shall be furnished by the director to the license collectors. No license shall be issued except as provided in Section 17-3-5 NMSA 1978. Any false statement in any application shall render the license issued void.

B. A license collector shall keep a correct and complete record of licenses issued, which record shall remain in the license collector's office and be open to inspection by the public at all times.

C. A license collector may collect and retain a vendor fee for each license or permit issued; provided the fee shall be just and reasonable, as determined by regulation of the state game commission, and shall not exceed one dollar (\$1.00) for each license or permit issued; and provided further that no such fee shall be collected by the department of game and fish from the purchaser of a special license. "Special license" includes those licenses for the following species: antelope, elk, Barbary sheep, bighorn sheep, bison, oryx, ibex, gazelle and javelina.

D. A license collector shall remit to the director of the department of game and fish the statutory fee of all licenses and permits sold on or before the tenth day of the month following and shall by the same time report the number and kind of licenses issued.

E. Except as provided in Section 17-1-14 NMSA 1978, the director of the department of game and fish shall turn over all money so received to the state treasurer to be credited to the game protection fund.

F. The director of the department of game and fish, in the director's sole discretion, may authorize a refund of the amount of a hunting license fee from the game and fish suspense fund if:

(1) upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid; or

(2) upon written application by a personal representative of a licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued.

G. The director of the department of game and fish, in the director's sole discretion, may authorize a transfer of a hunting license:

(1) to the licensee's designee if, upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid;

(2) to the designee of the licensee's estate if, upon written application by the personal representative of the licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued; or

(3) upon written application by a licensee, to a nonprofit organization approved by the state game commission.

H. The state game commission may prescribe, by rule, the documentation necessary for a finding pursuant to Subsection F or G of this section."

LAWS 2005, CHAPTER 39

AN ACT

RELATING TO STATE PARKS; PROVIDING FOR VOLUNTEER SERVICES IN THE OPERATION OF STATE PARKS.

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

Chapter 39 Section 1 Laws 2005

Section 1. A new section of Chapter 16, Article 2 NMSA 1978 is enacted to read:

"STATE PARK VOLUNTEERS.--

A. The state parks division of the energy, minerals and natural resources department may develop a program to recruit, train and accept the services of volunteers who support programs administered by the division. Volunteers may provide services for or in aid of interpretive functions, visitor services, conservation measures and development or other activities in and related to state parks and other conservation and natural resource activities administered by the division. Volunteers shall comply with applicable rules and policies of the department and the division.

B. A volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and state employee benefits.

C. A volunteer traveling at the request of the state parks division may receive per diem and mileage pursuant to the Per Diem and Mileage Act as well as reimbursement for uniforms, supplies and equipment used for the volunteer's work at the park; provided that the director of the division shall not authorize any reimbursement in excess of the value of services rendered to the division by the volunteer.

D. A volunteer may use state vehicles in the performance of division-related duties subject to those rules governing use of state vehicles by paid staff. A volunteer performing work under the terms of this section and who operates a state vehicle shall be treated for the purposes of insurability and tort claims liability as an employee of the state.

E. A volunteer may use state computers in the performance of division-related duties, subject to those rules, policies and directives governing use of state computers by state employees."

HOUSE BILL 273

LAWS 2005, CHAPTER 40

AN ACT

RELATING TO HIGHER EDUCATION; AUTHORIZING THE RUIDOSO BRANCH COMMUNITY COLLEGE AS A BRANCH OF EASTERN NEW MEXICO UNIVERSITY; TERMINATING EASTERN NEW MEXICO'S OFF-CAMPUS INSTRUCTION PROGRAM IN RUIDOSO.

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

Chapter 40 Section 1 Laws 2005

Section 1. A new section of Chapter 21, Article 14 NMSA 1978 is enacted to read:

"RUIDOSO BRANCH COMMUNITY COLLEGE.--The Ruidoso branch community college may be created as provided in Chapter 21, Article 14 NMSA 1978."

Chapter 40 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION--TERMINATION OF OFF-CAMPUS INSTRUCTION PROGRAM IN RUIDOSO--TRANSFER OF FUNDS AND PROPERTY.
-- The eastern New Mexico university off-campus instruction program in Ruidoso is terminated when the Ruidoso branch community college is created. Eastern New Mexico university may transfer funds and property of the university pertaining to the Ruidoso off-campus instruction program to the Ruidoso branch community college.

HOUSE BILL 405

LAWS 2005, CHAPTER 41

AN ACT

RELATING TO INSURANCE; ALLOWING INDIVIDUAL HEALTH CARE COVERAGE OF UNMARRIED DEPENDENTS UNTIL THEIR TWENTY-FIFTH BIRTHDAY.

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

Chapter 41 Section 1 Laws 2005

Section 1. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

"MAXIMUM AGE OF DEPENDENT.--An individual or group health policy or certificate of insurance delivered, issued for delivery or renewed in New Mexico that provides coverage for an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution."

Chapter 41 Section 2 Laws 2005

Section 2. Section 59A-46-38.3 NMSA 1978 (being Laws 2003, Chapter 391, Section 5) is amended to read:

"59A-46-38.3. MAXIMUM AGE OF DEPENDENT.--Each individual or group health maintenance organization contract delivered or issued for delivery or renewed in New Mexico that provides coverage for an enrollee's dependents shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution; provided that this requirement does not apply to the medicaid managed care system."

Chapter 41 Section 3 Laws 2005

Section 3. Section 59A-47-40 NMSA 1978 (being Laws 2003, Chapter 391, Section 7) is amended to read:

"59A-47-40. MAXIMUM AGE OF DEPENDENT.--An individual or group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers coverage of an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution."

Chapter 41 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

LAWS 2005, CHAPTER 42

AN ACT

RELATING TO INSURANCE; REQUIRING INSURERS TO OFFER COVERAGE FOR CERTAIN PART-TIME EMPLOYEES.

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

Chapter 42 Section 1 Laws 2005

Section 1. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

"COVERAGE OF PART-TIME EMPLOYEES.--An insurer that provides group health insurance pursuant to Chapter 59A, Article 22 NMSA 1978 shall make available, upon an employer's request prior to issuance, delivery or renewal, coverage for regular part-time employees who work or are expected to work an average of at least twenty hours per week over a six-month period. Nothing in this section shall be construed to require an employer to offer or provide coverage for regular part-time employees."

Chapter 42 Section 2 Laws 2005

Section 2. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"COVERAGE OF PART-TIME EMPLOYEES.--An insurer that provides group health insurance pursuant to Chapter 59A, Article 23 NMSA 1978 shall make available, upon an employer's request prior to issuance, delivery or renewal, coverage for regular part-time employees who work or are expected to work an average of at least twenty hours per week over a six-month period. Nothing in this section shall be construed to require an employer to offer or provide coverage for regular part-time employees."

Chapter 42 Section 3 Laws 2005

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

"COVERAGE OF PART-TIME EMPLOYEES.--A health maintenance organization that provides coverage for health care services pursuant to the Health Maintenance Organization Law shall make available, upon an employer's request prior to issuance, delivery or renewal, coverage for regular part-time employees who work or are expected to work an average of at least twenty hours per week over a six-month period. Nothing in this section shall be construed to require an employer to offer or provide coverage for regular part-time employees."

Chapter 42 Section 4 Laws 2005

Section 4. A new section of the Nonprofit Health Care Plan Law is enacted to read:

"COVERAGE OF PART-TIME EMPLOYEES.--A health care plan that provides coverage for health care pursuant to the Nonprofit Health Care Plan Law shall make available, upon an employer's request prior to issuance, delivery or renewal, coverage for regular part-time employees who work or are expected to work an average of at least twenty hours per week over a six-month period. Nothing in this section shall be construed to require an employer to offer or provide coverage for regular part-time employees."

Chapter 42 Section 5 Laws 2005

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 289

LAWS 2003, CHAPTER 43

AN ACT

RELATING TO HEALTH CARE; ENACTING THE UMBILICAL CORD BLOOD BANKING ACT; REQUIRING HEALTH CARE FACILITIES AND PROVIDERS TO GIVE PREGNANT PATIENTS INFORMATION REGARDING UMBILICAL CORD BLOOD DONATIONS; REQUIRING HEALTH CARE FACILITIES TO PERMIT PREGNANT PATIENTS TO ARRANGE FOR UMBILICAL CORD BLOOD DONATIONS.

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

Chapter 43 Section 1 Laws 2003

Section 1. SHORT TITLE.--This act may be cited as the "Umbilical Cord Blood Banking Act".

Chapter 43 Section 2 Laws 2003

Section 2. PURPOSE OF ACT.--The purpose of the Umbilical Cord Blood Banking Act is to educate pregnant women regarding the potential benefits of umbilical cord blood donations and to provide opportunities for the donation and storage of umbilical cord blood when desired by a pregnant woman.

Chapter 43 Section 3 Laws 2003

Section 3. DEFINITIONS.--As used in the Umbilical Cord Blood Banking Act:

A. "health care facility" means an institution providing health care services, including a hospital, clinic or other inpatient center, outpatient facility or diagnostic or treatment center that is licensed by the department of health;

B. "health care provider" means a person who is licensed, certified or otherwise authorized by law to provide or render health care services to pregnant women in New Mexico in the ordinary course of business or practice of a profession, but is limited to a medical physician, osteopathic physician, doctor of oriental medicine, certified nurse practitioner and certified nurse-midwife; and

C. "umbilical cord blood" means the blood that remains in the umbilical cord and placenta after the birth of a newborn child.

Chapter 43 Section 4 Laws 2003

Section 4. DISSEMINATION OF INFORMATION.--

A. All health care providers providing health care services to a pregnant woman during the last trimester of her pregnancy, which health care services are directly related to her pregnancy, shall advise her of options to donate umbilical cord blood following the delivery of a newborn child. Provision in a timely manner of publications prepared by the department of health pursuant to Section 5 of the Umbilical Cord Blood Banking Act shall constitute compliance with this subsection.

B. Nothing in this section imposes an obligation upon a health care provider to inform a pregnant woman regarding the option of umbilical cord blood donations if such information conflicts with bona fide religious beliefs of the health care provider.

Chapter 43 Section 5 Laws 2003

Section 5. INFORMATIONAL PUBLICATIONS.--The department of health shall, by January 1, 2006, prepare and distribute to health care providers written publications that include the following information:

A. the medical processes involved in the collection of umbilical cord blood;

B. the medical risks to a mother and her newborn child of umbilical cord blood collection;

C. the current and potential future medical uses and benefits of umbilical cord blood collection to a mother, her newborn child and her biological family;

D. the current and potential future medical uses and benefits of umbilical cord blood collection to persons who are not biologically related to a mother or her newborn child;

E. any costs that may be incurred by a pregnant woman who chooses to make an umbilical cord blood donation;

F. options for ownership and future use of the donated material; and

G. the availability in this state of umbilical cord blood donations.

Chapter 43 Section 6 Laws 2003

Section 6. DONATION OF UMBILICAL CORD BLOOD.--

A. Unless it is medically inadvisable, all health care facilities and health care providers treating a pregnant woman during the delivery of a newborn child shall, if requested by that woman, permit her to arrange for an umbilical cord blood donation.

B. Nothing in this section imposes an obligation upon a health care facility or health care provider to permit an umbilical cord blood donation if in the professional judgment of a health care provider the donation of umbilical cord blood would threaten the health of the mother or newborn child.

C. Nothing in this section imposes an obligation upon a health care facility or health care provider to permit an umbilical cord blood donation if the donation conflicts with bona fide religious beliefs of the health care facility or health care provider. If a health care facility or health care provider declines to engage in umbilical cord blood donation, that fact shall be made known to pregnant patients of that facility or provider as soon as reasonably feasible.

Chapter 43 Section 7 Laws 2003

Section 7. SEVERABILITY.--If any part or application of the Umbilical Cord Blood Banking Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 43 Section 8 Laws 2003

Section 8. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 3, 5 and 7 of this act is July 1, 2005.

B. The effective date of the provisions of Sections 4 and 6 of this act is January 1, 2006.

LAWS 2005, CHAPTER 44

AN ACT

RELATING TO CULTURAL AFFAIRS; CREATING THE NEW MEXICO COIN COMMISSION TO ASSIST THE GOVERNOR IN SELECTING THE DESIGNS TO BE SUBMITTED TO THE UNITED STATES MINT FOR THE NEW MEXICO STATE QUARTER FOR THE FIFTY STATES' COMMEMORATIVE COIN PROGRAM.

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

Chapter 44 Section 1 Laws 2005

Section 1. TEMPORARY PROVISION--NEW MEXICO COIN COMMISSION CREATED--MEMBERSHIP--POWERS AND DUTIES--CULTURAL AFFAIRS DEPARTMENT TO STAFF.--

A. The "New Mexico coin commission" is created to assist the governor in selecting the designs to be submitted to the United States mint for the New Mexico state quarter for the fifty states' commemorative coin program. The commission shall consist of seven members appointed by the governor. When making the appointments, the governor shall take into account the geographic distribution of the members. Members serve at the pleasure of the governor. The commission shall function until the United States mint has selected the design for the New Mexico quarter, but no later than July 1, 2008. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act, and shall receive no other compensation, perquisite or allowance.

B. The cultural affairs department shall provide staff support to the commission.

C. The commission shall solicit and consider design proposals for the New Mexico quarter. Members of the commission and their family members may not submit design proposals.

D. The commission shall select no fewer than three and no more than five designs and submit them to the governor for approval. The governor shall submit the approved designs to the United States mint, along with material explaining the designs and why they are representative of the state.

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 59

LAWS 2005, CHAPTER 45

AN ACT

RELATING TO HEALTH; INCLUDING PHARMACISTS IN IMMUNIZATION REPORTING TO THE DEPARTMENT OF HEALTH AND ALLOWING PHARMACISTS ACCESS TO THE INFORMATION IN THE IMMUNIZATION REGISTRY.

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

Chapter 45 Section 1 Laws 2005

Section 1. Section 24-5-8 NMSA 1978 (being Laws 2004, Chapter 45, Section 3) is amended to read:

"24-5-8. REPORTING.--Physicians, nurses, pharmacists and other health care providers may report on immunization to the immunization registry unless the patient, or the patient's guardian if the patient is a minor, refuses to allow reporting of this information."

Chapter 45 Section 2 Laws 2005

Section 2. Section 24-5-9 NMSA 1978 (being Laws 2004, Chapter 45, Section 4) is amended to read:

"24-5-9. ACCESS.--Access to the information in the immunization registry Nshall be limited to primary care physicians, nurses, pharmacists, managed care organizations, school nurses and other appropriate health care providers or public health entities as determined by the secretary of health; provided that a managed care organization shall be entitled to access information only for its enrollees."

HOUSE BILL 180

LAWS 2005, CHAPTER 46

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES LICENSING; REVISING STATUTORY REFERENCES.

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

Chapter 46 Section 1 Laws 2005

Section 1. Section 60-13-44 NMSA 1978 (being Laws 1967, Chapter 199, Section 52, as amended) is amended to read:

"60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products, if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to individuals who are physically handicapped, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to the physically handicapped that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the

governor's commission on disability. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by the physically handicapped or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the applicable New Mexico building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act in effect at the applicable time shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially

comply with the requirements of this section that apply to the recommendations of the trade bureaus."

HOUSE BILL 532

LAWS 2005, CHAPTER 47

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING PROCEDURES FOR ADDING PORTIONS OF SCHOOL DISTRICTS TO EXISTING TECHNICAL AND VOCATIONAL INSTITUTE DISTRICTS.

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

Chapter 47 Section 1 Laws 2005

Section 1. Section 21-16-14 NMSA 1978 (being Laws 1963, Chapter 108, Section 11, as amended) is amended to read:

"21-16-14. ADDITION OF SCHOOL DISTRICTS OR PORTIONS OF SCHOOL DISTRICTS TO EXISTING TECHNICAL AND VOCATIONAL INSTITUTE DISTRICTS.--

A. A technical and vocational institute district may be expanded by either the procedure in Subsections B, C and D of this section or the procedure in Subsections E and F of this section.

B. The qualified voters of a school district, portion of a school district, group of school districts within a county containing a technical and vocational institute district or in an adjoining county, not included in the technical and vocational institute district as originally formed, may petition the public education department to be added to the technical and vocational institute district. The department shall examine the petition, and, if it finds that the petition is signed by a number of qualified voters residing within the pertinent school district or portion of a school district equal to ten percent of the votes cast for governor in such school district or portion of such school district in the last preceding general election, the department shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed expansion of the technical and vocational institute district.

C. In conducting the survey, the department, in conjunction with the commission on higher education, shall ascertain the attitude of the technical and vocational institute board and collect other information it deems necessary. If on the basis of the survey the department finds that the proposed addition of the petitioning area will promote an improved education service in the area, it shall approve the

petition. The secretary of public education shall proceed to call an election within the petitioning area and in the established technical and vocational institute district on the question of the inclusion of the petitioning area in the institute district.

D. If a majority of the votes cast in the petitioning area and a majority of the votes cast within the established institute district are in favor of the addition of the area, the department shall notify the local school board of each affected school district and the technical and vocational institute board of the results of the election and shall declare the extension of the boundaries of the institute district to include the petitioning area in which the proposed addition referendum carried by a majority vote.

E. If a technical and vocational institute district includes less than all of a school district, the institute board, by resolution of a majority of the members of the board, may call an election within the institute district and in the portion of the school district that is not included in the institute district on the question of the addition of the excluded portion of the school district to the established institute district. Except where specific provision is otherwise provided by law, such election shall be conducted pursuant to the provisions of the School Election Law, with the president of the institute district serving in the place of the superintendent of schools in every case; provided that:

(1) the election may be held in conjunction with a regular election or as a special election;

(2) if a precinct lies partly within and partly outside the institute district, the parts of the precinct within and outside the institute district shall constitute separate precincts for purposes of the election; and

(3) precincts may be consolidated for purposes of administrative convenience.

F. If a majority of the votes cast in the institute district and the portion of the school district that is outside the institute district are in favor of the addition of the excluded portion of the school district to the institute district, the board of the institute district shall declare the institute district to be expanded to include all of such school district.

G. Each area added to an existing technical and vocational institute district shall automatically be subject to any special levy on taxable property approved for the institute district for the maintenance of facilities and services and for support of bond issues."

LAWS 2005, CHAPTER 48

AN ACT

RELATING TO STATE EMERGENCY FUNDS; ALLOWING LOANS OR GRANTS TO INDIAN NATIONS, TRIBES OR PUEBLOS LOCATED IN NEW MEXICO.

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

Chapter 48 Section 1 Laws 2005

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

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

A. is not within the available resources of the state agency, board, commission, municipal corporation or other political subdivision or the Indian nation, tribe or pueblo located in whole or in part in New Mexico as determined by the state board of finance; and

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

Chapter 48 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 1, AS AMENDED

LAWS 2005, CHAPTER 49

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CREATING A FUNDING FORMULA STUDY TASK FORCE; PROVIDING DUTIES; ALLOWING CONTRACTS.

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

Chapter 49 Section 1 Laws 2005

Section 1. FUNDING FORMULA STUDY TASK FORCE CREATED--MEMBERSHIP--DUTIES.--

A. The "funding formula study task force" is created. The task force shall function from the date of its appointment until December 15, 2006.

B. The task force is composed of the following members:

(1) three members from the house of representatives and three members from the senate appointed by the New Mexico legislative council;

(2) three members appointed by the governor;

(3) four representatives of public school administrators, including one each from a small district, a growth district, an impact aid district and a mid-sized district. The members shall be appointed by the New Mexico legislative council from a list submitted by the New Mexico superintendents' association; and

(4) the president of the New Mexico school board association or the president's designee.

C. Vacancies on the task force shall be filled by appointment by the original appointing authority.

D. Members of the task force are entitled to per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. Staff for the task force shall be provided by the legislative council service, the legislative education study committee, the legislative finance committee, the public education department and the office of education accountability of the department of finance and administration. Staff shall provide technical assistance to the contractor.

F. The task force shall:

(1) develop a work plan and budget for approval by the New Mexico legislative council;

(2) approve the request for proposals for a contractor to conduct the study of the public school funding formula and select the contractor; and

(3) make recommendations to the legislature and the governor by December 15, 2006.

G. The request for proposals shall request a comprehensive study of the public school funding formula, including the expectations of the public and statutory requirements for New Mexico's public education system; the costs of those expectations and requirements; and a thorough analysis of all formula components and consideration of possible changes to the formula, including:

(1) a revised training and experience index aligned to the three-tiered licensure system for teachers;

(2) size factors associated with small schools and small school districts; and

(3) any other factor with the potential to affect the equity and efficacy of the funding formula as a whole.

SENATE BILL 125, AS AMENDED

LAWS 2005, CHAPTER 50

AN ACT

RELATING TO CULTURAL AFFAIRS; EXPANDING THE MEMBERSHIP OF THE CULTURAL PROPERTIES REVIEW COMMITTEE.

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

Chapter 50 Section 1 Laws 2005

Section 1. Section 18-6-4 NMSA 1978 (being Laws 1969, Chapter 223, Section 4, as amended) is amended to read:

"18-6-4. COMMITTEE CREATED--MEMBERSHIP--COMPENSATION--VOTING--TERM--CHAIRMAN--MEETINGS.--

A. The "cultural properties review committee" is created, which consists of nine members as follows:

(1) the state historian at the state archives and record center;

- (2) one person professionally recognized in the discipline of architectural history;
- (3) one person professionally recognized in the discipline of history;
- (4) one person professionally recognized in the discipline of architecture;
- (5) one person professionally recognized in the discipline of prehistoric archaeology;
- (6) one person professionally recognized in the discipline of historic archaeology;
- (7) one additional person who is professionally recognized in:
 - (a) history;
 - (b) architectural history or architecture; or
 - (c) archaeology;
- (8) one person who is a member of a New Mexico Indian nation, tribe or pueblo; and
- (9) one person who is a resident of New Mexico and represents the general public.

Other than the state historian, all members shall be appointed by the governor. Each appointed professional member shall have achieved recognition for accomplishment in that member's field in the American southwest, and each shall have specialized knowledge of New Mexico.

B. Any member of the committee shall be reimbursed for necessary expenses in the discharge of the member's official duties in accordance with the rates set by the Per Diem and Mileage Act. Any committee member who receives a salary from state funds shall not be entitled to per diem and mileage for service on the committee unless the service is away from the town in which the member's duty station is located, and, in that case, the member shall receive per diem and mileage allowance at the rate set for salaried state employees. Committee members shall receive no other compensation, perquisite or allowance for committee service, but this does not mean that committee members who receive a salary from state funds shall not continue to draw such salary while discharging committee duties.

C. A simple majority shall constitute a quorum. A member of the committee shall abstain from voting or the member's vote shall be disqualified on any matter in which the member has a pecuniary interest.

D. Appointed members shall serve terms of four years. Members shall be appointed without regard to partisan political affiliation, and any member may be reappointed to the committee.

E. A chairman, vice chairman and secretary shall be elected from the membership to serve for one year, subject to reelection.

F. The committee shall meet at least once each quarter."

Chapter 50 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 134

LAWS 2005, CHAPTER 51

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; CLARIFYING LICENSE REVOCATION REFERRAL AUTHORITY FOR JUDGMENTS AND ORDERS FOR SUPPORT; AMENDING A SECTION OF THE PARENTAL RESPONSIBILITY ACT.

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

Chapter 51 Section 1 Laws 2005

Section 1. Section 40-5A-3 NMSA 1978 (being Laws 1995, Chapter 25, Section 3, as amended) is amended to read:

"40-5A-3. DEFINITIONS.--As used in the Parental Responsibility Act:

A. "applicant" means an obligor who is applying for issuance of a license;

B. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general

construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978;

(4) any other state agency to which the Uniform Licensing Act is applied by law;

(5) a licensing board or other authority that issues a license, certificate, registration or permit to engage in a profession or occupation regulated in New Mexico;

(6) the department of game and fish;

(7) the motor vehicle division of the taxation and revenue department; or

(8) the alcohol and gaming division of the regulation and licensing department;

C. "certified list" means a verified list that includes the names, social security numbers and last known addresses of obligors not in compliance;

D. "compliance" means that:

(1) an obligor is no more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support; and

(2) an obligor has, after receiving appropriate notice, complied with subpoenas or warrants relating to paternity or child support proceedings;

E. "department" means the human services department;

F. "judgment and order for support" means the judgment entered against an obligor by the district court or a tribal court in a case enforced by the department pursuant to Title IV-D of the Social Security Act;

G. "license" means a liquor license or other license, certificate, registration or permit issued by a board that a person is required to have to engage in a profession or occupation in New Mexico; "license" includes a commercial driver's license, driver's license and recreational licenses, including hunting, fishing or trapping licenses;

H. "licensee" means an obligor to whom a license has been issued; and

I. "obligor" means the person who has been ordered to pay child or spousal support pursuant to a judgment and order for support."

SENATE BILL 191

LAWS 2005, CHAPTER 52

AN ACT

RELATING TO LICENSING; REVISING LICENSING REQUIREMENTS FOR HOISTING OPERATORS AND MEMBERSHIP IN THE HOISTING OPERATORS LICENSURE EXAMINING COUNCIL; ESTABLISHING THE HOISTING OPERATORS SAFETY ACT FUND; AMENDING, REPEALING AND ENACTING SECTIONS OF THE HOISTING OPERATORS SAFETY ACT; MAKING AN APPROPRIATION.

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

Chapter 52 Section 1 Laws 2005

Section 1. Section 60-15-4 NMSA 1978 (being Laws 1993, Chapter 183, Section 4, as amended) is amended to read:

"60-15-4. LICENSE REQUIRED.--

A. No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless the person is licensed under the Hoisting Operators Safety Act or is exempt pursuant to Subsection M of Section 60-15-3 NMSA 1978.

B. A person who has successfully completed an in-house training course approved by the hoisting operators licensure examining council may operate hoisting equipment without a license as required by Subsection A of this section for a period of one year after successful completion of that course. One year after successful completion of an in-house training course approved by the council, a person must be licensed pursuant to Section 60-15-7 NMSA 1978, except that the requirement for passing a written examination pursuant to that section shall be waived.

C. The operator's employer is subject to applicable regulations controlling the use and operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute."

Chapter 52 Section 2 Laws 2005

Section 2. Section 60-15-12 NMSA 1978 (being Laws 1993, Chapter 183, Section 12, as amended) is amended to read:

"60-15-12. LICENSURE DENIAL, SUSPENSION OR REVOCATION--HEARING-
-
APPEALS.--The superintendent shall, before denying a license to an applicant, or revoking or suspending a license for a violation of any provision of the Hoisting Operators Safety Act, provide for a hearing pursuant to the provisions of the Uniform Licensing Act."

Chapter 52 Section 3 Laws 2005

Section 3. Section 60-15-14 NMSA 1978 (being Laws 1993, Chapter 183, Section 14, as amended) is amended to read:

"60-15-14. HOISTING OPERATORS LICENSURE EXAMINING COUNCIL -- APPOINTED.--The "hoisting operators licensure examining council" is created. The superintendent shall appoint no fewer than five members to the council with consideration being given to geographical representation. One member of the council shall be a class I hoisting operator; another member of the council shall be a contractor, as defined by Section 60-13-3 NMSA 1978, who employs one or more hoisting operators; one member shall be a representative of organized labor; and the other members shall be public members who are not licensed hoisting operators. The members of the council shall serve at the pleasure of the superintendent and their duties shall include:

A. reviewing and approving the applications, qualifications and examinations of applicants for licensure as hoisting operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

B. reporting findings and recommendations from the hearings to the superintendent; and

C. proceeding according to regulations adopted by the department."

Chapter 52 Section 4 Laws 2005

Section 4. A new section of the Hoisting Operators Safety Act is enacted to read:

"HOISTING OPERATORS SAFETY ACT FUND CREATED--PURPOSE--
APPROPRIATION.--

A. The "Hoisting Operators Safety Act fund" is created in the state treasury. The fund shall consist of legislative appropriations to the fund; fees charged by the department pursuant to the Hoisting Operators Safety Act; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the department, and money in the fund is appropriated to the department for the purpose of carrying out the provisions of the Hoisting Operators Safety Act. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent or the superintendent's authorized representative."

Chapter 52 Section 5 Laws 2005

Section 5. REPEAL.--Section 60-15-5 NMSA 1978 (being Laws 1993, Chapter 183, Section 5, as amended) is repealed.

Chapter 52 Section 6 Laws 2005

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

SENATE BILL 228, AS AMENDED

LAWS 2005, CHAPTER 53

AN ACT

RELATING TO PUBLIC HEALTH; IMPOSING LICENSURE FEES AND INTERMEDIATE SANCTIONS ON HEALTH FACILITIES; AMENDING SECTIONS OF THE PUBLIC HEALTH ACT.

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

Chapter 53 Section 1 Laws 2005

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973, Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--APPEALS.--

A. A health facility shall not be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to

protect human health or safety, the secretary may issue a cease-and-desist order. The health facility may request a hearing that shall be held in the manner provided in this section. The department may also proceed pursuant to the Health Facility Receivership Act.

B. The department is authorized to make inspections and investigations and to prescribe rules it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities.

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all rules of the department. Applications for hospital licenses shall include evidence that the bylaws or rules of the hospital apply equally to osteopathic and medical physicians. The department shall consolidate the applications and inspections for a hospital that also operates as a hospital-based primary care clinic.

D. Upon inspection of a health facility, if the department finds a violation of its rules, the department may deny the application for a license, whether initial or renewal, or it may issue a temporary license. A temporary license shall not be issued for a period exceeding one hundred twenty days, nor shall more than two consecutive temporary licenses be issued.

E. A one-year nontransferable license shall be issued to any health facility complying with all rules of the department. The license shall be renewable for successive one-year periods, upon filing of a renewal application, if the department is satisfied that the health facility is in compliance with all rules of the department or, if not in compliance with a rule, has been granted a waiver or variance of that rule by the department pursuant to procedures, conditions and guidelines adopted by rule of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a license be posted or kept on the licensed premises.

F. A health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on that accreditation. License renewals shall be issued upon application submitted by the health facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and responsibilities under other provisions of the Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed twelve dollars (\$12.00) per bed for an inpatient health facility or three hundred dollars (\$300) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit in a designated department recurring account for use in health facility licensure and certification operations.

H. The department may revoke or suspend the license of a health facility or may impose on a health facility an intermediate sanction and a civil monetary penalty provided in Section 24-1-5.2 NMSA 1978 after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter and, except for child care centers and facilities, may proceed pursuant to the Health Facility Receivership Act upon a determination that the health facility is not in compliance with any rule of the department. If immediate action is required to protect human health and safety, the secretary may suspend a license or impose an intermediate sanction pending a hearing, provided the hearing is held within five working days of the suspension or imposition of the sanction, unless waived by the licensee, and, except for child care centers and facilities, may proceed ex parte pursuant to the Health Facility Receivership Act.

I. The department shall schedule a hearing pursuant to Subsection H of this section if the department receives a request for a hearing from a licensee:

(1) within ten working days after receipt by the licensee of notice of suspension, revocation, imposition of an intermediate sanction or civil monetary penalty or denial of an initial or renewal application;

(2) within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction imposition and notice of hearing if the licensee wishes to waive the early hearing scheduled and request a hearing at a later date; or

(3) within five working days after receipt of a cease-and-desist order.

The department shall also provide timely notice to the licensee of the date, time and place of the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. A hearing held pursuant to provisions of this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by rule of the department. The licensee has the right to be represented by counsel, to present all relevant evidence by means of witnesses and books, papers, documents, records, files and other evidence and to examine all opposing witnesses who appear on any matter relevant to the issues. The hearing officer has the power to administer oaths on request

of any party and issue subpoenas and subpoenas duces tecum prior to or after the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents, records, files and other evidence. Documents or records pertaining to abuse, neglect or exploitation of a resident, client or patient of a health facility or other documents, records or files in the custody of the human services department or the office of the state long-term care ombudsman at the aging and long-term services department that are relevant to the alleged violations are discoverable and admissible as evidence in any hearing.

K. Any party may appeal the final decision of the department pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

L. A complaint about a health facility received by the department pursuant to this section shall be promptly investigated and appropriate action shall be taken if substantiated. The department shall develop a health facilities protocol in conjunction with the human services department, the protective services division of the children, youth and families department, the office of the state long-term care ombudsman and other appropriate agencies to ensure the health, safety and rights of individuals in health facilities. The health facilities protocol shall require:

(1) cross-reference among agencies pursuant to this subsection of an allegation of abuse, neglect or exploitation;

(2) an investigation, within the strict priority time frames established by each protocol member's rules, of an allegation or referral of abuse, neglect or exploitation after the department has made a good cause determination that abuse, neglect or exploitation occurred;

(3) an agency to share its investigative information and findings with other agencies, unless otherwise prohibited by law; and

(4) require the receiving agency to accept the information provided pursuant to Paragraph (3) of this subsection as potential evidence to initiate and conduct investigations.

M. A complaint received by the department pursuant to this section shall not be disclosed publicly in a manner as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, when there are reasonable grounds to believe that a child is in imminent danger of abuse or neglect while in the care of a child care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32A-4-3 NMSA 1978, the department shall consult with the owner or operator of the child care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three

working days, unless waived by the owner or operator. Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary or the department to make any inspection or investigation or to prescribe any rules concerning group homes as defined in Section 9-8-13 NMSA 1978 except as are reasonably necessary or desirable to promote the health and safety of persons using group homes."

Chapter 53 Section 2 Laws 2005

Section 2. Section 24-1-5.2 NMSA 1978 (being Laws 1990, Chapter 105, Section 2, as amended) is amended to read:

"24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--
CIVIL PENALTY.--

A. Upon a determination that a health facility is not in compliance with any licensing requirement of the department, the department, subject to the provisions of this section and Section 24-1-5 NMSA 1978, may:

(1) impose any intermediate sanction established by rule, including but not limited to:

- (a) a directed plan of correction;
- (b) facility monitors;
- (c) denial of payment for new medicaid admissions to the facility;
- (d) temporary management or receivership; and
- (e) restricted admissions;

(2) assess a civil monetary penalty, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed a total of five thousand dollars (\$5,000) per day. Penalties and interest amounts assessed under this paragraph and recovered on behalf of the state shall be remitted to the department in a recurring account in the state treasury for the sole purpose of funding the nonreimbursed cost of facility monitors, temporary management and health facility

receiverships. The civil monetary penalties contained in this paragraph are cumulative and may be imposed in addition to any other fines or penalties provided by law; and

(3) with respect to health facilities other than childcare centers or facilities, proceed pursuant to the Health Facility Receivership Act.

B. The secretary shall adopt and promulgate rules specifying the criteria for imposition of any intermediate sanction and civil monetary penalty. The criteria shall provide for more severe sanctions for a violation that results in any abuse, neglect or exploitation of residents, clients or patients as defined in the rules or that places one or more residents, clients or patients of a health facility at substantial risk of serious physical or mental harm.

C. The provisions of this section for intermediate sanctions and civil monetary penalties shall apply to certified nursing facilities except when a federal agency has imposed the same remedies, sanctions or penalties for the same or similar violations.

D. Rules adopted by the department shall permit sanctions pursuant to Paragraphs (1) and (2) of Subsection A of this section for a specific violation in a certified nursing facility if:

(1) the state statute or rule is not duplicated by a federal certification rule; or

(2) the department determines intermediate sanctions are necessary if sanctions permitted pursuant to Paragraphs (1) and (2) of Subsection A of this section do not duplicate a sanction imposed under the authority of 42 U.S.C. 1395 or 1396 for a particular deficiency.

E. A health facility is liable for the reasonable costs of a directed plan of correction, facility monitors, temporary management or receivership imposed pursuant to this section and Section 24-1-5 NMSA 1978. The department may take all necessary and appropriate legal action to recover these costs from a health facility. All money recovered from a health facility pursuant to this subsection shall be paid into the general fund."

Chapter 53 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

LAWS 2005, CHAPTER 54

AN ACT

RELATING TO PUBLIC FINANCE; ADDING SCHOOL-BASED HEALTH CENTERS AND TELEHEALTH SITES AS ELIGIBLE ENTITIES PURSUANT TO THE PRIMARY CARE CAPITAL FUNDING ACT; PROVIDING LOAN ELIGIBILITY REQUIREMENTS.

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

Chapter 54 Section 1 Laws 2005

Section 1. Section 24-1C-3 NMSA 1978 (being Laws 1994, Chapter 62, Section 9, as amended) is amended to read:

"24-1C-3. DEFINITIONS.--As used in the Primary Care Capital Funding Act:

A. "authority" means the New Mexico finance authority;

B. "capital project" means repair, renovation or construction of a facility; purchase of land; acquisition of capital equipment of a long-term nature; or acquisition of capital equipment to be used in the delivery of primary care, telehealth or hospice services;

C. "department" means the department of health;

D. "eligible entity" means:

(1) a community-based nonprofit primary care clinic or hospice that operates in a rural or other health care underserved area of the state, is a 501(c)(3) nonprofit corporation for federal income tax purposes and is eligible for funding pursuant to the Rural Primary Health Care Act;

(2) a school-based health center that operates in a public school district and that meets department requirements or that is funded by the federal department of health and human services; or

(3) a telehealth site that is operated by an eligible entity pursuant to Paragraphs (1) and (2) of this subsection;

E. "fund" means the primary care capital fund; and

F. "primary care" means the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services and including services delivered at a primary care clinic, telehealth site or a school-based health

center; "primary care" includes the provision of mental health services if those services are integrated into the eligible entity's service array."

Chapter 54 Section 2 Laws 2005

Section 2. Section 24-1C-4 NMSA 1978 (being Laws 1994, Chapter 62, Section 10) is amended to read:

"24-1C-4. PRIMARY CARE CAPITAL FUND--CREATION.--

A. The "primary care capital fund" is created as a revolving fund in the state treasury. The fund shall consist of appropriations, loan repayments, gifts, grants, donations and interest earned on investment of the fund. A separate account shall be maintained for appropriations, loan repayments, gifts, grants, donations and interest earned on investment of the account for loans to school-based health centers and telehealth sites. Money in the fund shall not revert at the end of a fiscal year.

B. The fund shall be administered by the authority. Administrative costs of the authority or department shall not be paid from the fund. Money in the fund shall be expended only on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the authority or his authorized representative."

Chapter 54 Section 3 Laws 2005

Section 3. Section 24-1C-6 NMSA 1978 (being Laws 1994, Chapter 62, Section 12, as amended) is amended to read:

"24-1C-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

A. The department and the authority shall administer the loan programs and contracts for services established pursuant to the provisions of the Primary Care Capital Funding Act. The department and authority shall:

(1) enter into joint powers agreements with each other or other appropriate public agencies to carry out the provisions of that act; and

(2) apply to any appropriate federal, state or local governmental agency or private organization for grants and gifts to carry out the provisions of that act or to fund allied community-based health care programs.

B. The department or authority may, instead of a loan, contract for services with an eligible entity to provide free or reduced fee primary care services for sick and medically indigent persons as reasonable adequate legal consideration for money from the fund to the entity so it may acquire or construct a capital project to provide the services.

C. The department and authority may:

(1) make and enter into contracts and agreements necessary to carry out their powers and duties pursuant to the provisions of the Primary Care Capital Funding Act; and

(2) do all things necessary or appropriate to carry out the provisions of the Primary Care Capital Funding Act.

D. The authority is responsible for all financial duties of the programs, including:

(1) administering the fund;

(2) accounting for all money received, controlled or disbursed for capital projects in accordance with the provisions of the Primary Care Capital Funding Act;

(3) evaluating and approving loans and contracts for services, including determining financial capacity of an eligible entity;

(4) enforcing contract provisions of loans and contracts for services, including the ability to sue to recover money or property owed the state;

(5) determining interest rates and other financial aspects of a loan and relevant terms of a contract for services; and

(6) performing other duties in accordance with the provisions of the Primary Care Capital Funding Act, regulations promulgated pursuant to that act or joint powers agreements entered into with the department.

E. The department is responsible for the following duties:

(1) defining sick and medically indigent persons for purposes of the Primary Care Capital Funding Act;

(2) establishing priorities for loans and contracts for services;

(3) determining the appropriateness of the capital project;

(4) evaluating the capability of an applicant to provide and maintain primary care or hospice services;

(5) selecting recipients of loans and persons with whom to contract for services;

(6) determining that capital projects comply with all state and federal licensing and procurement requirements; and

(7) contracting with an eligible entity to provide primary care services without charge or at a reduced fee for sick and medically indigent persons as defined by the department.

F. The authority may make a loan to an eligible entity to acquire, construct, renovate or otherwise improve a capital project, provided there is a finding:

(1) by the department that the project will provide primary care services to sick and medically indigent persons as defined by the department; and

(2) by the authority that there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions on other encumbrances and pledges for the state funds extended for the loan.

G. The authority may make a loan to a school-based health center that operates in a public school district or to a telehealth site for a capital project; provided, however, that the loan shall not exceed the amount in the account reserved for school-based health center or telehealth site funding."

SENATE BILL 456, AS AMENDED

LAWS 2005, CHAPTER 55

AN ACT

RELATING TO TELEHEALTH; ESTABLISHING A TELEHEALTH COMMISSION;
PRESCRIBING POWERS, DUTIES AND MEMBERSHIP.

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

Chapter 55 Section 1 Laws 2005

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

Chapter 55 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of creating a telehealth commission is to encourage a single, coordinated statewide effort to create a telehealth system that:

A. provides and supports health care delivery, diagnosis, consultation, treatment, transfer of medical data and education when distance separates a patient and a health care provider; multiple health care providers involved in patient care; and health care providers and educational or professional activities;

B. addresses the problems of provider distribution in medically underserved areas of the state;

C. strengthens the health infrastructure;

D. attracts and retains health care providers in rural areas; and

E. helps reduce costs associated with health care and make health care more affordable.

Chapter 55 Section 3 Laws 2005

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

A. "commission" means the New Mexico telehealth commission; and

B. "telehealth" means the use of electronic information, imaging and communication technologies, including interactive audio, video, data communications as well as store-and-forward technologies, to provide and support health care delivery, diagnosis, consultation, treatment, transfer of medical data and education when distance separates the patient and the health care provider.

Chapter 55 Section 4 Laws 2005

Section 4. TELEHEALTH COMMISSION CREATED--POWERS AND DUTIES--MEMBERSHIP.--

A. The "New Mexico telehealth commission" is created. The commission is administratively attached to the department of health, which shall work in conjunction with the New Mexico health policy commission, in accordance with the Executive Reorganization Act.

B. The commission shall consist of no more than twenty-five members with members, one-third of whom shall be from rural areas, chosen from the following categories, all of whom shall be appointed by and serve at the pleasure of the governor:

(1) health care facilities;

(2) health care practitioners;

- (3) health care workforce educators;
- (4) telehealth technology experts;
- (5) the telecommunications industry;
- (6) the business community;
- (7) health care insurance providers or other health care payers;
- (8) Indian nations, tribes and pueblos;
- (9) legislators;
- (10) state agencies responsible for:
 - (a) telecommunications;
 - (b) public health;
 - (c) medicaid and social services;
 - (d) workforce development;
 - (e) children's health and social services;
 - (f) services for the elderly and disabled;
 - (g) criminal justice;
 - (h) health policy and planning; and
 - (i) education; and

(11) other members as the governor may appoint to ensure appropriate cultural and geographic representation and the interests of the public.

C. The commission shall:

- (1) identify how telehealth can be used to increase access to care and implement state comprehensive health plans;
- (2) identify barriers to telehealth utilization and expansion, including payment, infrastructure, training and workforce availability;

(3) inventory the state's telehealth assets, map available telecommunications infrastructure and examine the financial impact of failing to develop the state's telehealth capacities;

(4) coordinate public and private sector initiatives to enhance networking, portal development and connectivity and to expand telehealth and telecommunications capacity;

(5) establish such subcommittees as the commission deems necessary to fulfill its purpose, powers and duties or to address specific telehealth issues;

(6) identify specific actions to increase collaborative efforts and public-private partnerships to increase the use of telehealth for health care access development, patient outcome improvement, patient and workforce education and health care practitioner recruitment and development;

(7) develop and disseminate specific telehealth standards and guidelines to ensure quality of care, positive health outcomes, appropriate use of technology and protection of privacy and confidentiality;

(8) review and comment on initiatives, projects or grant applications to ensure telehealth standards and guidelines are met and maximum collaboration and cooperation across the state is encouraged;

(9) meet at least once each quarter at the call of the chair or vice chair, who shall be designated by the governor from among the membership; and

(10) report annually to the governor and the legislature on the state of the telehealth system and the adequacy and allocation of telehealth services throughout the state, providing the governor and the legislature with specific recommendations for improving telehealth and related service systems.

D. A majority of the members of the commission constitutes a quorum for the transaction of business.

SENATE BILL 473, AS AMENDED

LAWS 2005, CHAPTER 56

AN ACT

RELATING TO TAXATION; CREATING AN OPTIONAL DESIGNATION FOR A PERSONAL INCOME TAX CONTRIBUTION FOR AMYOTROPHIC LATERAL

SCLEROSIS RESEARCH; CREATING THE AMYOTROPHIC LATERAL SCLEROSIS RESEARCH FUND; PROVIDING FOR A DISTRIBUTION; MAKING AN APPROPRIATION.

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

Chapter 56 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--CONTRIBUTIONS TO DEPARTMENT OF HEALTH--AMYOTROPHIC LATERAL SCLEROSIS RESEARCH.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the amyotrophic lateral sclerosis research fund in an amount equal to the money designated pursuant to the Income Tax Act as contributions to the amyotrophic lateral sclerosis research fund."

Chapter 56 Section 2 Laws 2005

Section 2. A new section of the Income Tax Act is enacted to read:

"OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--AMYOTROPHIC LATERAL SCLEROSIS RESEARCH FUND.--

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the amyotrophic lateral sclerosis research fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Amyotrophic Lateral Sclerosis Research Fund -

Check ___ if you wish to contribute a part or all of your tax refund to the amyotrophic lateral sclerosis research fund for amyotrophic lateral sclerosis (Lou Gehrig's disease) research. Enter here \$_____ the amount of your contribution.".

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act, and any designation made under the provisions of this section to such refunds is void."

Chapter 56 Section 3 Laws 2005

Section 3. AMYOTROPHIC LATERAL SCLEROSIS RESEARCH FUND.--The "amyotrophic lateral sclerosis research fund" is created in the state treasury. The fund shall consist of distributions made to the fund pursuant to the Tax Administration Act. Money in the fund is appropriated to the board of regents of the university of New Mexico for amyotrophic lateral sclerosis research. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the president of the university of New Mexico. Money in the fund shall revert to the general fund at the end of a fiscal year.

Chapter 56 Section 4 Laws 2005

Section 4. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

SENATE BILL 483

LAWS 2005, CHAPTER 57

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CREATING THE DIVISION OF INTERNATIONAL TRADE.

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

Chapter 57 Section 1 Laws 2005

Section 1. A new section of Chapter 9, Article 15 NMSA 1978 is enacted to read:

"DIVISION OF INTERNATIONAL TRADE CREATED--DUTIES.--

A. The "division of international trade" is created in the economic development department.

B. The division shall be responsible for conducting and coordinating the state's relations with other countries and shall promote New Mexico and its products and services. The division is created to:

(1) coordinate activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;

(2) promote New Mexico to international investors;

(3) promote New Mexico products and services to potential international consumers;

(4) establish a central registry for New Mexico products and services;

(5) develop, maintain and use a database of potential domestic and international investors and consumers for New Mexico and its products and services; and

(6) foster, coordinate and support the efforts of individuals and organizations involved in the promotion of New Mexico and its businesses, products and services to consumers in other countries.

C. The division shall provide periodic reports to the legislature on its activities and the activities of the state pertaining to New Mexico's international relations and trade."

Chapter 57 Section 2 Laws 2005

Section 2. Section 9-15-30 NMSA 1978 (being Laws 1988, Chapter 80, Section 4, as amended) is amended to read:

"9-15-30. MEXICAN AFFAIRS DIVISION CREATED--DUTIES.--

A. The "Mexican affairs division" is created as a division of the department.

B. The division shall be responsible for conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua and shall promote New Mexico products and services in Mexico. The division is created to coordinate activities of the department, the tourism department, the cultural affairs department, the department of transportation, the department of health, the department of environment, the department of public safety, the New Mexico-Chihuahua commission, the border authority and the joint border research institute at New Mexico state university as those activities relate to improving New Mexico-Mexico relations and trade and encouraging or funding appropriate border development.

C. The division shall provide periodic reports to the New Mexico finance authority oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development."

LAWS 2005, CHAPTER 58

AN ACT

RELATING TO THE BEHAVIORAL HEALTH CAPITAL FUND; AUTHORIZING THE ISSUANCE OF REVENUE BONDS BY THE NEW MEXICO FINANCE AUTHORITY FOR THE BEHAVIORAL HEALTH CAPITAL FUND; MAKING AN APPROPRIATION.

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

Chapter 58 Section 1 Laws 2005

Section 1. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--
PURPOSE--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not exceeding two million five hundred thousand dollars (\$2,500,000) for the behavioral health capital fund to make loans to eligible entities for capital projects pursuant to the Behavioral Health Capital Funding Act.

B. The net proceeds from the sale of the bonds are appropriated to the behavioral health capital fund for the purposes described in Subsection A of this section.

C. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds.

D. The cigarette tax proceeds appropriated and distributed to the authority pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 shall be deposited in a separate fund or account of the authority. Money in the separate fund or account in excess of the amount necessary for payment of principal and interest on the bonds and necessary reserves or sinking funds may be transferred to any other account of the authority and used for purposes of the New Mexico Finance Authority Act.

E. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 52

LAWS 2005, CHAPTER 59

AN ACT

RELATING TO CRIMINAL SENTENCING; REDEFINING PENALTIES FOR CHILD ABUSE; IMPOSING A LIFE SENTENCE FOR INTENTIONAL ABUSE OF A CHILD LESS THAN TWELVE YEARS OF AGE THAT RESULTS IN THE CHILD'S DEATH.

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

Chapter 59 Section 1 Laws 2005

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended by Laws 2004, Chapter 10, Section 1 and by Laws 2004, Chapter 11, Section 1) 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.

E. 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 to the child, he is guilty of a first degree felony.

F. Whoever commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. Whoever commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. Whoever commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. 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."

Chapter 59 Section 2 Laws 2005

Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- imprisonment;
- (1) for a first degree felony resulting in the death of a child, life imprisonment;
 - (2) for a first degree felony, eighteen years imprisonment;
 - (3) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
 - (4) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;
 - (5) for a second degree felony, nine years imprisonment;
 - (6) for a third degree felony resulting in the death of a human being, six years imprisonment;
 - (7) for a third degree felony for a sexual offense against a child, six years imprisonment;
 - (8) for a third degree felony, three years imprisonment; or
 - (9) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of Section

31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony

for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);

(2) for a first degree felony, fifteen thousand dollars (\$15,000);

(3) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(4) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(5) for a second degree felony, ten thousand dollars (\$10,000);

(6) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

(7) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000); or

(8) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the

previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

Chapter 59 Section 3 Laws 2005

Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment as the result of the commission of a capital felony, who was sentenced to life imprisonment as the result of a conviction for a first degree felony resulting in the death of a child, who was convicted of three violent felonies and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978 or who was convicted of two violent sexual offenses and sentenced pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where he is committed;

(2) consider all pertinent information concerning the inmate,

including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether the inmate is a habitual offender;

(e) the reports filed under Section

31-21-9 NMSA 1978; and

(f) the reports of such physical and mental examinations as have been made while in an institution;

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was convicted of a capital felony shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. Except for sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

D. Every person while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to his release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix his signature to the written statement of the conditions of his parole or does not have an approved parole plan, he shall not be released and shall remain in the custody of the institution in which he has served his sentence, excepting parole, until such time as the period of parole he was required to serve, less meritorious deductions, if any, expires, at which time he shall be released from that institution without parole, or until such time that he evidences his acceptance and agreement to the conditions of parole as required or receives approval for his parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for his parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and his duties relating thereto.

E. When a person on parole has performed the obligations of his release for the period of parole provided in this section, the board shall make a final order of discharge and issue him a certificate of discharge.

F. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of his parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his arrest, prosecution or conviction.

G. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 166, AS AMENDED

LAWS 2005, CHAPTER 60

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING STUDENTS TO CARRY AND SELF-ADMINISTER ASTHMA MEDICATION AND EMERGENCY ANAPHYLAXIS MEDICATION.

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

Chapter 60 Section 1 Laws 2005

Section 1. Section 22-5-4.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 9, as amended) is amended to read:

"22-5-4.3. SCHOOL DISCIPLINE POLICIES--STUDENTS MAY SELF-ADMINISTER CERTAIN MEDICATIONS.--

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include corporal punishment, in-school suspension, school service, suspension or expulsion.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

E. All public school and school district discipline policies shall allow students to carry and self-administer asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

(1) the health care provider has instructed the student in the correct and responsible use of the medication;

(2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and

(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the

treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

F. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

G. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication."

SENATE BILL 275

LAWS 2005, CHAPTER 61

AN ACT

RELATING TO ANIMALS; ENACTING THE DANGEROUS DOG ACT; AUTHORIZING SEIZURE AND DESTRUCTION OF DANGEROUS DOGS; DECLARING EXCEPTIONS; IMPOSING REGISTRATION AND HANDLING REQUIREMENTS; PROVIDING PENALTIES.

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

Chapter 61 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Dangerous Dog Act".

Chapter 61 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Dangerous Dog Act:

A. "animal control authority" means an entity authorized to enforce the animal control laws of a city, county or state, whether acting alone or in concert with other governmental authorities. In those areas not served by an animal control authority, the sheriff or municipal law enforcement shall carry out the duties of the animal control authority under the Dangerous Dog Act;

B. "dangerous dog" means a dog that caused a serious injury to a person or domestic animal;

C. "owner" means a person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of eighteen, that person's parent or guardian;

D. "potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

(1) causing an injury to a person or domestic animal that is less severe than a serious injury;

(2) chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or

(3) acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure;

E. "proper enclosure" means secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or otherwise affixing the animal to a stationary object; and

F. "serious injury" means a physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

Chapter 61 Section 3 Laws 2005

Section 3. EXCEPTIONS.--A dog shall not be declared a dangerous or potentially dangerous dog if:

A. the dog was used by a law enforcement official for legitimate law enforcement purposes;

B. the threat, injury or damage was sustained by a person or domestic animal who was:

(1) trespassing upon premises occupied by the owner or the dog;

(2) provoking, tormenting, abusing or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or

(3) committing or attempting to commit a crime; or

C. the dog was:

(1) responding to pain or injury;

(2) protecting itself or its offspring; or

(3) protecting or defending a human being or domestic animal from attack or assault.

Chapter 61 Section 4 Laws 2005

Section 4. SEIZURE OF DOG--PETITION TO COURT.--

A. If an animal control authority has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.

B. If an animal control authority has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.

C. After seizure, the animal control authority shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of Section 5 of the Dangerous Dog Act.

D. After seizure:

(1) the owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to Section 5 of the Dangerous Dog Act; or

(2) the animal control authority may, within fourteen days after seizure of the dog, bring a petition in court seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within thirty days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to its owner.

E. If the owner does not admit that the dog is dangerous or potentially dangerous and the animal control authority does not bring a petition in court within fourteen days of seizure of the dog, the court shall immediately order the release of the dog to its owner.

F. If the owner admits that the dog is dangerous and transfers ownership of the dog to the animal control authority, the animal control authority may humanely destroy the dog.

G. A determination that a dog is not dangerous or potentially dangerous shall not prevent an animal control authority from making a subsequent application for seizure based on the dog's subsequent behavior.

Chapter 61 Section 5 Laws 2005

Section 5. REGISTRATION AND HANDLING REQUIREMENTS FOR DANGEROUS AND POTENTIALLY DANGEROUS DOGS.--

A. An animal control authority shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes that:

- (1) the owner is able to keep the dog under control at all times;
- (2) a license, if applicable, has been issued pursuant to the requirements of the jurisdiction;
- (3) the dog has a current rabies vaccination;
- (4) the owner has a proper enclosure for the dog;
- (5) the owner has paid an annual fee, if applicable, established by the animal control authority to register a potentially dangerous dog;
- (6) the dog has been spayed or neutered;
- (7) the dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
- (8) the owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.

B. If a dog previously determined to be potentially dangerous has not exhibited any of the behaviors specified in Subsection D of Section 2 of the Dangerous Dog Act for thirty-six consecutive months, the owner may request the animal control authority in the jurisdiction to lift the requirements for registration pursuant to this section. If the animal control authority has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.

C. An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of Subsection A of this section, establishes that:

(1) the owner has paid an annual fee, if applicable, established by the animal control authority to register a dangerous dog;

(2) the owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;

(3) the dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;

(4) when the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times;

(5) the dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and

(6) a clearly visible warning sign with a conspicuous warning symbol indicating that there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty feet, whichever is less.

D. An animal control authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to abide by the conditions for registration, confinement or handling set forth in this section.

Chapter 61 Section 6 Laws 2005

Section 6. PROHIBITED ACTS--PENALTIES.--

A. It is unlawful for an owner of a dangerous or potentially dangerous dog to:

(1) keep the dog without a valid certificate of registration;

(2) violate the registration and handling requirements for the dog;

(3) fail to notify the animal control authority immediately upon:

(a) the escape of the dog; or

(b) an attack by the dog upon a human being or a domestic animal;

(4) fail to notify the animal control authority of the dog's death within five business days;

(5) fail to notify the animal control authority within twenty-four hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog;

(6) fail to surrender the dog to an animal control authority for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety; or

(7) fail to comply with special handling or care requirements for the dog that a court has ordered.

B. Whoever violates a provision of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and, for a second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

C. An owner of a dangerous or potentially dangerous dog that causes serious injury or death to a domestic animal, without provocation, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

D. An owner of a dangerous or potentially dangerous dog that causes serious injury to a human being, without provocation, is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. An owner of a dangerous or potentially dangerous dog that causes the death of a human being, without provocation, is guilty of a third degree felony resulting in the death of a human being and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

F. Prosecution pursuant to this section requires a showing that:

(1) an owner knew of the propensity of a dog to inflict serious injury;
or

(2) the dog had previously been found by a court to be a dangerous or potentially dangerous dog.

LAWS 2005, CHAPTER 62

AN ACT

RELATING TO CONSUMER PRODUCTS; REQUIRING AN AVERSIVE OR BITTERING AGENT IN ENGINE COOLANT AND ANTIFREEZE; PROVIDING FOR A LIMITATION ON LIABILITY; PROVIDING EXCEPTIONS; PROVIDING POWERS TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE; PROVIDING A PENALTY.

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

Chapter 62 Section 1 Laws 2005

Section 1. AVERSIVE OR BITTERING AGENT IN ENGINE COOLANT AND ANTIFREEZE--LIABILITY LIMITATION--EXCEPTIONS--PENALTY.--

A. Engine coolant or antifreeze sold in this state after January 1, 2006 that is manufactured after July 1, 2005 and that contains more than ten percent ethylene glycol shall include denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive or bittering agent within the product so as to render it unpalatable. A manufacturer or packager of engine coolant or antifreeze subject to the provisions of this section shall maintain a record of the trade name, scientific name and active ingredients of an aversive or bittering agent used pursuant to this section. Information and documentation maintained pursuant to this section shall be furnished to a member of the public upon request.

B. The requirements of this section apply only to manufacturers, packagers, distributors, recyclers or sellers of engine coolant or antifreeze.

C. A manufacturer, packager, distributor, recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

D. The limitation on liability provided in Subsection B of this section is only applicable if denatonium benzoate is included in engine coolant or antifreeze in the concentrations mandated by this section. The limitation on liability provided in Subsection B of this section does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

E. No political subdivision of this state shall have authority to establish or continue in effect a prohibition, limitation, standard or other requirement relating to the inclusion of an aversive or bittering agent in engine coolant or antifreeze, with respect to

retail containers containing less than fifty-five gallons of engine coolant or antifreeze, which is different from, or in addition to, the provisions of this section.

F. The provisions of this section do not apply to the sale of a motor vehicle that contains engine coolant or antifreeze.

G. The New Mexico department of agriculture has the authority to inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of this section.

H. A person who violates the provisions of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

SENATE BILL 497, AS AMENDED

LAWS 2005, CHAPTER 63

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; INCREASING THE PERCENTAGE OF THE SEVERANCE TAX PERMANENT FUND INVESTED IN THE SMALL BUSINESS INVESTMENT CORPORATION; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 63 Section 1 Laws 2005

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS INVESTMENTS.--

A. No more than six percent of the market value of the severance tax permanent fund may be invested in New Mexico private equity funds or New Mexico businesses under this section.

B. In making investments pursuant to Subsection A of this section, the council shall make investments in New Mexico private equity funds or New Mexico businesses whose investments or enterprises enhance the economic development objectives of the state.

C. The state investment officer shall make investments pursuant to Subsection A of this section only upon approval of the council, upon review of the recommendation of the private equity investment advisory committee and within guidelines and policies established by the council.

D. As used in this section:

(1) "New Mexico business" means, in the case of a corporation or limited liability company, a business with its principal office and a majority of its full-time employees located in New Mexico or, in the case of a limited partnership, a business with its principal place of business and eighty percent of its assets located in New Mexico; and

(2) "New Mexico private equity fund" means a limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in or debt of businesses for the purpose of providing capital for start-up, expansion, product or market development, recapitalization or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans and who has established permanent residency in the state;

(d) is committed to investing or helps secure investing by others, in an amount at least equal to the total investment made by the state investment officer in that fund pursuant to this section, in businesses with a principal place of business in the state and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in the state; and

(e) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77(b)), and rules and regulations promulgated pursuant to that section.

E. The state investment officer is authorized to make investments in New Mexico businesses to create new job opportunities and to support new, emerging or expanding businesses in a manner consistent with the constitution of New Mexico if:

(1) the investments are made in conjunction with cooperative investment agreements with parties that have demonstrated abilities and relationships in making investments in new, emerging or expanding businesses;

(2) an investment in any one business does not exceed ten percent of the amount available for investment pursuant to this section; and

(3) the investments represent no more than fifty-one percent of the total investment capital in a business; provided, however, that nothing in this subsection prohibits the ownership of more than fifty-one percent of the total investment capital in a New Mexico business if the additional ownership interest:

(a) is due to foreclosure or other action by the state investment officer pursuant to agreements with the business or other investors in that business;

(b) is necessary to protect the investment; and

(c) does not require an additional investment of the severance tax permanent fund.

F. The state investment officer shall make a commitment to the small business investment corporation pursuant to the Small Business Investment Act to invest three-fourths percent of the market value of the severance tax permanent fund to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses and to otherwise make investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico. On July 1 of each year, the state investment officer shall determine whether the invested capital in the small business investment corporation is less than three-fourths percent of the market value of the severance tax permanent fund. If the invested capital in the small business investment corporation equals less than three-fourths percent of the market value of the severance tax permanent fund, further commitments shall be made until the invested capital is equal to three-fourths percent of the market value of the fund.

G. The state investment officer shall report semiannually on the New Mexico private equity investments made pursuant to this section. Annually, a report shall be submitted to the legislature prior to the beginning of each regular legislative session and a second report no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committee. Each report shall provide the amounts invested in each New Mexico private equity fund, as well as information about the objectives of the funds, the companies in which each fund is invested and how each investment enhances the economic development objectives of the state. Each report shall provide the amounts invested in each New Mexico business."

LAWS 2005, CHAPTER 64

AN ACT

RELATING TO CHILDREN; CREATING THE CHILDREN'S CABINET; PROVIDING GOALS AND DUTIES OF THE CHILDREN'S CABINET.

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

Chapter 64 Section 1 Laws 2005

Section 1. A new section of the Children's Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Children's Cabinet Act"."

Chapter 64 Section 2 Laws 2005

Section 2. A new section of the Children's Code is enacted to read:

"CHILDREN'S CABINET CREATED.--

A. The children's cabinet is created and is administratively attached to the office of the governor. The children's cabinet shall meet at least six times each year.

B. The children's cabinet shall consist of the following members:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the secretary of children, youth and families;
- (4) the secretary of corrections;
- (5) the secretary of human services;
- (6) the secretary of labor;
- (7) the secretary of health;
- (8) the secretary of finance and administration;
- (9) the secretary of economic development;
- (10) the secretary of public safety;

(11) the secretary of aging and long-term services;

(12) the secretary of Indian affairs; and

(13) the secretary of public education.

C. Each year the children's cabinet shall select the governor or lieutenant governor to be the chairperson."

Chapter 64 Section 3 Laws 2005

Section 3. A new section of the Children's Code is enacted to read:

"POWERS--DUTIES--GOALS.--

A. The children's cabinet shall study and make recommendations for the design of a coordinated system to maximize outcomes among children and youth under age twenty-one, particularly those in disadvantaged situations, in the following areas:

(1) physical and mental health fitness;

(2) family and community safety and support;

(3) preparedness for and success in school;

(4) successful transition to meaningful and purposeful adulthood and employment; and

(5) valued contributions to and active participation in communities.

B. Departments participating in the children's cabinet may enter into joint powers agreements pursuant to the Children's Cabinet Act.

C. At least twice each year, the children's cabinet shall meet with parents, children, youth, educators, public officials and representatives of faith-based organizations, community-based organizations, philanthropic organizations, public schools and public school districts, colleges and universities, health care providers, nonprofit organizations, youth service providers, political subdivisions, the interim legislative health and human services committee and the legislative education study committee. The children's cabinet may coordinate with these persons as needed to design or implement the coordinated system.

D. By September 1 of each year, the children's cabinet shall report and make recommendations to the governor and the legislature, including:

(1) a child and youth report card that identifies the status and well-being of children and youth, including special target populations of children and youth that are disproportionately at risk, based on the outcomes in Subsection A of this section; and

(2) a child and youth policy and inventory budget identifying state programs and initiatives that affect the well-being of children and youth, including proposed budget allocations toward the outcome areas in Subsection A of this section based on age, ethnicity and special target populations as determined by the children's cabinet."

Chapter 64 Section 4 Laws 2005

Section 4. A new section of the Children's Code is enacted to read:

"CHILDREN'S CABINET DEPARTMENT LIAISONS.--Each member of the children's cabinet shall name an employee to serve as a liaison to ensure coordination and communication among departments and agencies and to address cross-jurisdictional issues in an efficient, effective and expeditious manner."

SENATE BILL 435, AS AMENDED

LAWS 2005, CHAPTER 65

AN ACT

RELATING TO CHILDREN; CREATING THE NEXT GENERATION FUND; CREATING A NEXT GENERATION COUNCIL; PROVIDING POWERS AND DUTIES.

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

Chapter 65 Section 1 Laws 2005

Section 1. Section 24-19-1 NMSA 1978 (being Laws 1986, Chapter 15, Section 1) is amended to read:

"24-19-1. SHORT TITLE.--Chapter 24, Article 19 NMSA 1978 may be cited as the "Children's Trust Fund Act"."

Chapter 65 Section 2 Laws 2005

Section 2. Section 24-19-2 NMSA 1978 (being Laws 1986, Chapter 15, Section 2) is amended to read:

"24-19-2. PURPOSE.--It is the purpose of the Children's Trust Fund Act to:

A. provide the means to develop innovative children's projects that address one or more of the following:

(1) preventing abuse and neglect of children;

(2) providing medical, psychological and other appropriate treatment for children who are victims of abuse or neglect; and

(3) developing community-based services aimed at the prevention and treatment of child abuse and neglect; and

B. manage next generation fund projects."

Chapter 65 Section 3 Laws 2005

Section 3. Section 24-19-3 NMSA 1978 (being Laws 1986, Chapter 15, Section 3, as amended) is amended to read:

"24-19-3. DEFINITIONS.--As used in the Children's Trust Fund Act:

A. "board" means the children's trust fund board of trustees;

B. "children's projects" means projects that provide services to children on a one-time, short-term demonstration basis, including services to their families, consistent with the purposes of the Children's Trust Fund Act;

C. "council" means the next generation council;

D. "department" means the children, youth and families department;

E. "next generation fund projects" means projects funded from the next generation fund that meet the requirements for funding provided in Section 5 of this 2005 act; and

F. "secretary" means the secretary of children, youth and families."

Chapter 65 Section 4 Laws 2005

Section 4. Section 24-19-4 NMSA 1978 (being Laws 1986, Chapter 15, Section 4, as amended) is amended to read:

"24-19-4. CHILDREN'S TRUST FUND CREATED--EXPENDITURE

LIMITATIONS.--

A. The "children's trust fund" is created in the state treasury. The children's trust fund may be used for any purpose enumerated in Section 24-19-2 NMSA 1978. All income received from investment of the fund shall be credited to the fund. No money appropriated to the fund or otherwise accruing to it shall be disbursed in any manner except as provided in the Children's Trust Fund Act.

B. The children's trust fund shall be administered by the department for the purpose of funding children's projects from the income received from investment of the fund; provided that none of the income shall be used for capital expenditures. All income from investment of the fund is appropriated to the department for that purpose or for administrative costs as provided in Subsection C of this section. Grants, distributions and transfers of money from the fund shall be made only from the income received from investment of the fund.

C. Up to ten percent of the income received from investment of the children's trust fund may be expended for costs of administration of the fund and administration of the children's projects undertaken with fund money. Administrative costs include per diem and mileage, staff salaries and expenses related to administration of the fund.

D. Disbursements from income credited to the children's trust fund and appropriated to the department shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families or the secretary's designated representative to fund children's projects approved by the board.

E. One-half of the money transferred to the children's trust fund pursuant to Section 40-1-11 NMSA 1978 and all of the money transferred to the children's trust fund pursuant to Section 66-3-420 NMSA 1978 shall be deemed income received from investment of the fund."

Chapter 65 Section 5 Laws 2005

Section 5. A new section of the Children's Trust Fund Act is enacted to read:

"NEXT GENERATION FUND--CREATED--EXPENDITURE LIMITATIONS.--

A. The "next generation fund" is created in the state treasury. The next generation fund may be used for any purpose enumerated in Section 24-19-2 NMSA 1978. All income received from investment of the fund shall be credited to the fund. No money appropriated to the fund or otherwise accruing to it shall be disbursed in any manner except as provided in the Children's Trust Fund Act.

B. The fund shall be used to fund next generation fund projects that are approved by the board. Next generation fund projects shall:

- (1) provide positive child and youth development activities that support physical, mental and social well-being;
- (2) promote strong, healthy families and help to prevent child abuse and neglect;
- (3) promote community service, leadership and citizenship; and
- (4) provide community coordination of child and youth development programming across the age zero to twenty-four developmental continuum.

C. The next generation fund shall be administered by the department, and the income from investment of the fund is appropriated to the department to carry out the purposes of the fund. None of the income shall be used for capital expenditures. Grants, distributions and transfers of money from the fund shall be made only from the income received from investment of the fund.

D. Up to ten percent of the income received from investment of the fund may be expended for costs of administering the fund and next generation projects. Administrative costs include per diem and mileage, staff salaries and expenses related to administration of the fund.

E. Disbursements from the fund shall be made by warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families or the secretary's designated representative."

Chapter 65 Section 6 Laws 2005

Section 6. Section 24-19-7 NMSA 1978 (being Laws 1986, Chapter 15, Section 7) is amended to read:

"24-19-7. DUTIES OF THE BOARD.--At least four times a year, the board shall meet upon the call of its chairman to review proposals submitted to the department by public or private entities and take all action necessary or proper for the administration of the Children's Trust Fund Act. The board shall approve or disapprove each proposal submitted and shall base its decision on the proposal's merit and feasibility, the best interest of the beneficiaries of the children's project proposal and the capacity of the children's project's success or failure for evaluation."

Chapter 65 Section 7 Laws 2005

Section 7. A new section of the Children's Trust Fund Act is enacted to read:

"NEXT GENERATION COUNCIL--CREATED--MEMBERSHIP--PURPOSE.--

A. The "next generation council" is created. The board shall appoint ten members, at least two from each congressional district, who are not employees of the state who are knowledgeable in the area of positive child and youth development programs. Members serve at the pleasure of the board. Members shall select a member to serve as chairperson of the council. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

B. The council shall evaluate proposed next generation fund projects and make funding recommendations to the board. The board shall approve or disapprove next generation fund projects for funding and transmit those proposals to the department."

Chapter 65 Section 8 Laws 2005

Section 8. Section 24-19-8 NMSA 1978 (being Laws 1986, Chapter 15, Section 8) is amended to read:

"24-19-8. CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ADDITIONAL POWERS AND DUTIES.--The department shall:

A. promulgate rules approved by the board;

B. transmit proposals for children's projects to the board and next generation fund projects to the council for evaluation and report on the proposals;

C. enter into contracts approved by the board to carry out the proposed children's project or next generation fund project, provided that:

(1) not more than fifty percent of the total funds distributed for any one fiscal year from the children's trust fund shall be allocated for any single children's project;

(2) not more than fifty percent of the total funds distributed for any one fiscal year from the next generation fund shall be allocated for any single next generation fund project;

(3) each children's project shall be funded for a specified period, not to exceed four years, and funds shall not be used for maintenance of ongoing or permanent efforts extending beyond the period specified, except that a children's project may be extended once for a period not to exceed the original, and the board shall approve rules providing procedures and guidelines for the preparation and approval of proposals for children's projects and providing for any other matter the board deems necessary for the administration of the Children's Trust Fund Act; and

(4) no contract shall be entered into if the department finds it contrary to law;

D. furnish the board and the council with the necessary technical and clerical assistance;

E. adopt standard contract provisions; and

F. report at least annually to the governor and the legislature on the progress of its work and the results of children's projects and next generation fund projects."

Chapter 65 Section 9 Laws 2005

Section 9. Section 24-19-9 NMSA 1978 (being Laws 1986, Chapter 15, Section 9) is amended to read:

"24-19-9. ACCEPTANCE OF FEDERAL FUNDS AND PRIVATE DONATIONS.-- To carry out the provisions of the Children's Trust Fund Act, the department may accept any federal matching funds or grants for children's projects or next generation fund projects. The department may accept donations and bequests from private sources for deposit in the children's trust fund or the next generation fund, as applicable."

SENATE BILL 614, AS AMENDED

LAWS 2005, CHAPTER 66

AN ACT

RELATING TO CHILDREN; CHANGING THE YOUTH COUNCIL TO THE YOUTH ALLIANCE; CHANGING MEMBERSHIP AND DUTIES; CHANGING DUTIES OF THE YOUTH ALLIANCE COORDINATOR.

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

Chapter 66 Section 1 Laws 2005

Section 1. Section 9-2A-19 NMSA 1978 (being Laws 2003, Chapter 324, Section 1) is amended to read:

"9-2A-19. SHORT TITLE.--Sections 9-2A-19 through 9-2A-22 NMSA 1978 may be cited as the "Youth Alliance Act"."

Chapter 66 Section 2 Laws 2005

Section 2. Section 9-2A-20 NMSA 1978 (being Laws 2003, Chapter 324, Section 2) is amended to read:

"9-2A-20. PURPOSE.--The purpose of the Youth Alliance Act is to encourage young people throughout New Mexico to consider and discuss the opportunities, issues and challenges they face and to identify community, family and collaborative assets as possible solutions for presentation to the governor, lieutenant governor and legislature."

Chapter 66 Section 3 Laws 2005

Section 3. Section 9-2A-21 NMSA 1978 (being Laws 2003, Chapter 324, Section 3) is amended to read:

"9-2A-21. YOUTH ALLIANCE CREATED--ORGANIZATION--FUNCTIONS--DEFINITION.--

A. The "youth alliance" is created and is administratively attached to the children, youth and families department.

B. The alliance shall consist of youth, aged fourteen to twenty-four, from each New Mexico legislative district to be recruited through an open process and selected by a panel of other youth alliance members, legislators, government officials and representatives of community-based organizations using clear criteria developed by the department to ensure ethnic and economic diversity. Members shall serve two-year terms.

C. The alliance shall meet at least four times a year for the purpose of discussing, from a youth perspective, the assets that exist in communities and schools and the gaps that are present in these systems and to recommend opportunities for problem-solving and collaboration to the governor, lieutenant governor and legislature.

D. The alliance shall issue an annual report that summarizes the activities and findings of the alliance. The report shall be submitted to the legislature and the executive no later than November 15 of each year.

E. Subject to sufficient appropriations, the alliance members shall engage a diverse group of local peers and solicit their input and launch local projects.

F. As used in the Youth Alliance Act, "alliance" means the youth alliance."

Chapter 66 Section 4 Laws 2005

Section 4. Section 9-2A-22 NMSA 1978 (being Laws 2003, Chapter 324, Section 4) is amended to read:

"9-2A-22. YOUTH ALLIANCE COORDINATOR--POSITION CREATED--
DUTIES.--

A. The position of "youth alliance coordinator" is created in the office of the secretary of children, youth and families to organize, administer and coordinate youth alliance activities.

B. The coordinator shall:

(1) oversee the recruitment and selection of alliance members;

(2) organize alliance meetings, at least four of which shall include the lieutenant governor and the children's cabinet and at least two of which shall include the governor;

(3) assist the alliance in preparing an annual report on its activities and findings; and

(4) act as a liaison between the alliance and the children's cabinet, the legislature and other government officials to ensure their involvement in activities related to children and youth."

SENATE BILL 617

LAWS 2005, CHAPTER 67

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING CONDITIONS FOR STATE EXPENDITURES FOR BUSINESS INCUBATORS.

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

Chapter 67 Section 1 Laws 2005

Section 1. BUSINESS INCUBATORS--CONDITIONS FOR STATE EXPENDITURES.--Business incubators receiving state funds shall be required to pass a state incubator certification program administered by the economic development department. The department shall certify business incubators that submit documentation to the department that the incubator has:

A. a mission statement that defines the incubator's role to assist entrepreneurs and support the growth of businesses;

B. for incubators established after the effective date of this section, a formal feasibility study indicating an appropriate market and local community support or, for incubators established prior to the effective date of this section, a business plan;

C. an effective governing board or an appropriate oversight advisory board committed to the incubator's mission;

D. qualified management and staff to achieve the mission of the incubator and to help businesses;

E. an ongoing business assistance program that places the greatest value on client assistance and adds value to client businesses by developing programs and coordinating activities such as:

(1) technical assistance and consulting;

(2) coaching and mentoring, business training workshops and seminars;

(3) providing marketing assistance;

(4) fostering networking opportunities and links with other business service providers; and

(5) providing assistance in obtaining financing;

F. a facility that encourages innovation and provides dedicated space for incubator client firms with flexible leases and that includes a common area meeting space and business equipment;

G. a process for client businesses that involves a screening and selection process and graduation policy for client companies;

H. a system for program evaluation;

I. all applicable required licenses and permits and a functional accounting system; and

J. membership in the national business incubation association.

HOUSE BILL 54, AS AMENDED

LAWS 2005, CHAPTER 68

AN ACT

RELATING TO FAMILIES; AMENDING THE FAMILY PRESERVATION ACT TO CHANGE THE SHORT TITLE AND RELATED PROVISIONS TO THE FAMILY SUPPORT ACT; ENACTING THE FAMILY SUPPORT ACT.

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

Chapter 68 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Family Preservation Act".

Chapter 68 Section 2 Laws 2005

Section 2. LEGISLATIVE PURPOSE.--The purpose of the Family Preservation Act is to confirm the state's policy of support for the family and to emphasize the responsibilities of parents and the state in the healthy development of children and the family as an institution. The Family Preservation Act is also intended to serve as a benchmark against which other legislation may be measured to assess whether it furthers the goals of preserving and enhancing families in New Mexico.

Chapter 68 Section 3 Laws 2005

Section 3. FAMILY PRESERVATION GOALS--STATEMENT OF POLICY.--It is the policy of the state that its laws and programs shall:

A. support intact, functional families and promote each family's ability and responsibility to raise its children;

B. strengthen families in crisis and at risk of losing their children, so that children can remain safely in their own homes when their homes are safe environments and in their communities;

C. promote the creation of well-paying, stable jobs so that families can provide for their basic needs, including health, education, food, clothing and shelter; and

D. help halt the breakup of the nuclear family, stabilize neighborhoods and strengthen communities.

Chapter 68 Section 4 Laws 2005

Section 4. PARENTAL AND STATE RESPONSIBILITIES.--

A. Parents have joint primary responsibility for the well-being of their family. Parents have the primary responsibility to:

(1) ensure that their children have adequate food, shelter, health care and a healthy environment;

(2) support their children in all ways possible to grow up to be responsible, caring members of society;

(3) ensure that their children receive quality education both in and out of school to prepare them for active and productive adult lives;

(4) protect their children from the serious dangers of narcotics, alcohol and other harmful substances; and

(5) protect their children from all forms of exploitation harmful to any aspect of their welfare.

B. The state has a responsibility to develop plans to:

(1) make available to families free, quality public primary and secondary education;

(2) provide public safety services so that family members are safe in their homes, schools, workplaces and recreational settings;

(3) make available social service programs that support vulnerable families and protect spouses and children in danger of physical or serious emotional harm;

(4) develop programs that build on the strengths of families and connect them with community resources;

(5) provide parents with access to the training and support they need to raise their children, function effectively as parents and play a key role in helping preschool and growing children learn; and

(6) assist parents in carrying out their primary responsibility of providing for the well-being of their family.

Chapter 68 Section 5 Laws 2005

Section 5. Section 32A-17-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 218) is amended to read:

"32A-17-1. SHORT TITLE.--Chapter 32A, Article 17 NMSA 1978 may be cited as the "Family Support Act"."

Chapter 68 Section 6 Laws 2005

Section 6. Section 32A-17-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 219) is amended to read:

"32A-17-2. DEFINITION.--As used in the Family Support Act, "family support services" means short-term, intensive services, provided to a family whose child may reasonably be expected to face out-of-home placement, that are designed to teach a family new skills to help the family remain intact and able to care for the child at home."

Chapter 68 Section 7 Laws 2005

Section 7. Section 32A-17-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 220) is amended to read:

"32A-17-3. ELIGIBILITY.--Family support services may be provided, considering available resources, to a family whose child is at risk for placement as:

- A. an abused child;
- B. a neglected child;
- C. a child of a family in need of services;
- D. an emotionally disturbed child; or
- E. a delinquent child."

Chapter 68 Section 8 Laws 2005

Section 8. Section 32A-17-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 221) is amended to read:

"32A-17-4. SERVICE DELIVERY.--

A. The department shall coordinate and implement the provision of family support services. The public education department shall assist the department by identifying children in public schools who are at risk for the purpose of making family support services available to the families of those children. The department shall ensure the statewide quality of family support services by:

(1) providing standards and policies for family support services that are family-centered and that identify family strengths;

(2) monitoring the provision of family support services to ensure that the services satisfy standards established by the department;

(3) providing training for persons who provide family support services; and

(4) establishing a standardized intake process for the purpose of rapidly assessing the needs of a child and family referred for family support services.

B. A person who works in a family support services program shall:

(1) provide family support services in the family's home or any other natural setting;

(2) provide direct crisis intervention and therapeutic services, to be available twenty-four hours per day, seven days a week, as needed for each family;

(3) assist with the solution of practical problems that contribute to family stress, so as to affect improved parental performance and enhanced functioning of the family unit; and

(4) arrange for additional assistance, to the extent of available resources, for the family, including housing, child care, education and training, emergency cash grants, state and federally funded public assistance or any other basic support or social service appropriate for the family."

Chapter 68 Section 9 Laws 2005

Section 9. Section 32A-17-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 222) is amended to read:

"32A-17-5. QUALIFICATIONS.--A person who provides family support services shall have appropriate training, experience, supervision and continuing education to carry out the person's duties."

Chapter 68 Section 10 Laws 2005

Section 10. Section 32A-17-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 223) is amended to read:

"32A-17-6. EVALUATION.--The secretary of the department shall conduct an annual evaluation of family support services, and the data collected during the evaluation shall be compiled in a manner that promotes comparison with data collected from similar programs in other states."

LAWS 2005, CHAPTER 69

AN ACT

RELATING TO LICENSURE; PROVIDING FOR SEPARATE RULE PROMULGATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS; EXPANDING POWERS AND DUTIES OF THE BOARD; CHANGING QUORUM REQUIREMENTS; AMENDING LICENSURE REQUIREMENTS.

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

Chapter 69 Section 1 Laws 2005

Section 1. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

- A. "approved" or "approval" means acceptable to the board;
- B. "board" means the state board of licensure for professional engineers and professional surveyors;
- C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;
- E. "engineering", "practice of engineering" or "engineering practice" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic,

chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

K. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

L. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

M. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

N. "surveying", "practice of surveying" or "surveying practice" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to lay out horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

O. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

P. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

Q. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act;

R. "surveying work" means the work performed in the practice of surveying; and

S. "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system.

The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services. "

Chapter 69 Section 2 Laws 2005

Section 2. Section 61-23-5 NMSA 1978 (being Laws 1987, Chapter 336, Section 5, as amended) is amended to read:

"61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS--MEMBERS--TERMS.--

A. There is created the "state board of licensure for professional engineers and professional surveyors" that shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term."

Chapter 69 Section 3 Laws 2005

Section 3. Section 61-23-6 NMSA 1978 (being Laws 1987, Chapter 336, Section 6, as amended) is amended to read:

"61-23-6. BOARD MEMBERS--QUALIFICATIONS.--

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico, or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated."

Chapter 69 Section 4 Laws 2005

Section 4. Section 61-23-9 NMSA 1978 (being Laws 1987, Chapter 336, Section 9, as amended) is amended to read:

"61-23-9. BOARD--ORGANIZATION--MEETINGS.--

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may be substituted for a non-attending member in order to have a quorum. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed professional surveyors and one of the public members, who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may serve on this committee. The committee shall elect a chair and

vice chair from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board. Committee actions shall be reported to the board.

D. There shall be a joint engineering and surveying standing committee of the board composed of two members from the professional engineering committee, the public member and the chair, and two members from the professional surveying committee, the public member and the chair. If the public member is currently the chair of either committee, the vice chair will serve as the professional member on the standing committee.

E. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chair, a vice chair and a secretary, who shall be members of the board. A member of the board shall not be elected to the same office for more than two consecutive years. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal."

Chapter 69 Section 5 Laws 2005

Section 5. Section 61-23-10 NMSA 1978 (being Laws 1987, Chapter 336, Section 10, as amended) is amended to read:

"61-23-10. DUTIES AND POWERS OF THE BOARD.--

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act and to exercise the authority granted the board in that act. The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. The professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

D. The professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

E. The joint engineering and surveying standing committee shall have the exclusive authority over practice disputes between engineers and surveyors to determine if any proposed rules of professional responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rulemaking authority is delegated to the engineering committee or to the surveying committee. Determination of exclusive practice of engineering or surveying requires an affirmative vote by no less than three members of the committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.

F. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chair's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

G. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

H. The board may subject an applicant for licensure to such examinations as it deems necessary to determine the applicant's qualifications.

I. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

J. No action or other legal proceedings for damages shall be instituted against the board, any board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

K. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

L. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical rules of the board and the board of examiners for architects."

Chapter 69 Section 6 Laws 2005

Section 6. Section 61-23-14 NMSA 1978 (being Laws 1993, Chapter 218, Section 11, as amended) is amended to read:

"61-23-14. CERTIFICATION AS AN ENGINEER INTERN--REQUIREMENTS.--

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that the applicant:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that the applicant has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering."

Chapter 69 Section 7 Laws 2005

Section 7. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12, as amended) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--
REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

(1) is of good moral character and reputation;

(2) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board; provided a satisfactory written explanation is given and the applicant meets one of the following requirements:

(a) is certified as an engineer intern and has at least four years of board-approved engineering experience after graduation from a board-approved engineering curriculum;

(b) is certified as an engineer intern, and has, including the two years for engineer intern certification, at least six years of board-approved engineering experience after graduation from a board-approved, four-year engineering technology curriculum accredited by the technical accreditation commission of the accreditation board for engineering and technology;

(c) has obtained a doctorate degree in an engineering discipline recognized by the board and has a minimum of four years of board-approved engineering experience subsequent to the awarding of the degree;

(d) has obtained a master's degree in an engineering discipline recognized by the board from a board-approved program and has a minimum of six years of engineering experience subsequent to the awarding of the degree; or

(e) has graduated from a board-approved, four-year engineering curriculum and has a minimum of twelve years of engineering experience subsequent to the awarding of the degree.

B. An applicant shall be allowed to take the appropriate examination for licensure as a professional engineer as approved by the board.

C. Upon successfully completing the examination, required experience and all the requirements as noted in this section, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if the applicant:

(1) is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board competence in current engineering standards and procedures."

Chapter 69 Section 8 Laws 2005

Section 8. Section 61-23-17 NMSA 1978 (being Laws 1987, Chapter 336, Section 17) is amended to read:

"61-23-17. APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, registration or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and

education, a detailed summary of the applicant's technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. No fees shall be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

Chapter 69 Section 9 Laws 2005

Section 9. Section 61-23-20 NMSA 1978 (being Laws 1987, Chapter 336, Section 20, as amended) is amended to read:

"61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional engineers. Licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The

board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status."

Chapter 69 Section 10 Laws 2005

Section 10. Section 61-23-24 NMSA 1978 (being Laws 1993, Chapter 218, Section 18, as amended) is amended to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections E and L of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any licensed professional engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of such reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

I. The professional engineering committee shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Publication and public notice shall be in accordance with the Uniform Licensing Act. The professional engineering committee may revise and amend the rules of professional responsibility for professional engineers from time to time and shall notify each licensee in writing of such revisions or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county where the violation occurs."

Chapter 69 Section 11 Laws 2005

Section 11. Section 61-23-27.4 NMSA 1978 (being Laws 1993, Chapter 218, Section 25, as amended) is amended to read:

"61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--GENERAL REQUIREMENTS.--

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application to demonstrate that the applicant:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum or has a minimum of eight years of board-approved surveying experience, including the four years of experience required for surveying intern certification, if graduated from a four-year, board-approved related science curriculum; and

(4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience pursuant to Paragraph (3) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a professional surveyor in:

(1) the District of Columbia, another state, a territory or a possession of the United States, provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico."

Chapter 69 Section 12 Laws 2005

Section 12. Section 61-23-27.7 NMSA 1978 (being Laws 1993, Chapter 218, Section 28, as amended) is amended to read:

"61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. Initial certificates of licensure shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to maintain the certificate of licensure current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every certificate of licensure shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired."

Chapter 69 Section 13 Laws 2005

Section 13. Section 61-23-27.9 NMSA 1978 (being Laws 1993, Chapter 218, Section 30, as amended) is amended to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING--MANDATORY DISCLOSURE.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor pursuant to that act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through the joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports that are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section.

D. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

(1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or

(2) the absence of professional liability insurance coverage."

Chapter 69 Section 14 Laws 2005

Section 14. Section 61-23-27.11 NMSA 1978 (being Laws 1993, Chapter 218, Section 32, as amended) is amended to read:

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional surveyor who is found by the board to have:

(1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule establish the guidelines

for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any licensee. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the professional surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, provided a majority of the members of the professional surveying committee, acting for the board, or of the board votes in favor of reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The professional surveying committee shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The professional surveying committee may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each licensee in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs."

Chapter 69 Section 15 Laws 2005

Section 15. Section 61-23-31.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 38) is amended to read:

"61-23-31.1. GOOD SAMARITAN.--

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides aircraft structure, structural, aeronautical, electrical, mechanical, other engineering services or surveying at the scene of a declared national, state or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, such as a terrorist act, shall not be liable for any personal injury, wrongful death, property damage or other loss caused by the engineer's or surveyor's acts, errors or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly or governmentally owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in this section shall provide immunity for wanton, willful or intentional misconduct."

HOUSE BILL 99, AS AMENDED

LAWS 2005, CHAPTER 70

AN ACT

MAKING AN APPROPRIATION FOR DRINKING WATER SYSTEM FINANCING;
DECLARING AN EMERGENCY.

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

Chapter 70 Section 1 Laws 2005

Section 1. APPROPRIATION.--Pursuant to the provisions of Section 6-21-6.1 NMSA 1978, two million dollars (\$2,000,000) is appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2005 and subsequent fiscal years to provide state matching funds for federal Safe Drinking Water Act projects and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act.

Chapter 70 Section 2 Laws 2005

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

HOUSE BILL 123, AS AMENDED

WITH EMERGENCY CLAUSE

EFFECTIVE April 4, 2005

LAWS 2005, CHAPTER 71

AN ACT

RELATING TO CULTURAL AFFAIRS; EXPANDING THE MEMBERSHIP OF THE MUSEUM BOARD OF REGENTS.

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

Chapter 71 Section 1 Laws 2005

Section 1. Section 18-3-2 NMSA 1978 (being Laws 1978, Chapter 164, Section 1) is amended to read:

"18-3-2. MUSEUM BOARD OF REGENTS--APPOINTMENT--TERMS--VACANCIES.--The "museum board of regents", comprised of nine members appointed by the governor with the advice and consent of the senate, is created. In making the appointments, the governor shall appoint residents of New Mexico and give due consideration to geographical distribution of the members. The members shall be persons conversant with or showing a continuing interest in history, fine arts, Indian art, folk art or anthropology. The members shall be appointed for terms of six years or less in such manner that the terms of at least two but no more than three members expire on July 8 of each odd-numbered year. Vacancies shall be filled by the governor for the remainder of the original terms. Members of the museum board of regents 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."

Chapter 71 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 149

LAWS 2005, CHAPTER 72

AN ACT

RELATING TO HEALTH; INCREASING THE MEMBERSHIP OF THE NEW MEXICO HEALTH POLICY COMMISSION; REQUIRING THAT A MAJORITY OF MEMBERS HAVE NO FINANCIAL INTEREST IN THE HEALTH CARE INDUSTRY.

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

Chapter 72 Section 1 Laws 2005

Section 1. Section 9-7-11.2 NMSA 1978 (being Laws 1991, Chapter 139, Section 2, as amended) is amended to read:

"9-7-11.2. NEW MEXICO HEALTH POLICY COMMISSION CREATED--
COMPOSITION--DUTIES.--

A. There is created the "New Mexico health policy commission", which is administratively attached to the department of finance and administration.

B. The New Mexico health policy commission shall consist of nine members appointed by the governor with the advice and consent of the senate to reflect the ethnic, economic, geographic and professional diversity of the state. A majority of the commission members shall have no pecuniary or fiduciary interest in the health services industry while serving or for three years preceding appointment to the commission. Three members shall be appointed for one-year terms, three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The New Mexico health policy commission shall meet at the call of the chair and shall meet not less than quarterly. The chair shall be elected from among the members of the commission. Members of the New Mexico health policy commission

shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

D. The New Mexico health policy commission shall establish task forces as needed to make recommendations to the commission on various health issues. Task force members may include individuals who have expertise or a pecuniary or fiduciary interest in the health services industry. Voting members of a task force may receive mileage expenses if they:

- (1) are members who represent consumer interests;
- (2) are individuals who were not appointed to represent the views of the organization or agency for which they work; or
- (3) represent an organization that has a policy of not reimbursing travel expenses of employees or representatives for travel to meetings.

E. The New Mexico health policy commission shall:

- (1) develop a plan for and monitor the implementation of the state's health policy;
- (2) obtain and evaluate information from a broad spectrum of New Mexico's society to develop and monitor the implementation of the state's health policy;
- (3) obtain and evaluate information relating to factors that affect the availability and accessibility of health services and health care personnel in the public and private sectors;
- (4) perform needs assessments on health personnel, health education and recruitment and retention and make recommendations regarding the training, recruitment, placement and retention of health professionals in underserved areas of the state;
- (5) prepare and publish an annual report describing the progress in addressing the state's health policy and planning issues. The report shall include a workplan of goals and objectives for addressing the state's health policy and planning issues in the upcoming year;
- (6) distribute the annual report to the governor, appropriate state agencies and interim legislative committees and interested parties;
- (7) establish a process to prioritize recommendations on program development, resource allocation and proposed legislation;
- (8) provide information and analysis on health issues;

(9) serve as a catalyst and synthesizer of health policy in the public and private sectors;

(10) respond to requests by the executive and legislative branches of government; and

(11) ensure that any behavioral health projects, including those relating to mental health and substance abuse, are conducted in compliance with the requirements of Section 9-7-6.4 NMSA 1978."

HOUSE BILL 374

LAWS 2005, CHAPTER 73

AN ACT

RELATING TO SPECIAL DISTRICTS; REVISING THE BOUNDARIES OF THE SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY.

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

Chapter 73 Section 1 Laws 2005

Section 1. Section 72-19-6 NMSA 1978 (being Laws 1990, Chapter 14, Section 6) is amended to read:

"72-19-6. BOUNDARIES OF AUTHORITY.--The boundaries of the authority are as follows: a portion of southern Sandoval county bounded on the east by the Rio Grande, on the south by the Bernalillo and Sandoval county lines, on the west by the top of the Rio Puerco drainage and on the north by the top of the drainage that lies on the southern boundary of the Zia Indian reservation, the Santa Ana Indian reservation and state highway 550. The boundary of the authority is more particularly described as follows: beginning at the intersection of the west bank of the Rio Grande and the Sandoval county line in projected section 8, township 11 north, range 3 east, that point also being the southeast corner of herein described boundary; thence proceeding in a northeasterly and westerly direction along the Sandoval county line for approximately fourteen and one-half miles to the top of the Rio Puerco drainage in section 32, township 12 north, range 1 east; thence, in a northerly direction along the top of the Rio Puerco drainage for approximately fourteen miles to a point in the southwest corner of section 21, township 14 north, range 1 east; thence, in an easterly direction along the top of the Rio Puerco drainage and the Zia Indian reservation boundary to a point in the southeast corner of section 21, township 14 north, range 1 east; thence, south for approximately one mile along the west boundary of the Zia Indian reservation to a point in the southeast corner of section 28, township 14 north, range 1 east; thence, in an

easterly direction along the southern boundary of the Zia Indian reservation for approximately six miles to a point in the southeast corner of section 33, township 14 north, range 2 east; thence, in an easterly direction for approximately three miles to a point in the northeast corner of section 1, township 13 north, range 2 east; thence, south for approximately one mile to a point on the northeast corner of section 12, township 13 north, range 2 east; thence, east for approximately two miles to the south side of state highway 550 in section 9, township 13 north, range 3 east; thence, in a southeasterly direction along the south side of state highway 550, not including Pueblo of Santa Ana reservation, for approximately six miles to a point on the west bank of the Rio Grande in section 30, township 13 north, range 4 east; thence, in a southwesterly direction along the west bank of the Rio Grande for a distance of approximately ten miles to a point in section 8, township 11 north, range 3 east, which point is the southeast corner and point of beginning of the authority."

Chapter 73 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION.--Nothing in the boundary revisions of Section 1 of this 2005 act shall be construed to release a citizen or property subject to indebtedness owed on the effective date of this act to a political subdivision of the state from the obligation to continue to pay the existing indebtedness until it is paid and collected in full by the political subdivision.

HOUSE BILL 591, AS AMENDED

LAWS 2005, CHAPTER 74

AN ACT

RELATING TO GAME AND FISH; INCREASING LICENSE FEES; CHANGING CERTAIN CLASSES OF LICENSES; MAKING AN APPROPRIATION.

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

Chapter 74 Section 1 Laws 2005

Section 1. Section 17-3-2 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 2, as amended) is amended to read:

"17-3-2. CLASSES OF LICENSES.--

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "oryx" entitles the licensee to hunt oryx during the open season;

(15) "ibex" entitles the licensee to hunt ibex during the open season;

(16) "cougar" entitles the licensee to hunt cougar during the open season;

(17) "turkey" entitles the licensee to hunt turkey during the open season;

(18) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(19) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(20) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer;

(21) "temporary small game" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license; and

(22) "second rod" entitles the licensee to fish using two fishing rods to fish for game fish during the open seasons for each species.

B. A hunting license does not entitle the licensee to hunt, kill or take game animals or birds within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or within or upon a game refuge or game management area.

C. A fishing license does not entitle the licensee to fish for or take fish within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or in or on closed waters.

D. A junior fishing license may be purchased by a resident who has reached his twelfth birthday but has not reached his eighteenth birthday. A junior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A senior fishing license may be purchased by a resident who has reached his sixty-fifth birthday. A senior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. A nonresident junior fishing license may be purchased by a nonresident who has reached his twelfth birthday but has not reached his eighteenth birthday. A

nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

G. A senior general hunting license may be purchased by a resident who has reached his sixty-fifth birthday. A senior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

H. A junior general hunting license may be purchased by a resident who has not reached his eighteenth birthday. A junior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

I. A handicapped fishing license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by a resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species.

J. A handicapped general hunting license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species.

K. A fishing license may be obtained at no cost by a resident who has reached his seventieth birthday.

L. A second rod validation may be purchased by either a resident or nonresident. A second rod validation entitles the licensee to fish using two rods for game fish during the open season for each species.

M. A junior-senior elk license may be purchased by a resident who has not reached his eighteenth birthday or by a resident who has reached his sixty-fifth birthday. A junior-senior elk license entitles the licensee to hunt for elk during the open season for that species."

Chapter 74 Section 2 Laws 2005

Section 2. Section 17-3-13 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 5, as amended) is amended to read:

"17-3-13. LICENSE FEES.--

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by him, numbering each class separately. Upon satisfactory proof that a license or permit has been lost before its expiration, he may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing	\$25.00
Resident, small game	20.00
Resident, deer	36.00
Resident, general hunting	40.00
Resident, general hunting and fishing	59.00
Resident, senior, handicapped, general hunting and fishing	28.00
Resident, junior, general hunting and fishing	20.00
Resident, antelope	50.00
Resident, elk cow	50.00
Resident, elk bull or either sex	80.00
Resident, junior-senior, elk	48.00
Resident, bighorn sheep, ram	150.00
Resident, bighorn sheep, ewe	75.00
Resident, Barbary sheep	100.00
Resident, bear	44.00
Resident, turkey	25.00
Resident, cougar	40.00

Resident, oryx	150.00
Resident, ibex	100.00
Resident, javelina	55.00
Resident, fur dealer	15.00
Resident, trapper	20.00
Resident, junior trapper	9.00
Nonresident, fishing	56.00
Nonresident, junior fishing	28.00
Nonresident, small game	90.00
Nonresident, deer	260.00
Nonresident, quality deer	345.00
Nonresident, bear	250.00
Nonresident, cougar	280.00
Nonresident, turkey	100.00
Nonresident, antelope	260.00
Nonresident, elk cow	315.00
Nonresident, elk bull or either sex	525.00
Nonresident, quality elk	750.00
Nonresident, bighorn sheep	3,150.00
Nonresident, Barbary sheep	350.00
Nonresident, oryx	1,600.00
Nonresident, ibex	1,600.00
Nonresident, javelina	155.00

Nonresident, fur dealer	125.00
Nonresident, trapper	345.00
Nonresident, nongame	65.00
Resident, senior, handicapped, fishing	8.00
Resident, junior fishing	5.00
Temporary fishing, one day	12.00
Temporary fishing, five days	24.00
Resident, senior, handicapped, general hunting	24.00
Resident, junior general hunting	15.00
Temporary small game, four days	33.00
Second rod validation	4.00."

Chapter 74 Section 3 Laws 2005

Section 3. Section 17-3-19 NMSA 1978 (being Laws 1949, Chapter 149, Section 1, as amended) is amended to read:

"17-3-19. SPECIAL LICENSE--MINORS FISHING ON SCOUT PROPERTY.-- Every citizen of the United States who is a resident or nonresident of the state of New Mexico and of the ages of fourteen, fifteen, sixteen or seventeen years shall, upon the payment of two dollars (\$2.00), be issued a special temporary license to fish for ten days during the proper open season in any waters or streams located on the property owned and operated by the boy scouts of America in Colfax county, New Mexico. Such temporary license shall not authorize fishing in any other waters of this state."

Chapter 74 Section 4 Laws 2005

Section 4. Section 17-3-20 NMSA 1978 (being Laws 1949, Chapter 149, Section 2) is amended to read:

"17-3-20. FEE DISPOSITION.--Of the two dollars (\$2.00) collected for each temporary license issued pursuant to Section 17-3-19 NMSA 1978, one dollar fifty cents

(\$1.50) shall be paid to the department of game and fish to be credited to the game protection fund and fifty cents (\$.50) shall be paid to the vendor of the license."

Chapter 74 Section 5 Laws 2005

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is April 1, 2006.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILLS 16, 77 AND 336, AS AMENDED

LAWS 2005, CHAPTER 75

AN ACT

RELATING TO LAND GRANTS; CLARIFYING BOARD OF TRUSTEE AUTHORITY;
CLARIFYING EJECTMENT PROCEDURES.

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

Chapter 75 Section 1 Laws 2005

Section 1. Section 49-1-22 NMSA 1978 (being Laws 2004, Chapter 124, Section 2) is recompiled as Section 49-1-11.1 NMSA 1978 and is amended to read:

"49-1-11.1. RIGHTS OF LESSEES AND PURCHASERS.--

A. A person who is not an heir and who has purchased or leased property within the limits of a land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

B. The provisions of Chapter 49, Article 1 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of a land grant-merced or be construed to grant the board of trustees of a land grant-merced regulatory authority over such property interests or lands other than the common lands. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced."

Chapter 75 Section 2 Laws 2005

Section 2. Section 49-1-15 NMSA 1978 (being Laws 1907, Chapter 42, Section 15, as amended) is amended to read:

"49-1-15. REMOVAL FROM LAND GRANT-MERCED--DELINQUENCY--FORFEITURE.--

A. If a person holds in possession or claims in private ownership, within the exterior boundaries of a land grant-merced, any tract, piece or parcel of land to which, in the opinion of the board of trustees, the person has no right or title, the board may institute an action of ejectment in district court against the person. If upon the trial it is determined that such possession is without right, judgment shall be rendered in favor of the board for possession of the tract, piece or parcel of land and for such damages as it may have proved for the wrongful detention.

B. Any delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir."

Chapter 75 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 51

LAWS 2005, CHAPTER 76

AN ACT

AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE GRANTS FOR PUBLIC PROJECTS FROM THE WATER AND WASTEWATER PROJECT GRANT FUND; DECLARING AN EMERGENCY.

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

Chapter 76 Section 1 Laws 2005

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions 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 to the following qualified entities for the following public projects on terms and conditions established by the authority:

1. to the El Prado water and sanitation district in Taos county for the purchase of water rights and associated administrative costs;

2. to the Agua Sana mutual domestic water consumers association in Rio Arriba county for water projects;

3. to the Anthony soil and water district in Dona Ana county for water and wastewater projects;

4. to the city of Bayard in Grant county for water and wastewater projects;

5. to the village of Chaparral in Dona Ana county for water projects;

6. to the village of Cloudcroft in Otero County for water and wastewater projects;

7. to the village of Dora in Roosevelt county for water projects;

8. to La Union mutual domestic water consumers association in Dona Ana county for a water project;

9. to the city of Lordsburg in Hidalgo county for water and wastewater projects;

10. to the village of Melrose in Curry county for water and wastewater projects;

11. to the village of Milan in Cibola county for water projects;

12. to the Moquino mutual domestic water consumers association in Cibola county for water and wastewater projects;

13. to the village of Ruidoso Downs in Lincoln county for water projects;

14. to the town of Ruidoso in Lincoln county for water projects;

15. to the village of San Jon in Quay county for water and wastewater projects;

16. to the town of Tatum in Lea county for water and wastewater projects;

17. to the village of Texico in Curry county for water projects;

18. to the city of Truth or Consequences in Sierra county for water and wastewater projects;

19. to the Upper Des Montes mutual domestic water consumers association in Taos county for water projects;
20. to the West Rim mutual domestic water consumers association in Taos county for water and wastewater projects;
21. to the Agua Fria mutual domestic water consumers association in Santa Fe county for a wastewater project;
22. to the Arroyo de Agua water association in Rio Arriba county for a water project;
23. to the Aurora mutual domestic water consumers association in San Miguel county for a water project;
24. to the Bluewater water and sanitation district in Cibola county for a water project;
25. to El Valle de Ranchos de Taos in Taos county for a water project;
26. to the village of Floyd in Roosevelt county for a water project;
27. to the village of Hatch in Dona Ana county for a water and wastewater project;
28. to the Hidden Valley mutual domestic water consumers association in Sandoval county for water and wastewater projects;
29. to the Lakeshore water and sanitation district in Sierra county for a water and wastewater project;
30. to the village of Milan in Cibola county for a wastewater project;
31. to the Polvadera mutual domestic water consumers association in Socorro county for a water and wastewater project;
32. to the Sacatosa mutual domestic water consumers association in San Miguel county for a water project;
33. to the city of Santa Rosa in Guadalupe county for a wastewater project;
34. to the Talavera mutual domestic water consumers association in Dona Ana county for a water project;

35. to the Timberon water and sanitation district in Otero county for a water project; and

36. to the town of Vaughn in Guadalupe county for a water and wastewater project.

Chapter 76 Section 2 Laws 2005

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 2008 its desire to continue to pursue a grant from the water and wastewater project grant 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 grant from the water and wastewater project grant fund to that qualified entity for that public project is void.

Chapter 76 Section 3 Laws 2005

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

SENATE BILL 54, AS AMENDED

WITH EMERGENCY CLAUSE

EFFECTIVE April 4, 2005

LAWS 2005, CHAPTER 77

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; PROVIDING FOR COMPENSATION OF AUCTIONEERS.

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

Chapter 77 Section 1 Laws 2005

Section 1. Section 61-16-1 NMSA 1978 (being Laws 1889, Chapter 95, Section 1, as amended) is amended to read:

"61-16-1. AUCTIONEERS--PUFFING--FEES.--It is unlawful for any person who sells at public auction any personal property belonging to another:

A. to bid on any article placed by him at auction; or

B. employ or in any way allow puffers to bid for him at an auction."

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 57

LAWS 2005, CHAPTER 78

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING EACH SCHOOL DISTRICT TO OFFER AT LEAST ONE HONORS OR SIMILAR ACADEMICALLY RIGOROUS CLASS IN ALL HIGH SCHOOLS.

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

Chapter 78 Section 1 Laws 2005

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

"HONORS OR SIMILAR CLASSES IN MATHEMATICS AND LANGUAGE ARTS.--Beginning with the 2006-2007 school year, each school district shall offer at least one honors or similar academically rigorous class each in mathematics and language arts in each high school."

SENATE BILL 69, AS AMENDED

LAWS 2005, CHAPTER 79

AN ACT

RELATING TO PUBLIC RECORDS; CHANGING DEFINITIONS; PROVIDING ACCESS TO CERTAIN RECORDS AFTER CERTAIN TIME PERIODS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 79 Section 1 Laws 2005

Section 1. Section 14-3-2 NMSA 1978 (being Laws 1959, Chapter 245, Section 2, as amended) is amended to read:

"14-3-2. DEFINITIONS.--As used in the Public Records Act:

A. "administrator" means the state records administrator;

B. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

C. "commission" means the state commission of public records;

D. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission;

E. "microphotography system" means all microphotography equipment, services and supplies;

F. "personal identification information" means the name, social security number, military identification number, home address, telephone number, email address, fingerprint, photograph, identifying biometric data, genetic identification, personal financial account number, state identification number, including driver's license number, alien registration number, government passport number, personal taxpayer identification number, or government benefit account number of a natural person;

G. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

H. "records center" means the central records depository that is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;

I. "records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee; and

J. "records retention and disposition schedules" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition."

Chapter 79 Section 2 Laws 2005

Section 2. A new section of the Public Records Act is enacted to read:

"ACCESS TO CONFIDENTIAL RECORDS.--

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

(1) personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;

(2) records that are confidential pursuant to Section 2-3-13 NMSA 1978, which shall remain confidential for seventy-five years after the date of creation;

(3) records that are confidential pursuant to Section 18-6-11.1 NMSA 1978; and

(4) records whose disclosure is prohibited by court action or federal law.

B. Nothing in this section shall limit or remove the discretion of a records custodian to withhold a public record pursuant to Section 14-2-1 NMSA 1978."

SENATE BILL 92, AS AMENDED

LAWS 2005, CHAPTER 80

AN ACT

RELATING TO EDUCATION; CHANGING HOW INSTRUCTIONAL MATERIAL ALLOCATIONS ARE CALCULATED, DISTRIBUTED AND EXPENDED; PROVIDING FOR FEES; CREATING A FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 80 Section 1 Laws 2005

Section 1. Section 22-15-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 205, as amended) is amended to read:

"22-15-1. SHORT TITLE.--Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law"."

Chapter 80 Section 2 Laws 2005

Section 2. Section 22-15-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 206, as amended) is amended to read:

"22-15-2. DEFINITIONS.--As used in the Instructional Material Law:

A. "division" or "bureau" means the instructional material bureau of the department;

B. "director" or "chief" means the chief of the bureau;

C. "instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media;

D. "multiple list" means a written list of those instructional materials approved by the department;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law; and

F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership."

Chapter 80 Section 3 Laws 2005

Section 3. Section 22-15-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 208, as amended) is amended to read:

"22-15-4. BUREAU--DUTIES.--Subject to the policies and regulations of the department, the bureau shall:

A. administer the provisions of the Instructional Material Law;

B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process."

Chapter 80 Section 4 Laws 2005

Section 4. Section 22-15-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 212, as amended) is amended to read:

"22-15-8. MULTIPLE LIST--SELECTION--REVIEW PROCESS.--

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution, private school as agent or adult basic education center may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school

boards shall also give public notice, which notice may

include publication in a newspaper of general circulation in

the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption."

Chapter 80 Section 5 Laws 2005

Section 5. A new section of the Instructional Material Law, Section 22-15-8.1 NMSA 1978, is enacted to read:

"22-15-8.1. INSTRUCTIONAL MATERIAL ADOPTION FUND.--The "instructional material adoption fund" is created in the state treasury. The fund consists of fees charged to publishers to review their instructional materials, income from investment of the fund, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department and money in the fund is appropriated to the department to pay expenses associated with adoption of instructional material for the multiple list."

Chapter 80 Section 6 Laws 2005

Section 6. Section 22-15-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 213, as amended) is amended to read:

"22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL MATERIAL.--

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the

next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district, state institution or adult basic education center may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget adjustment request to the department. Adult basic education centers may expend up to one hundred percent of their instructional material funds for items that are not on the multiple list.

D. The department shall establish procedures for the distribution of funds directly to school districts, state institutions and adult basic education centers. The department shall provide payment to a publisher or depository on behalf of a private school for instructional material included on the multiple list provided for in Section 22-15-8 NMSA 1978.

E. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years."

Chapter 80 Section 7 Laws 2005

Section 7. Section 22-15-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 216, as amended) is amended to read:

"22-15-12. ANNUAL REPORT.--Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center acquiring instructional material pursuant to the Instructional Material Law shall file a report with the department that includes an itemized list of instructional material purchased by the eligible entity, by

vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance."

Chapter 80 Section 8 Laws 2005

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 128, AS AMENDED,

WITH EMERGENCY CLAUSE

APPROVED APRIL 4, 2005

LAWS 2005, CHAPTER 81

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE TECHNOLOGY RESEARCH COLLABORATIVE.

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

Chapter 81 Section 1 Laws 2005

Section 1. TECHNOLOGY RESEARCH COLLABORATIVE CREATED--PURPOSE.--

A. The "technology research collaborative" is created. The New Mexico institute of mining and technology shall be the fiscal agent for the collaborative.

B. Participating institutions associated with the collaborative shall include national laboratories, other major research institutes and all the post-secondary institutions of New Mexico.

C. The purposes of the collaborative are to:

(1) establish advanced technology centers based on the wealth of scientific and technical talent that exists in the member institutions;

(2) develop and create new intellectual property for the state and encourage new opportunities for business and increased jobs;

(3) commercialize the intellectual property; and

(4) create a work force to support enterprises based on the intellectual property.

D. Intellectual property created by an employee or agent of an institution associated with the collaborative shall be owned by that institution. Intellectual property created jointly shall be owned jointly. If the intellectual property is created using federal funds, the applicable federal laws and regulations shall govern the ownership.

E. The collaborative may receive appropriations from the legislature through the board of regents of the New Mexico institute of mining and technology and may receive any other items of value from public or private sources.

F. The "board of the technology research collaborative" is created. The board shall consist of eleven members as follows:

(1) the governor, or the governor's designee, who shall chair the collaborative;

(2) the presidents, or their designees, of the university of New Mexico, New Mexico state university and New Mexico institute of mining and technology;

(3) five members at large, appointed by the governor with the consent of the senate;

(4) the director of Sandia national laboratories, or the director's designee; and

(5) the director of Los Alamos national laboratory, or the director's designee.

G. Appointed members shall serve for two-year terms at the pleasure of the governor. Members serve until their successors have been appointed. The governor may fill any vacancy on the board for the remainder of an unexpired term.

H. The board may elect officers as it deems necessary to carry out its duties. A majority of the members of the board shall constitute a quorum for the transaction of business, and shall meet four times per year. Board members shall not vote by proxy.

I. Public members of the board shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

J. The board shall:

(1) employ a director and other staff, who shall be exempt from the provisions of the Personnel Act, as the board deems necessary to provide continuity and management of the collaborative; and

(2) prepare annual reports to the legislature on expenditures and progress of the collaborative.

SENATE BILL 169, AS AMENDED

LAWS 2005, CHAPTER 82

AN ACT

RELATING TO CHILDREN; EXTENDING THE TIME FOR TEMPORARY VOLUNTARY PLACEMENTS OF CHILDREN OUTSIDE THE HOME; DECLARING AN EMERGENCY.

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

Chapter 82 Section 1 Laws 2005

Section 1. Section 32A-3A-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 69) is amended to read:

"32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

A. No child shall remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court after the filing of a petition by the department for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

B. In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

C. Any placement described in this section shall not be considered abandonment by a parent, guardian or custodian or other family member."

Chapter 82 Section 2 Laws 2005

Section 2. Section 32A-3A-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 70) is amended to read:

"32A-3A-8. DUTY TO FILE A PETITION.--If any child has remained in voluntary placement for longer than three hundred sixty-five days in any two-year period and the parent, guardian or custodian of the child refuses to or cannot accept the child back into the parent's, guardian's or custodian's custody, the department shall immediately file a petition alleging that the child is a neglected child or that the child's family needs court-ordered family services."

Chapter 82 Section 3 Laws 2005

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

SENATE BILL 242, WITH EMERGENCY CLAUSE

APPROVED APRIL 4, 2005

LAWS 2005, CHAPTER 83

AN ACT

RELATING TO LEGAL EDUCATION; ESTABLISHING A LEGAL EDUCATION LOAN REPAYMENT PROGRAM FOR ATTORNEYS SERVING IN PUBLIC SERVICE EMPLOYMENT; CREATING A PUBLIC SERVICE LAW ADVISORY COMMITTEE.

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

Chapter 83 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Public Service Law Loan Repayment Act".

Chapter 83 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the Public Service Law Loan Repayment Act is to improve access to the justice system in New Mexico by increasing the number of attorneys in public service employment through a legal education loan repayment program.

Chapter 83 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Public Service Law Loan Repayment Act:

A. "commission" means the commission on higher education;

B. "committee" means the public service law advisory committee;

C. "legal education" means education at an accredited law school and any bar review preparation courses for the state bar examination;

D. "loan" means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law school student, requiring either repayment of principal and interest or repayment in services;

E. "participating attorney" means an attorney who receives a loan repayment award from the commission pursuant to the provisions of the Public Service Law Loan Repayment Act; and

F. "public service employment" means employment with:

(1) an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;

(2) the public defender department; or

(3) a New Mexico district attorney's office.

Chapter 83 Section 4 Laws 2005

Section 4. COMMISSION--POWERS AND DUTIES.--

A. The commission may:

(1) grant an award to repay loans obtained for legal education expenses of a participating attorney as consideration and inducement to the attorney to engage in public service employment; and

(2) delegate to other agencies or contract for the performance of services required by the provisions of the Public Service Law Loan Repayment Act.

B. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a participating attorney in the public service law loan repayment program.

Chapter 83 Section 5 Laws 2005

Section 5. LOAN REPAYMENT PROGRAM--PARTICIPANT ELIGIBILITY-- AWARD CRITERIA.--

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare an intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. An applicant who intends to practice as an attorney in a public service employment position that earns more than forty-five thousand dollars (\$45,000) per year is not eligible for participation in the public service law loan repayment program.

D. Prior to receiving a loan repayment award, the applicant shall file with the commission:

(1) a declaration of intent to practice as an attorney in public service employment;

(2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the commission as appropriate for consideration.

E. Award criteria shall provide that:

(1) preference in making awards shall be to applicants who:

(a) have graduated from the university of New Mexico law school;

(b) have the greatest financial need based on legal education indebtedness and salary;

(c) work in public service employment that has the lowest salaries; and

(d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the commission acting on behalf of the state;

(3) award amounts are dependent upon the applicant's total legal education debt, salary and other sources of income deemed by the commission as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayment programs.

F. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Loan Repayment Act:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels.

Chapter 83 Section 6 Laws 2005

Section 6. LOAN REPAYMENT CONTRACT TERMS--PAYMENT.--

A. The loan repayment award shall be evidenced by a contract between the participating attorney and the commission acting on behalf of the state. The contract shall state the amount of the award and the obligations of the participating attorney under the public service law loan repayment program, including a minimum three-year

period of service, quarterly reporting requirements and other policies established by the commission.

B. A participating attorney shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission. The maximum credit for a year shall not exceed seven thousand two hundred dollars (\$7,200).

C. If a participating attorney does not comply with the terms of the contract, the commission shall require immediate repayment of the award plus eighteen percent interest and may assess a penalty of up to three times the amount of award disbursed, unless the commission finds acceptable extenuating circumstances for why the participating attorney cannot serve or comply with the terms of the contract. If the commission does not find acceptable extenuating circumstances for the participating attorney's failure to comply with the contract, the commission shall require immediate repayment of the award plus the amount of the penalty.

D. The commission, in consultation with the committee, shall adopt rules to implement the provisions of this section. The rules may provide for the disbursement of loan repayment awards in annual or other periodic installments.

Chapter 83 Section 7 Laws 2005

Section 7. CONTRACTS--ENFORCEMENT.--The general form of the contract required shall be prepared and approved by the attorney general and the department of finance and administration and signed by the participating attorney and by the executive director of the commission or the executive director's designated representative on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any attorney on any such contract.

Chapter 83 Section 8 Laws 2005

Section 8. PUBLIC SERVICE LAW ADVISORY COMMITTEE--CREATED--DUTIES.--

A. The "public service law advisory committee" is created to advise the commission on matters relating to the administration of the Public Service Law Loan Repayment Act.

B. The committee is composed of:

(1) the dean of the university of New Mexico law school or the dean's designee;

(2) the executive director of New Mexico legal aid or the director's designee who shall be an attorney employed with an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides civil legal services to indigent persons in New Mexico;

(3) the chief public defender or the chief's designee;

(4) a district attorney appointed by the New Mexico district attorneys association; and

(5) a financial aid or career services officer of the university of New Mexico law school designated by the dean.

C. The committee shall:

(1) make recommendations to the commission on applicants for the public service law loan repayment program;

(2) advise the commission on the adoption of rules to implement the provisions of the Public Service Law Loan Repayment Act; and

(3) give advice or other assistance to the commission as requested.

Chapter 83 Section 9 Laws 2005

Section 9. FUND CREATED--METHOD OF PAYMENT.--The "public service law loan repayment fund" is created in the state treasury. All money appropriated for the public service law loan repayment program shall be credited to the fund and all payments for repayment of awards or penalties received by the commission shall be credited to the fund. All payments for loan repayment awards shall be by warrant of the secretary of finance and administration upon vouchers signed by the designated representative of the commission. Any unexpended or unencumbered balance remaining in the public service law loan repayment fund at the end of a fiscal year shall not revert to the general fund.

Chapter 83 Section 10 Laws 2005

Section 10. CANCELLATION.--The commission may cancel any contract made between it and any participating attorney for any reasonable cause deemed sufficient by the commission.

Chapter 83 Section 11 Laws 2005

Section 11. REPORTS.--The commission shall make an annual report to the governor and the legislature, prior to each regular session, of its activities, including the loan repayment awards granted, the names and addresses of participating attorneys

and their employers who are in public service employment pursuant to the Public Service Law Loan Repayment Act and the names of participating attorneys who are not employed in public service employment, the reason they are not employed in public service employment and the amounts owed and paid on loans and loan repayment awards.

SENATE BILL 258, AS AMENDED

LAWS 2005, CHAPTER 84

AN ACT

RELATING TO PUBLIC ACCOUNTANCY; PROVIDING FOR THE NONRENEWAL OF CERTIFICATES AND PERMITS WITHOUT A HEARING FOR FAILURE TO PAY RENEWAL FEES; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 84 Section 1 Laws 2005

Section 1. Section 61-28B-9 NMSA 1978 (being Laws 1999, Chapter 179, Section 9) is amended to read:

"61-28B-9. ISSUANCE AND RENEWAL OF CERTIFICATE--MAINTENANCE OF COMPETENCY.--

A. The board shall grant or renew a certificate upon application and demonstration that the applicant's qualifications are in accordance with the 1999 Public Accountancy Act or that they are eligible under the substantial equivalency standard provided in that act.

B. The board may establish by rule for the issuance of annual certificates and may prescribe the expiration date of certificates. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the provisions of the Uniform Licensing Act. If the renewal fee and delinquency fee are not paid within ninety days after the expiration date of the license, the certificate shall be subject to cancellation. A certificate holder whose certificate has been canceled for failure to pay the annual renewal fee may secure reinstatement of the certificate only upon application and payment of the renewal fee and reinstatement fee and upon approval by the board.

C. The board shall grant or deny an application for certification no later than one hundred twenty days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a certificate, the board may issue a provisional certificate for no longer than ninety days while the board reconsiders its decision.

E. To renew a certificate, a certificate holder shall provide satisfactory proof to the board of continuing professional education that is designed to maintain competency. Continuing professional education courses shall comply with board rules. The board may create an exception to the requirement to maintain continuing professional education for certificate holders who do not provide services to the public. A certificate holder granted such an exception must place the word "inactive" or "retired" adjacent to his certified public accountant title or registered public accountant title on a business card, letterhead or other document or device, except for a board-issued certificate.

F. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction."

Chapter 84 Section 2 Laws 2005

Section 2. Section 61-28B-13 NMSA 1978 (being Laws 1999, Chapter 179, Section 13, as amended) is amended to read:

"61-28B-13. FIRM PERMITS TO PRACTICE, ATTEST EXPERIENCE, PEER REVIEW.--

A. The board may grant or renew a permit to practice as a firm to an applicant that demonstrates its qualification for the permit as provided in Subsection E of this section. A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act in order to provide attest services or use the title "certified public accountant", "CPA", "certified public accountant firm", "CPA firm", "registered public accountant", "RPA", "registered public accountant firm" or "RPA firm".

B. Permits shall be issued and renewed for periods not more than two years, expiring on June 30 of the year of expiration. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a permit without prior hearing pursuant to the provisions of the Uniform Licensing Act. If the renewal fee and delinquency fee are not paid within ninety days after the expiration of the permit, the permit shall be subject to cancellation. A firm whose permit has been canceled for failure to pay the annual renewal fee may secure reinstatement of the permit upon application and payment of the renewal fee and upon approval by the board.

C. The board shall grant or deny an application for a permit no later than ninety days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a permit, the board may issue a provisional permit for no longer than ninety days while the board reconsiders its decision.

E. An applicant for initial issuance or renewal of a permit shall demonstrate that:

(1) a simple majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state. Such partners, officers, shareholders, members or managers, whose principal place of business is in New Mexico, and who perform professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder who is responsible for the proper registration of the firm and identifies that individual to the board;

(b) all owners who are not certificate holders are active individual participants in the certified public accountant firm or registered public accountant firm or affiliated entities; and

(c) the firm complies with the 1999 Public Accountancy Act;
and

(2) an individual certificate holder who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for such services.

F. An applicant for initial issuance or renewal of a permit shall be required to register each office of the firm within New Mexico with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate issued pursuant to the 1999 Public Accountancy Act or the corresponding provision of prior law or by some other state.

G. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence of a change in the identities of partners,

officers, shareholders, members or managers whose principal place of business is in this state, a change in the number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

H. A firm that falls out of compliance with the provisions of the 1999 Public Accountancy Act due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a six-month period for a firm to take the corrective action. Failure to bring the firm back into compliance within six months shall result in the suspension or revocation of the firm permit.

I. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

J. If a partner, shareholder or member is a legal business entity, that legal business entity must be a firm.

K. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section. Attest services may not be performed by a certificate holder who is a member of a firm that does not meet the certificate holder's ownership requirements set forth in this section."

Chapter 84 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 262

LAWS 2005, CHAPTER 85

AN ACT

RELATING TO COURTS; CREATING THE JUDICIAL COMPENSATION
COMMISSION TO RECOMMEND SALARIES FOR JUDGES AND JUSTICES.

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

Chapter 85 Section 1 Laws 2005

Section 1. JUDICIAL COMPENSATION COMMISSION--CREATION--MEMBERSHIP--DUTIES.--

A. The "judicial compensation commission" is created to recommend salaries for judges of the magistrate courts, metropolitan courts, district courts and courts of appeals and justices of the supreme court.

B. The judicial compensation commission shall be composed of five members and one chairperson as follows:

(1) the dean of the university of New Mexico school of law, who shall serve as chairperson and vote only in the event of a tie vote;

(2) the president of the state bar of New Mexico, or the president's designee;

(3) one member appointed by the governor;

(4) one member appointed by the president pro tempore of the senate;

(5) one member appointed by the speaker of the house of representatives; and

(6) one member appointed by the chief justice of the supreme court.

C. The initial appointee of the governor shall serve for three years, the initial appointees of the president pro tempore and the speaker of the house shall serve for two years and the initial appointee of the chief justice shall serve for one year. All subsequent appointments shall be made for three-year terms.

D. The commission is administratively attached to the administrative office of the courts. Staff and meeting rooms shall be provided by the administrative office of the courts. The commission may employ experts to provide analysis and data upon which to base its recommendations.

E. The commission shall meet at the call of the chairperson not less than annually. The meetings shall be open to the public.

F. Members of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

G. On or before December 1 of each year, the commission shall report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices.

SENATE BILL 263

LAWS 2005, CHAPTER 86

AN ACT

RELATING TO INSURANCE; AMENDING THE RETIREE HEALTH CARE ACT TO INCLUDE FORMER MEMBERS OF CERTAIN GOVERNING BOARDS.

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

Chapter 86 Section 1 Laws 2005

Section 1. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4, as amended) is amended to read:

"10-7C-4. DEFINITIONS.--As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act or an employee of an independent public employer;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the board of the retiree health care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Public Employees Retirement Reciprocity Act or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) an unmarried child under the age of nineteen who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same household;

(3) a child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of nineteen and twenty-five and is a full-time student at an accredited educational institution; provided that "full-time student" shall be a student enrolled in and taking twelve or more semester hours or its equivalent contact hours in primary, secondary, undergraduate or vocational school or a student enrolled in and taking nine or more semester hours or its equivalent contact hours in graduate school;

(4) a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap; provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(5) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(6) a surviving dependent child who is the dependent child of a deceased eligible retiree whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school

insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "independent public employer", which means a municipality, county or public entity that is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the executive director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(2) a "salaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(3) an "eligible participating retiree", which means a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement association or the governing authority of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree: 1) retired on or before June 30, 1990; and 2) at the time of retirement did not have a retirement health plan or retirement health insurance coverage available from his employer; or

(c) is a retiree who: 1) was at the time of retirement an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires less than five years after the date participation begins, in which event the time period required for employee and employer contributions shall become the period of time between the date participation begins and the date of retirement; and 3) is certified to be a retiree by the educational retirement director, the executive director of the public employees retirement board or the governing authority of an independent public employer;

(4) a "legislative member", which means a person who is not a retiree and who served as a member of the New Mexico legislature for at least two years, but is no longer a member of the legislature and is certified to be such by the legislative council service; or

(5) a "former participating employer governing authority member", which means a person, other than a nonsalaried eligible participating entity governing

authority member or a salaried eligible participating entity governing authority member, who is not a retiree and who served as a member of the governing authority of a participating employer for at least four years but is no longer a member of the governing authority and whose length of service is certified by the chief executive officer of the participating employer;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" include:

(1) those dependents created by common law relationships;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal guardianship; and

(4) anyone not specifically referred to as an eligible dependent pursuant to the rules and regulations adopted by the board;

L. "participating employee" means an employee of

a participating employer, which employee has not been expelled from participation in the Retiree Health Care Act pursuant to Section 10-7C-10 NMSA 1978;

M. "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

N. "public entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government; and

O. "retiree" means a person who:

(1) is receiving:

(a) a disability or normal retirement benefit or survivor's benefit pursuant to the Educational Retirement Act;

(b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or

(2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act."

Chapter 86 Section 2 Laws 2005

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. Except as otherwise provided in this section, each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed fifty dollars (\$50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars (\$5.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. A legislative member or a former participating employer governing authority member shall pay a monthly premium for any selected plan equal to one-twelfth of the annual cost of the claims and administrative costs of that plan allocated to the member by the board. In addition, a legislative member or a former participating employer governing authority member shall pay the additional monthly participation fee set by the board pursuant to this subsection as a consideration

and condition for participation in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state.

D. For eligible retirees who become eligible for participation on or after July 1, 2001, the board may determine monthly premiums based on the retirees' years of credited service with participating employers."

Chapter 86 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 296

LAWS 2005, CHAPTER 87

AN ACT

RELATING TO TAXATION; CREATING AN OPTIONAL DESIGNATION FOR A PERSONAL INCOME TAX CONTRIBUTION FOR THE STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING FOR A DISTRIBUTION; MAKING AN APPROPRIATION.

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

Chapter 87 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--CONTRIBUTIONS TO THE STATE PARKS DIVISION.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy,

minerals and natural resources department in an amount equal to the money designated pursuant to the Income Tax Act as contributions to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. The energy, minerals and natural resources department shall remit the amount designated for the state parks division to the state parks division for expenditure for the kids in parks education program."

Chapter 87 Section 2 Laws 2005

Section 2. A new section of the Income Tax Act is enacted to read:

"OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--STATE PARKS DIVISION.--

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"State Parks Division Check if you wish to
contribute a part or all of your tax refund
to the state parks division of the energy,
minerals and natural resources department
for the kids in parks education program. Enter
here \$_____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act, and any designation made under the provisions of this section to such refunds is void."

Chapter 87 Section 3 Laws 2005

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

SENATE BILL 310

LAWS 2005, CHAPTER 88

AN ACT

RELATING TO CONSERVATION; AMENDING A SECTION OF THE NEW MEXICO YOUTH CONSERVATION CORPS ACT TO INCREASE THE AMOUNT OF THE EDUCATIONAL TUITION VOUCHER.

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

Chapter 88 Section 1 Laws 2005

Section 1. Section 9-5B-9 NMSA 1978 (being Laws 1992, Chapter 91, Section 9, as amended) 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 the corps member's employment is entitled to receive as additional compensation five hundred dollars (\$500) or a one thousand five hundred dollar (\$1,500) 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."

SENATE BILL 352

LAWS 2005, CHAPTER 89

AN ACT

RELATING TO TAXATION; CHANGING ONE ELECTION CONDITION FOR A CERTAIN COUNTY HEALTH MILL LEVY.

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

Chapter 89 Section 1 Laws 2005

Section 1. Section 4-38-17.1 NMSA 1978 (being Laws 2004, Chapter 113, Section 1) is amended to read:

"4-38-17.1. TAX LEVIES AUTHORIZATION--PROCEDURES--HEALTH PURPOSES.--

A. A board of county commissioners may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the county under the Property Tax Code for the purpose of providing health care to sick and indigent persons in the county.

B. The resolution shall specify the rate of the proposed tax, which shall not exceed one dollar fifty cents (\$1.50) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the county under the Property Tax Code and shall:

(1) specify the date of the election at which the question of imposition of the tax to the qualified electors of the county shall be held, which may be a general election or a special election called for that purpose, except that the election may not be held on the same ballot as an election held pursuant to Section 4-48B-15 NMSA 1978; and

(2) limit the imposition of the proposed tax to no more than eight years.

C. The question shall be voted upon as a separate question and shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. Upon certification, copies of the election shall be mailed immediately to the department of finance and administration and the taxation and revenue department.

D. For purposes of this section, "county" means a class B county with a population of no less than forty-one thousand and no more than forty-five thousand according to the last federal decennial census.

E. The mill levy authorized in this section is not subject to the rate limitation provisions of Section 7-37-7.1 NMSA 1978 and shall not be used to meet a county's obligations pursuant to Section 27-10-4 NMSA 1978."

SENATE BILL 375

LAWS 2005, CHAPTER 90

AN ACT

RELATING TO BANKING; LOWERING STATE BANK DIVERSIFICATION REQUIREMENTS.

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

Chapter 90 Section 1 Laws 2005

Section 1. Section 58-1-24 NMSA 1978 (being Laws 1963, Chapter 305, Section 24, as amended) is amended to read:

"58-1-24. DIVERSIFICATION OF LOANS AND INVESTMENTS.--

A. A state bank shall not extend credit directly by means of discount notes, issuance of letters of credit, acceptance of drafts or otherwise, or purchase any bond, note, bill of exchange or any evidence of indebtedness, when by reason of such extension of credit or purchase, the totals of the obligations so acquired that are held by the state bank will exceed:

(1) sixty percent of total deposits or seventy-five percent of savings, whichever is greater, for obligations secured by real estate, together with the current market value of any real estate owned by the bank and not used in its banking business; or

(2) thirty-five percent of capital and surplus for obligations of the same obligor.

B. The limitations of Paragraph (2) of Subsection A of this section shall not apply to loans and investments otherwise authorized by the Banking Act if the obligations are:

(1) obligations of the United States, general obligations of a state or a political subdivision thereof or of a federal reserve bank;

(2) secured as to principal and interest by the guarantee, insurance or other like commitment of the United States, an agency of the United States or a federal reserve bank, whether the commitment provides for payment in cash or in obligations of the United States;

(3) secured by obligations of the United States, a state or a political subdivision thereof having a value of one hundred percent of the amount thereof;

(4) upon notes or drafts having a maturity of not more than twelve months exclusive of days of grace, drawn in good faith against actually existing values and secured by an instrument transferring or securing title to goods in process of shipment or to livestock, or creating a lien on livestock to the amount of the value of the security, but the limitation on such obligations shall be thirty percent of capital and surplus;

(5) upon notes or drafts secured by trust receipts, shipping documents or receipts of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, nonperishable staples to the amount of eighty percent of the value of the security, and this exemption shall not apply:

(a) unless the staples are insured, if it is customary to insure them; or

(b) for more than ten months to obligations of the same obligor arising from the same transaction or secured by the same staples;

(6) secured by the assignment of accounts receivable to the extent of eighty percent of the amount of such accounts not overdue, but the limitation of these obligations shall be thirty percent of capital and surplus;

(7) those arising out of the daily transaction of the business of any clearinghouse association; or

(8) obligations that are fully secured by a pledge of a time certificate of deposit issued by the same state-chartered bank in an amount equal to or exceeding the amount of the obligation.

C. In calculating, for the purposes of this section, the obligations of a single obligor or the obligations of a specified class, there shall be included:

(1) the direct liability of the maker; the amount of a loan made to a corporation to the extent that the proceeds of the loan directly or indirectly are to be loaned to the individual;

(2) in the case of obligations of a partnership or association, the obligations of each general partner or of each member of the association; the amount of

a loan made to a corporation to the extent that the proceeds of the loan directly or indirectly are to be loaned to the partnership or association;

(3) in the case of obligations of a general partner or a member of an association, the obligations of the partnership or association;

(4) in the case of obligations of a corporation, the obligations of any subsidiaries in which it owns, directly or indirectly, a majority of the outstanding voting stock;

(5) in the case of obligations of a corporation, the amount of a loan made to any other person to the extent that the proceeds of the loan directly or indirectly are to be:

(a) loaned to the corporation;

(b) used for the acquisition from the corporation of any securities issued by the corporation, other than securities acquired by an underwriter for public offering; or

(c) transferred to the corporation without fair and adequate consideration; and

(6) the discharge of an equivalent amount of debt previously incurred in good faith or value shall be deemed fair and adequate consideration."

SENATE BILL 509

LAWS 2005, CHAPTER 91

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS FOR CERTAIN NURSING HOME RECEIPTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 91 Section 1 Laws 2005

Section 1. Section 7-9-77.1 NMSA 1978 (being Laws 1998, Chapter 96, Section 1, as amended by Laws 2003, Chapter 350, Section 1 and by Laws 2003, Chapter 351, Section 1) is amended to read:

"7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL AND HEALTH CARE SERVICES.--

A. Receipts from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors, osteopathic physicians and podiatrists or of medical, other health and palliative services by hospices or nursing homes to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts from payments by a third-party administrator of the federal TRICARE program for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

C. Receipts from payments by the United States government or any agency thereof for medical services provided by a clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts pursuant to the following schedule:

(1) from July 1, 2003 through June 30, 2004, thirty-three and one-third percent of the receipts may be deducted;

(2) from July 1, 2004 through June 30, 2005, sixty-six and two-thirds percent of the receipts may be deducted; and

(3) after June 30, 2005, one hundred percent of the receipts may be deducted.

D. Receipts from payments by the United States government or any agency thereof for medical, other health and palliative services provided by a home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts pursuant to the following schedule:

(1) from July 1, 2003 through June 30, 2004, thirty-three and one-third percent of the receipts may be deducted;

(2) from July 1, 2004 through June 30, 2005, sixty-six and two-thirds percent of the receipts may be deducted; and

(3) after June 30, 2005, one hundred percent of the receipts may be deducted.

E. For the purposes of this section:

(1) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(2) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency and certified to provide medicare services;

(3) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(4) "medical doctor" means a person licensed as a physician to practice medicine pursuant to the provisions of the Medical Practice Act;

(5) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services;

(6) "osteopathic physician" means a person licensed as an osteopathic physician pursuant to the provisions of Chapter 61, Article 10 NMSA 1978;

(7) "podiatrist" means a person licensed as a podiatrist pursuant to the provisions of the Podiatry Act; and

(8) "TRICARE program" means the program defined in 10 U.S.C. 1072(7)."

Chapter 91 Section 2 Laws 2005

Section 2. REPEAL.--Section 7-2-18.12 NMSA 1978 (being Laws 2004, Chapter 99, Section 1) is repealed.

SENATE BILL 534, AS AMENDED

LAWS 2005, CHAPTER 92

AN ACT

RELATING TO HEALTH CARE FACILITIES; ALLOWING THE GOVERNING BOARD OF A SPECIAL HOSPITAL DISTRICT TO ENTER INTO AN AGREEMENT TO OWN OR OPERATE A COMMON HEALTH CARE SERVICE.

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

Chapter 92 Section 1 Laws 2005

Section 1. Section 4-48A-9 NMSA 1978 (being Laws 1978, Chapter 29, Section 9, as amended) is amended to read:

"4-48A-9. BOARD OF TRUSTEES--POWERS.--The board of trustees may:

A. acquire, construct, operate or maintain one or more hospital facilities in the special hospital district for the purposes for which the special hospital district was created;

B. receive and expend all funds accruing to the special hospital district pursuant to any provision of the Special Hospital District Act through the sale of bonds or the levy of taxes, paid from any source on account of patients accommodated at the hospital, from any gift or bequest or from any federal, state or private grant;

C. enter into contracts, including contracts with the federal government and the departments and agencies thereof or the state government and the departments, institutions and agencies thereof, for the treatment of or the hospitalization of patients under the jurisdiction of such entities;

D. adopt and use a seal to authenticate its official transactions;

E. sue and be sued;

F. adopt rules and regulations for the governing of the special hospital district;

G. employ and fix the compensation of an executive director of the special hospital district and such other staff and clerical personnel it deems necessary;

H. employ a hospital administrator for hospital facilities under its control and approve or disapprove the recommendations of such administrator pertaining to compensation and employment benefits for hospital employees;

I. fix the mileage reimbursement rate for travel on official business in a privately owned vehicle by employees of hospital facilities under its control, provided that the rate shall not exceed the internal revenue service standard mileage rate for use of a vehicle for business;

J. exercise all powers necessary and requisite for the accomplishment of the purposes for which the special hospital district is created;

K. issue bonds in the manner provided by law for the issuance of special hospital district revenue bonds for the construction, purchase, renovation, remodeling, equipping or re-equipping of hospital facilities under its control and purchasing the necessary land therefor;

L. charge for hospital services rendered;

M. lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon such terms and conditions as the board of trustees may determine, provided that the lease may be terminated by the board of trustees without cause upon one hundred eighty days' notice after the first three years of the lease;

N. enter into an agreement with another county or counties, another county or counties and another political subdivision or any other person, corporation or association that provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary for the operation of hospitals owned or operated by the parties; and to designate one of the parties as the central purchasing office, as defined in the Procurement Code, for the others, to make purchases for the parties to the agreement as they shall deem necessary and to comply with the provisions of the Procurement Code;

O. expend public money to recruit health care personnel to serve the sick of the special hospital district; and

P. enter into an agreement with a state or federal agency, county, municipality, other political subdivision or person for the formation of a legal entity to jointly own or operate a common health care service, subject to the provisions of or exemptions from the Procurement Code."

SENATE BILL 541

LAWS 2005, CHAPTER 93

AN ACT

RELATING TO WAGES; PROVIDING FOR AUTOMATIC DIRECT DEPOSIT OF STATE EMPLOYEE SALARIES AND WAGES INTO EMPLOYEE ACCOUNTS AT FINANCIAL INSTITUTIONS; REQUIRING THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO PROMULGATE RULES REGARDING AUTOMATIC DIRECT DEPOSIT.

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

Chapter 93 Section 1 Laws 2005

Section 1. Section 10-7-2 NMSA 1978 (being Laws 1933, Chapter 157, Section 1, as amended) is amended to read:

"10-7-2. SALARIES AND WAGES--RULES--DIRECT DEPOSIT.--

A. Persons employed by and on behalf of the state, except those employed by institutions of higher education, including all officers, shall receive their salaries or wages for services rendered in accordance with rules issued by the department of finance and administration.

B. The department of finance and administration may require the automatic direct deposit of a state employee's salary or wages into the employee's account, or into an account established by the department on behalf of the employee, in a financial institution authorized by the United States or one of the several states to receive deposits in the United States. The department of finance and administration shall adopt rules governing the automatic direct deposit of salary or wages. Those rules shall provide the circumstances under which a state employee may, with the approval of the department of finance and administration, withdraw from or elect not to participate in automatic direct deposit."

Chapter 93 Section 2 Laws 2005

Section 2. Section 50-4-2 NMSA 1978 (being Laws 1937, Chapter 109, Section 2, as amended) is amended to read:

"50-4-2. SEMIMONTHLY AND MONTHLY PAY DAYS.--

A. An employer in this state shall designate regular pay days, not more than sixteen days apart, as days fixed for the payment of wages to all employees paid in this state. The employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the twenty-fifth day of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the tenth day of the succeeding month. Where computation of earnings and of amounts due, preparation of payrolls and issuance of paychecks are at a central location outside New Mexico, the employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the last of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the fifteenth day of the succeeding month.

B. Except as provided by rules of the department of finance and administration for payment of salaries and wages to state employees, other than employees of institutions of higher education, promulgated pursuant to Section 10-7-2 NMSA 1978, an employer shall pay wages in full, less lawful deductions and less payroll deductions authorized by the employer and employee. Wages shall be paid in lawful money of the United States or in checks, payroll vouchers or drafts on banks, convertible into cash on demand at full face value or, with the voluntary authorization of the employer, employee and financial institution, by deposit to the account of the employee in any bank, savings and loan association, credit union or other financial

institution authorized by the United States or one of the several states to receive deposits in the United States, without any reduction or deduction, except as may be specifically stated in a written contract of hiring entered into at the time of hiring. An employer shall provide an employee with a written receipt that identifies the employer and sets forth the employee's gross pay, the number of hours worked by the employee, the total wages and benefits earned by the employee and an itemized listing of all deductions withheld from the employee's gross pay. Nothing contained in Sections 50-4-1 through 50-4-12 NMSA 1978 shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals than those set forth in this section. Where the labor or service to be rendered to an employer is recompensed on a task, piece or commission basis or other method of calculating the amount of wages to be paid, other than a definite and fixed amount in cash, the employer and the employee may agree in writing at the time of hiring that the wages shall be paid on a monthly basis, on or before the tenth day of the succeeding calendar month.

C. Notwithstanding the provisions of Subsection A of this section, an employer may pay professional, administrative or executive employees or employees employed in the capacity of outside salesman, as those terms are defined under the federal Fair Labor Standards Act, one time per month, excluding those employees whose wages are subject to provisions of collective bargaining agreements."

SENATE BILL 639

LAWS 2005, CHAPTER 94

AN ACT

RELATING TO EMPLOYMENT; ESTABLISHING A PRESUMPTION OF EMPLOYER AND EMPLOYEE RELATIONSHIP IN THE CONSTRUCTION INDUSTRIES; SETTING STANDARDS TO INDICATE WHEN A WORKER IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE; REQUIRING THE LABOR DEPARTMENT TO ADMINISTER AND ENFORCE THE STANDARDS; IMPOSING CRIMINAL PENALTIES AND LICENSE SANCTIONS FOR IMPROPERLY REPORTING AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR; PROVIDING AN EXCEPTION.

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

Chapter 94 Section 1 Laws 2005

Section 1. EMPLOYER AND EMPLOYEE RELATIONSHIP--INDEPENDENT CONTRACTOR--IMPROPER REPORTING--PENALTY--LICENSE SANCTIONS.--

A. Except as provided in Subsection D of this section, for purposes of the employer and employee relationship within those construction industries subject to the

Construction Industries Licensing Act, a contractor who is an employer shall consider a person providing labor or services to the contractor for compensation to be an employee of the contractor and not an independent contractor unless the following standards indicative of an independent contractor are met:

(1) the person providing labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) the person providing labor or services is responsible for obtaining business registrations or licenses required by state law or local ordinance for the person to provide the labor or services;

(3) the person providing labor or services furnishes the tools or equipment necessary to provide the labor or services;

(4) the person providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) payment for labor or services is made upon completion of the performance of specific portions of a project or is made on the basis of a periodic retainer; and

(6) the person providing labor or services represents to the public that the labor or services are to be provided by an independently established business. A person is engaged in an independently established business when four or more of the following circumstances exist:

(a) labor or services are primarily performed at a location separate from the person's residence or in a specific portion of the residence that is set aside for performing labor or services;

(b) commercial advertising or business cards are purchased by the person, or the person is a member of a trade or professional association;

(c) telephone or email listings used for the labor or services are different from the person's personal listings;

(d) labor or services are performed only pursuant to a written contract;

(e) labor or services are performed for two or more persons within a period of one year; or

(f) the person assumes financial responsibility for errors and omissions in labor or services as evidenced by insurance, performance bonds and warranties relating to the labor or services being provided.

B. The labor department shall administer and enforce the provisions of Subsection A of this section, including coordination with the construction industries division of the regulation and licensing department.

C. A contractor who intentionally and willfully reports to a state agency or other client that an employee is an independent contractor or who, for the purposes of a program administered by a state agency, intentionally and willfully treats or otherwise lists an employee as an independent contractor when the employee's status does not meet the standards indicative of an independent contractor as identified in Subsection A of this section is guilty of a misdemeanor and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term not to exceed six months or both. For the purposes of this subsection, "state agency" means an administration, board, commission, department or division of this state.

D. Conviction of a contractor for violating Subsection C of this section shall be grounds for the construction industries commission to take action to suspend, revoke or refuse to renew a license issued to that contractor by the construction industries division of the regulation and licensing department.

E. Subsections A, B and C of this section shall not be construed to affect or apply to a common law or statutory action providing for recovery in torts and shall not be construed to affect or change the common law interpretation of independent contractor status as it relates to tort liability.

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 657, AS AMENDED

LAWS 2005, CHAPTER 95

AN ACT

RELATING TO PUBLIC WORKS; AMENDING THE PUBLIC WORKS APPRENTICE AND TRAINING ACT TO ALLOW EXPENDITURE OF FUNDS FOR APPROVED APPRENTICE AND TRAINING PROGRAMS NOTWITHSTANDING CERTAIN LIMITING LANGUAGE OF THE GENERAL APPROPRIATION ACT; MAKING AN APPROPRIATION.

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

Chapter 95 Section 1 Laws 2005

Section 1. Section 13-4D-5 NMSA 1978 (being Laws 1992, Chapter 74, Section 5) is amended to read:

"13-4D-5. FUND CREATED--DISBURSEMENT OF FUNDS.--There is created the "public works apprentice and training fund" in the labor and industrial division of the labor department. Contributions into the fund shall be as provided under the provisions of Section 13-4D-4 NMSA 1978. Funds contributed under the provisions of the Public Works Apprentice and Training Act shall be distributed in the following manner:

A. no more than fifteen percent of the funds may be used by the public works bureau of the labor and industrial division of the labor department to hire staff to administer the funds collected by the division; and

B. the remainder of the funds shall be used for approved apprentice and training programs in New Mexico. The labor and industrial division of the labor department shall develop an annual budget and, subject to appropriation by the legislature in the general appropriation act, shall disburse funds to approved apprentice and training programs in New Mexico, taking into account participant contact hours of classroom instruction and on-the-job training for the preceding year, to be not less than ninety percent of one hundred forty-four contact hours of classroom instruction per participant per school year and not less than one thousand hours of on-the-job training per twelve-month period. Notwithstanding any language in the general appropriation act that otherwise limits budget adjustments, if the fund balance available for disbursement to approved programs exceeds the amount appropriated, pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the labor department may request budget increases up to the excess fund balance for distribution to the programs."

Chapter 95 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION--PUBLIC WORKS APPRENTICE AND TRAINING FUND--2004 APPROPRIATION.--Money appropriated in the General Appropriation Act of 2004 from the public works apprentice and training fund for apprentice and training programs but not disbursed and expended because of budget adjustment limitations contained in that act shall be disbursed and expended in fiscal years 2005 and 2006 notwithstanding those limitations.

SENATE BILL 663

LAWS 2005, CHAPTER 96

AN ACT

RELATING TO PUBLIC PROPERTY; AUTHORIZING BOARDS OF COUNTY COMMISSIONERS TO LEASE PROPERTY IN CERTAIN CIRCUMSTANCES.

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

Chapter 96 Section 1 Laws 2005

Section 1. LEGISLATIVE FINDINGS--COMMUNITY VALUE.--The legislature finds that without the daily contributions and efforts of the thousands of worthwhile nonprofit organizations dedicated to serving sick and indigent persons in communities throughout New Mexico, the state would be inundated with constant requests for health, human and social services that it does not have revenue or resources to provide. The legislature finds that it is in the best interests of that population, as well as for all residents and taxpayers, that consideration be extended as real value recognition of the indispensable part these services contribute to the fabric of life in New Mexico.

Chapter 96 Section 2 Laws 2005

Section 2. Section 4-38-13.1 NMSA 1978 (being Laws 1984, Chapter 43, Section 1) is amended to read:

"4-38-13.1. COUNTY EQUIPMENT AND PROPERTY--PERMITTED USES.--

A. Notwithstanding any other provision of law, the board of county commissioners of any county except a class A county may contract for the use of county equipment or property for the benefit of community ditch associations, mutual domestic water associations or other public entities providing services to significant groups of county residents, which services could legally be provided by a governmental entity. In granting this permission, the board shall specifically describe the equipment or property to be used and the entity on whose behalf it will be used.

B. A board of county commissioners may contract for the use of county buildings for the benefit of nonprofit organizations demonstrating a consistent history of service to sick and indigent persons in the county, which service could legally be expected to be provided by a governmental entity, at rates these organizations can be reasonably expected to pay while maintaining their full service commitment to their respective constituencies. Such contracts must set forth the respective value of services being provided to county residents and the relative value of the use of property provided by the county."

SENATE BILL 740

LAWS 2005, CHAPTER 97

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING ADDITIONAL PROGRAM UNITS FOR CHARTER SCHOOL STUDENTS TO PARTICIPATE IN EXTRACURRICULAR ACTIVITIES.

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

Chapter 97 Section 1 Laws 2005

Section 1. A new section of the 1999 Charter Schools Act is enacted to read:

"CHARTER SCHOOL STUDENT PARTICIPATION IN PUBLIC SCHOOL EXTRACURRICULAR ACTIVITIES.--

A. The New Mexico activities association and the local school board in the school district in which a charter school is located shall allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by the New Mexico activities association if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities sanctioned by the New Mexico activities association or any other association.

B. A charter school student otherwise eligible to participate in an extracurricular activity shall participate in the public school in the attendance zone in which the student lives, provided, however, that the student may choose only one public school in which to participate."

SENATE BILL 789, AS AMENDED

LAWS 2005, CHAPTER 98

AN ACT

RELATING TO PUBLIC WORKS; CLARIFYING LANGUAGE REQUIRING CONTRACTORS TO BE REGISTERED; CLARIFYING APPLICABILITY TO USING AGENCIES; SPECIFYING THAT BIDS SUBMITTED BY UNREGISTERED CONTRACTORS OR PRIME CONTRACTORS SHALL NOT BE CONSIDERED FOR AWARD; SPECIFYING THAT BIDS SUBMITTED WITH UNREGISTERED SUBCONTRACTORS SHALL BE CONSIDERED FOLLOWING SUBSTITUTION; SPECIFYING ADDITIONAL REASONS FOR SUBSTITUTION OF NAMED SUBCONTRACTORS.

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

Chapter 98 Section 1 Laws 2005

Section 1. Section 13-1-105 NMSA 1978 (being Laws 1984, Chapter 65, Section 78, as amended) is amended to read:

"13-1-105. COMPETITIVE SEALED BIDS--RECEIPT AND ACCEPTANCE OF BIDS.--

A. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code. In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.

B. If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds."

Chapter 98 Section 2 Laws 2005

Section 2. Section 13-4-13.1 NMSA 1978 (being Laws 2004, Chapter 89, Section 1) is amended to read:

"13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF CONTRACTORS AND SUBCONTRACTORS.--

A. Except as otherwise provided in this subsection, in order to submit a bid valued at more than fifty thousand dollars (\$50,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than fifty thousand dollars (\$50,000) for a public works project that is subject to the Public Works Minimum Wage Act, the contractor, serving as a prime contractor or not, shall be registered with the labor and industrial division of the labor department. Bidding

documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection. The provisions of this section do not apply to vocational classes in public schools or public post-secondary educational institutions.

B. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

C. Contractors and subcontractors may register with the division on a form provided by the division and in accordance with labor department rules. The division shall charge an annual registration fee of two hundred dollars (\$200). The division shall issue to the applicant a certificate of registration within fifteen days after receiving from the applicant the completed registration form and the registration fee.

D. Registration fees collected by the division shall be deposited in the labor enforcement fund."

Chapter 98 Section 3 Laws 2005

Section 3. Section 13-4-36 NMSA 1978 (being Laws 1988, Chapter 18, Section 6, as amended) is amended to read:

"13-4-36. SUBSTITUTION OF SUBCONTRACTOR.--

A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor in the following circumstances:

(1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;

(2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;

(3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;

(4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;

(5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;

(6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low;

(7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete;

(8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor;

(9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the construction industries division of the regulation and licensing department; or

(10) when it is determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the using agency shall give at least five working days notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:

(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or

(2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list."

SENATE BILL 806

LAWS 2005, CHAPTER 99

AN ACT

RELATING TO PUBLIC PURCHASES; ENACTING A NEW SECTION OF THE PROCUREMENT CODE TO PROVIDE FOR BONDING OF SUBCONTRACTORS.

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

Chapter 99 Section 1 Laws 2005

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

"BONDING OF SUBCONTRACTORS.--A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is fifty thousand dollars (\$50,000) or more."

SENATE BILL 814

LAWS 2005, CHAPTER 100

AN ACT

RELATING TO REIMBURSEMENT FOR PER DIEM AND MILEAGE EXPENSES; PROVIDING FOR THE REIMBURSEMENT OF LEGISLATORS FOR TRAVEL WITHIN THE STATE ONE HUNDRED MILES OR MORE FROM THEIR HOMES FOR OFFICIAL INTERIM COMMITTEE BUSINESS.

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

Chapter 100 Section 1 Laws 2005

Section 1. Section 2-1-9 NMSA 1978 (being Laws 1971, Chapter 1, Section 11, as amended) is amended to read:

"2-1-9. OUT-OF-STATE TRAVEL--IN-STATE TRAVEL.--

A. Out-of-state travel of members, officers and employees of the legislative branch of government shall be exempt from approval by any member of the executive branch.

B. Members of the legislature serving on official business for interim committees within the state shall receive:

(1) per diem at the internal revenue service per diem rate as provided in Section 2-1-8 NMSA 1978 for each day served, including travel time, and the cost of public transportation by the shortest, most direct route or mileage for each mile traveled by the shortest, most direct route by automobiles at the internal revenue service standard mileage rate or by privately owned aircraft at the air mileage rate set out by the rules adopted by the department of finance and administration pursuant to the Per Diem and Mileage Act; and

(2) per diem for one additional day at the internal revenue service per diem rate as provided in Section 2-1-8 NMSA 1978 if, in order to serve on official business for an interim committee, a legislator travels to a location that is one hundred or more miles from the location of the legislator's point of departure; provided that, pursuant to policies adopted by the New Mexico legislative council, per diem under this paragraph shall be paid only if the legislator is not entitled to per diem for travel time as provided in Paragraph (1) of this subsection.

C. Reimbursement for out-of-state travel on committee business shall be as follows:

(1) the cost of the tickets on public transportation by the shortest, most direct route and the cost of airport parking; or

(2) mileage at the same rates established for in-state travel if automobiles or private airplanes are used, based on official mileage by the shortest, most direct route; and

(3) per diem for the number of days spent in travel and on committee business at the in-state rate provided for in Section 2-1-8 NMSA 1978; and

(4) in no event, however, shall the reimbursement for out-of-state travel exceed the dollar amount that would be due if the member had used first class public air transportation by the shortest, most direct route."

SENATE BILL 839, AS AMENDED

LAWS 2005, CHAPTER 101

AN ACT

RELATING TO STATE FUNDS; PERMITTING THE STATE INVESTMENT OFFICER TO LOAN TO FILM PRODUCTION COMPANIES A PORTION OF EXPECTED FILM PRODUCTION TAX CREDITS; ELIMINATING STATE INVESTMENT OFFICER AUTHORITY TO PURCHASE FILM PRODUCTION TAX CREDITS; PROVIDING FOR INTERCEPTION OF TAX REFUNDS TO AID IN REPAYMENT TO THE STATE INVESTMENT OFFICER OF CERTAIN LOANS TO FILM PRODUCTION COMPANIES.

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

Chapter 101 Section 1 Laws 2005

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; and

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to a loan made against the credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors."

Chapter 101 Section 2 Laws 2005

Section 2. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than two and one-half percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project under this section.

B. If an investment is made under this section, not more than seven million five hundred thousand dollars (\$7,500,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico film private equity fund or any one New Mexico film project.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private equity investment advisory committee and the New Mexico film division of the economic development department. The state investment officer may make debt or equity investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in

New Mexico, a majority of the production crew will be

New Mexico residents;

(4) have posted a completion bond that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the state investment council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

D. The state investment officer may loan at a market rate of interest, with respect to an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978; provided that the film production company agrees to name the state investment officer as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled if the company does not apply for the film production tax credit. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The state investment council shall establish guidelines for the state investment officer's initiation of a loan and the terms of the loan.

E. As used in this section:

(1) "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

(2) "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."

HOUSE BILL 122, AS AMENDED

LAWS 2005, CHAPTER 102

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FUNDING FOR DEVELOPMENT TRAINING PROGRAMS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 102 Section 1 Laws 2005

Section 1. Section 21-19-7 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, as amended by Laws 2003, Chapter 352, Section 1 and by Laws 2003, Chapter 353, Section 1 and also by Laws 2003, Chapter 360, Section 3) is amended to read:

"21-19-7. DEVELOPMENT TRAINING.--

A. The economic development department shall establish a development training program that provides

quick-response classroom training, in-plant training and skill-enhancement training to furnish qualified manpower resources for new or expanding industries, nonretail service sector businesses and film and multimedia production companies in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom designed for, and based on the special requirements of, each

company or preemployment training program for the film and multimedia industry. The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" composed of:

(1) the director of the economic development division of the economic development department;

(2) the director of the vocational education division of the public education department;

(3) the director of the governor's office of workforce training and development;

(4) the executive director of the commission on higher education;

(5) an employee of the department of labor;

(6) one member from organized labor appointed by the governor;
and

(7) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits preserving the ecological state of New Mexico and its people.

D. Subject to the approval of the industrial training board, the economic development division of the economic development department shall:

(1) administer all funds allocated or appropriated for industrial development training purposes;

(2) provide designated training services;

(3) regulate, control and abandon any training program established under the provisions of this section;

(4) assist companies requesting training in the development of a training proposal to meet the companies' manpower needs;

(5) contract for the implementation of all training programs;

(6) provide for training by educational institutions or by a company through in-plant training, at that company's request; and

(7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The vocational education division of the public education department shall provide technical assistance to the economic development department concerning the development of agreements, the determination of the most appropriate instructional training to be provided and the review of training program implementation.

F. Except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies and preemployment training programs for that industry, the state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

(1) payment shall not be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) training applicants shall have resided within the state for a minimum of one year at any time prior to the commencement of the training program and be of legal status for employment;

(3) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;

(4) payment shall not be made pursuant to any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(5) all applicants shall be eligible under the federal Fair Labor Standards Act of 1938, as amended, and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs;

(8) payment shall not be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a majority of those involved in the training program or production are of Indian descent; and

(9) if a company hires twenty or more trainees, payment shall not be made for training in a municipality having a population of more than forty thousand according to the most recent decennial census or a class A county unless the company:

(a) offers its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code; and

(b) contributes not less than fifty percent of the premium for the health insurance for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered."

Chapter 102 Section 2 Laws 2005

Section 2. Section 21-19-7.1 NMSA 1978 (being Laws 2003, Chapter 353, Section 2) is amended to read:

"21-19-7.1. DEVELOPMENT TRAINING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES.--

A. After consulting with the New Mexico film division of the economic development department, the industrial training board shall promulgate rules for development funding for film and multimedia production companies. The rules shall provide:

(1) for preapproval by the New Mexico film division of personnel who:

(a) are New Mexico residents;

(b) have participated in on-the-job training or attended a training course sponsored in part by an accredited educational institution in New Mexico or by the New Mexico film division; and

(c) have been certified as film and multimedia trainees by the New Mexico film division;

(2) for submission to the New Mexico film division of the economic development department by a film or multimedia production company, after completing production in New Mexico, of employment, salary and related information concerning those personnel who have been:

(a) approved by the New Mexico film division pursuant to Subsection A of this section; and

(b) employed by the production company in a film or multimedia production in New Mexico;

(3) after approval by the New Mexico film division, for reimbursement from the development training fund to the production company of fifty percent of the salaries paid to the personnel for whom information is submitted pursuant to Paragraph (2) of this subsection; and

(4) that the reimbursement shall be made by the New Mexico film division without further action or approval of the industrial training board.

B. The New Mexico film division of the economic development department shall establish a film and multimedia preemployment training program to furnish qualified manpower resources for the film and multimedia industry. The New Mexico film division shall adopt rules implementing the preemployment training program."

Chapter 102 Section 3 Laws 2005

Section 3. A new section of Chapter 21, Article 19 NMSA 1978 is enacted to read:

"DISTRIBUTIONS OF DEVELOPMENT TRAINING FUNDS.--

A. Of appropriations made in any fiscal year for development training, up to two-thirds shall be expended in urban communities in the state. At least one-third of the appropriations made in any fiscal year for development training shall be expended in nonurban communities.

B. Of money available in the development training fund, the economic development department may use in any fiscal year:

(1) up to fifty thousand dollars (\$50,000) to generally administer the development training program; and

(2) in addition to the general administration funding allowed in Paragraph (1) of this subsection, up to fifty thousand dollars (\$50,000) to administer the provisions of Section 21-19-7.1 NMSA 1978.

C. Up to two million dollars (\$2,000,000) of development training funds may be used to reimburse film and multimedia production companies and to provide preemployment training for that industry pursuant to the provisions of Section 21-19-7.1 NMSA 1978.

D. As used in this section:

(1) "nonurban community" means a municipality that is not an urban community or is the unincorporated area of a county; and

(2) "urban community" means a municipality with a population of forty thousand or more according to the most recent federal decennial census."

Chapter 102 Section 4 Laws 2005

Section 4. CONTINGENCY.--The provisions of this act become effective upon enactment into law of an appropriation for development training in the General Appropriation Act of 2005.

Chapter 102 Section 5 Laws 2005

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 517, WITH EMERGENCY CLAUSE

APPROVED APRIL 4, 2005

LAWS 2005, CHAPTER 103

AN ACT

RELATING TO FINANCE; AMENDING THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT TO AUTHORIZE THE NEW MEXICO FINANCE AUTHORITY TO MAKE, PARTICIPATE IN AND GUARANTEE LOANS FOR ECONOMIC DEVELOPMENT PROJECTS; AUTHORIZING ECONOMIC DEVELOPMENT REVOLVING FUND BONDS; CHANGING THE NAME OF A FUND; PROVIDING FOR CONFIDENTIALITY OF CERTAIN PROPRIETARY INFORMATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 103 Section 1 Laws 2005

Section 1. Section 6-25-1 NMSA 1978 (being Laws 2003, Chapter 349, Section 1) is amended to read:

"6-25-1. SHORT TITLE.--Chapter 6, Article 25 NMSA 1978 may be cited as the "Statewide Economic Development Finance Act"."

Chapter 103 Section 2 Laws 2005

Section 2. Section 6-25-2 NMSA 1978 (being Laws 2003, Chapter 349, Section 2) is amended to read:

"6-25-2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) it is important for government to promote, support and assist in developing a thriving economic base within the state; increase opportunities for gainful employment and improved living conditions; assist in promoting a balanced and productive economy; encourage the flow of private capital for investment in productive enterprises; and otherwise improve the prosperity, health and general welfare of the people of the state;

(2) in order to attract and encourage established businesses to locate in New Mexico, to retain and expand existing New Mexico businesses and to provide an environment that supports new and emerging businesses within the state, New Mexico communities must be able to provide basic infrastructure and educational, cultural and recreational facilities that require substantial financial resources beyond those of many New Mexico communities;

(3) other states have agencies dedicated to providing financing for economic development projects, which agencies work directly with the state, municipalities, counties and regional economic development agencies to provide the necessary financing related to retaining and attracting businesses and to provide financing to qualified nonprofit corporations that provide community housing, education, health care and cultural facilities;

(4) it is necessary to provide coordinated planning and financing resources to address community and cultural infrastructure needs; and

(5) the combined expertise and resources of the economic development department and the New Mexico finance authority should be used:

(a) for the effective promotion of economic development within the state;

(b) to increase the gainful employment of the citizens and decrease the cost of social services and unemployment compensation;

(c) to increase the tax base of the state; and

(d) to improve the prosperity, health and welfare of the people of the state.

B. The purpose of the Statewide Economic Development Finance Act is to:

(1) stimulate economic development with needed programs in the public interest that serve necessary and valid public purposes; and

(2) provide one method of implementing the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico for state projects."

Chapter 103 Section 3 Laws 2005

Section 3. Section 6-25-3 NMSA 1978 (being Laws 2003, Chapter 349, Section 3) is amended to read:

"6-25-3. DEFINITIONS.--As used in the Statewide Economic Development Finance Act:

A. "authority" means the New Mexico finance authority;

B. "department" means the economic development department;

C. "economic development assistance provisions" means the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico;

D. "project revenue bonds" means bonds, notes or other instruments authorized in Section 6-25-7 NMSA 1978 and issued by the authority pursuant to the Statewide Economic Development Finance Act on behalf of eligible entities;

E. "economic development goal" means:

(1) assistance to rural and underserved areas designed to increase business activity;

(2) retention and expansion of existing business enterprises;

(3) attraction of new business enterprises; or

(4) creation and promotion of an environment suitable for the support of start-up and emerging business enterprises within the state;

F. "economic development revolving fund bonds" means bonds, notes or other instruments payable from the fund and issued by the authority pursuant to the Statewide Economic Development Finance Act;

G. "eligible entity" means a for-profit or not-for-profit business enterprise, including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in an enterprise that serves an economic development goal and is suitable for financing assistance;

H. "financing assistance" means project revenue bonds, loans, loan participations or loan guarantees provided by the authority to or for eligible entities pursuant to the Statewide Economic Development Finance Act;

I. "fund" means the economic development revolving fund;

J. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

K. "opt-in agreement" means an agreement entered into between the department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, school district and, if applicable, municipal approval of a project, subject to compliance with all local zoning, permitting and other land use rules, and for payments in lieu of taxes to the qualifying county, school district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

L. "payment in lieu of taxes" means the total annual payment, including any state in-lieu payment, paid as compensation for the tax impact of a project, in an amount negotiated and determined in the opt-in agreement between the department and the qualifying county, the school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and school district in the same proportion as property tax revenues are normally distributed to those recipients;

M. "standard project" means land, buildings, improvements, machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the anticipated quantifiable benefits of the standard project, for use by an eligible entity as:

(1) industrial or manufacturing facilities;

(2) commercial facilities, including facilities for wholesale sales and services;

(3) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities;

(4) educational facilities, including schools;

(5) arts, entertainment or cultural facilities, including museums, theaters, arenas or assembly halls; and

(6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities;

N. "project" means a standard project or a state project;

O. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

P. "quantifiable benefits" means a project's advancement of an economic development goal as measured by a variety of factors, including:

(1) the benefits an eligible entity contracts to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure; and

(2) other benefits such as the total number of direct and indirect jobs created by the project, total amount of annual salaries to be paid as a result of the project, total gross receipts and occupancy tax collections, total property tax collections, total state corporate and personal income tax collections and other fee and revenue collections resulting from the project;

Q. "school district" means a school district where a project is located that is exempt from property taxes pursuant to the Statewide Economic Development Finance Act;

R. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a school district and, if applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients;

S. "state project" means land, buildings or infrastructure for facilities to support new or expanding eligible entities for which financing assistance is provided pursuant to the economic development assistance provisions; and

T. "tax impact of a project" means the annual reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of a project to the department."

Chapter 103 Section 4 Laws 2005

Section 4. Section 6-25-4 NMSA 1978 (being Laws 2003, Chapter 349, Section 4) is amended to read:

"6-25-4. ECONOMIC DEVELOPMENT DEPARTMENT--ADDITIONAL POWERS.--Consistent with the provisions of the Statewide Economic Development Finance Act, the department may:

A. acquire, whether by construction, purchase, gift or lease, and hold fee simple title to or other interest in any project;

B. enter into a lease of property in connection with any project;

C. sell, lease or otherwise dispose of any project;

D. assign lease payments, rents and any other revenues derived from a project to the authority pursuant to leases, mortgages or indentures securing payment of the principal of, interest on and any other charges and expenses relating to project revenue bonds issued by the authority;

E. make state in-lieu payments to a qualifying county, a school district and, if applicable, a qualifying municipality to offset the tax impact of a project; and

F. coordinate with the authority:

(1) for the authority's provision of staffing support and assistance in carrying out the department's responsibilities under the Statewide Economic Development Finance Act; and

(2) to enter into memoranda of understanding or such other agreements as the department and authority determine to be appropriate for such purposes."

Chapter 103 Section 5 Laws 2005

Section 5. Section 6-25-5 NMSA 1978 (being Laws 2003, Chapter 349, Section 5) is amended to read:

"6-25-5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN AGREEMENTS.--

A. For the purpose of recommending projects to the authority for financing assistance, the department and the authority shall coordinate to:

(1) survey potential eligible entities and projects and provide outreach services to local governments and eligible entities, for the purpose of identifying and recommending projects to the authority for financing assistance;

(2) evaluate potential projects for suitability for financing assistance;

(3) formulate recommendations of projects that are suitable for financing assistance; and

(4) obtain input and information relevant to the establishment and implementation of criteria for evaluating potential projects.

B. The department, with such staffing and other assistance from the authority as the department may request, shall propose to enter into opt-in agreements with counties, school districts and municipalities for the purpose of facilitating local government approvals necessary to permit projects to proceed. Opt-in agreements shall provide:

(1) for project compliance with all applicable local land use regulations;

(2) for payments in lieu of taxes to qualifying counties, school districts and, if applicable, qualifying municipalities to mitigate the tax impact of a project;

(3) that financing assistance is conditioned upon compliance with:

(a) all applicable ordinances, regulations and codes of a local government concerning planning, zoning and development permitting; and

(b) such other requirements as the department and the county, school district and municipality may agree to include;

(4) that the payments in lieu of taxes shall be distributed in a manner and in amounts calculated in accordance with the provisions of Section 6-25-14 NMSA 1978; and

(5) that the county, school district or municipality reserves the right to withdraw from the agreement if it determines that the project subject to the agreement does not satisfy the requirements enumerated in the opt-in agreement.

C. The department shall adopt rules for the exercise of its powers and responsibilities pursuant to the Statewide Economic Development Finance Act."

Chapter 103 Section 6 Laws 2005

Section 6. Section 6-25-6 NMSA 1978 (being Laws 2003, Chapter 349, Section 6) is amended to read:

"6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

A. To implement a program to assist eligible entities in financing projects, the authority has the powers specified in this section.

B. Projects receiving financing assistance with money in the fund shall first be approved by law. To protect public money in the fund or other public resources, rules of the authority relating to state projects shall include provisions to ensure achievement of the economic development goals of the state project and shall describe the means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.

C. Standard projects shall be approved by the authority pursuant to rules approved by the New Mexico finance authority oversight committee.

D. The authority may:

(1) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) make loans from the fund for projects to eligible entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

(3) enter into loan participation agreements from the fund for projects, whether in the form of an interest rate buy-down, the purchase of loans or portions of loans originated and underwritten by third-party lenders or other similar arrangements;

(4) provide loan guarantees from the fund for projects;

(5) make, execute and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to project revenue bonds, economic development revolving fund bonds, loans, loan participations or loan guarantees and the Statewide Economic Development Finance Act and pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) purchase and hold loans and loan participations in the fund at prices and in a manner determined by the authority;

(7) sell loans and loan participations acquired or held by the authority in the fund at prices and in a manner determined by the authority;

(8) prescribe the form of application or procedure required of an eligible entity to apply for financing assistance;

(9) fix the terms and conditions of the financing assistance, including the priority of lien and type of collateral or other security, and enter into agreements with eligible entities with respect to financing assistance;

(10) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase, participation in or guarantee of loans; and the review of proposed financing assistance to an eligible entity, whether or not the financing assistance is provided;

(11) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(12) to the extent allowed under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installments of principal or interest, security or any other term of financing assistance;

(13) consider the ability of the eligible entity to secure financing for a project from other sources and the costs of that financing;

(14) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and sell, mortgage, convey, lease or assign that property for authority purposes; and

(15) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under law.

E. The authority shall adopt rules subject to approval of the New Mexico finance authority oversight committee to:

(1) establish procedures for applying for financing assistance;

(2) establish credit qualifications for eligible entities and establish terms and conditions for financing assistance;

(3) establish economic development goals for projects in consultation with the department;

(4) establish methods for determining quantifiable benefits;

(5) provide safeguards to protect public money and other public resources provided for a state project;

(6) establish procedures by which the authority requests approval by law for projects receiving financing assistance with money in the fund; and

(7) establish fees to pay the costs of evaluating, originating and administering financing assistance.

F. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act."

Chapter 103 Section 7 Laws 2005

Section 7. Section 6-25-7 NMSA 1978 (being Laws 2003, Chapter 349, Section 7) is amended to read:

"6-25-7. PROJECT REVENUE BONDS.--

A. The authority may issue project revenue bonds on behalf of an eligible entity to provide funds for a project. Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall not be a general obligation of the authority or the state within the meaning of any provision of the constitution of New Mexico and shall never give rise to a pecuniary liability of the authority or the state or a charge against the general credit or taxing powers of the state. Project revenue bonds shall be payable from the revenue derived from a project being financed by the bonds and from other revenues pledged by an eligible entity, and may be secured in such manner as provided in the Statewide Economic Development Finance Act and as determined by the authority. Project revenue bonds may be executed and delivered at any time, may be in such form and denominations, may be payable in installments and at times not exceeding thirty years from their date of delivery, may bear or accrete interest at a rate or rates and may contain such provisions not inconsistent with the Statewide Economic Development Finance Act, all as provided in the resolution and proceedings of the authority authorizing issuance of the bonds. Project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act may be sold at public or private sale in such manner and from time to time as may be determined by the authority, and the authority may pay all expenses that the authority may determine necessary in connection with the authorization, sale and issuance of the bonds. All project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be negotiable.

B. The principal of and interest on project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be secured by a pledge of the revenues of the project being financed with the proceeds of the bonds, may be secured by a mortgage of all or a part of the project being financed or other collateral pledged by an eligible entity, and may be secured by the lease of such project, which collateral and lease may be assigned, in whole or in part, by the department to the authority or to third parties to carry out the purposes of the Statewide Economic Development Finance Act. The resolution of the authority pursuant to which the project revenue bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds,

including provisions respecting the fixing and collection of all revenues from any project to which the resolution or mortgage pertains, the terms to be incorporated in the lease of the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues of the project and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as determined by the authority or the department and as shall not be in conflict with the Statewide Economic Development Finance Act; provided, however, that in making any such agreements or provisions, the authority and the department may not obligate themselves except with respect to the project and application of the revenues from the project, and except as expressly permitted by the Statewide Economic Development Finance Act, and shall not have the power to incur a pecuniary liability or a charge, or to pledge the general credit or taxing power of the state. The resolution authorizing the issuance of project revenue bonds may provide procedures and remedies in the event of default in payment of the principal of or interest on the bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon the authority, the department or the state or any charge against the general credit or taxing powers of the state.

C. The authority may arrange for such other guarantees, insurance or other credit enhancements or additional security provided by an eligible entity as determined by the authority for the project revenue bonds and may provide for the payment of the costs from the proceeds of the bonds, or may require payment of the costs by the eligible entity on whose behalf the bonds are issued.

D. Project revenue bonds issued to finance a project may also be secured by pledging a portion of the qualifying municipal or county infrastructure gross receipts tax revenues by the municipality or county in which the project is located, as permitted by the Local Economic Development Act.

E. The project revenue bonds and the income from the bonds, all mortgages or other instruments executed as security for the bonds, all lease agreements made pursuant to the provisions of the Statewide Economic Development Finance Act and revenue derived from any sale or lease of a project shall be exempt from all taxation by the state or any political subdivision of the state. The authority may issue project revenue bonds the interest on which is exempt from taxation under federal law.

F. In any calendar year, no more than fifteen percent of the state ceiling allocated pursuant to the Private Activity Bond Act may be used for projects financed pursuant to the Statewide Economic Development Finance Act."

Chapter 103 Section 8 Laws 2005

Section 8. Section 6-25-8 NMSA 1978 (being Laws 2003, Chapter 349, Section 8) is amended to read:

"6-25-8. LEASES OF PROJECTS.--

A. Prior to the department's lease of any project to an eligible entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of and interest on project revenue bonds to be issued to finance the project;

(2) the amount necessary to be paid each year into any reserve funds the authority establishes in connection with the retirement of the proposed project revenue bonds and the maintenance and repair of the project; and

(3) unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect to the project, the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. The determinations required by Subsection A of this section shall be set forth in the resolution under which the proposed project revenue bonds are to be issued; and prior to the issuance of the bonds, the department shall lease or sell the project to a lessee or purchaser pursuant to an agreement conditioned upon completion of the project and providing for payment to the department and assigned to the authority or a trustee, of such rentals or payments as will be sufficient to:

(1) pay the principal of and interest on the bonds issued to finance the project;

(2) build up and maintain any reserve established by the authority for the bonds; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease obligates the lessee to pay for the maintenance and insurance of the project."

Chapter 103 Section 9 Laws 2005

Section 9. Section 6-25-9 NMSA 1978 (being Laws 2003, Chapter 349, Section 9) is amended to read:

"6-25-9. PROJECT REVENUE REFUNDING BONDS.--

A. Outstanding project revenue bonds may be refunded by the authority by issuing its refunding bonds in such amounts as the authority may determine to refund all or a portion of the principal of the project revenue bonds, all interest on the bonds to the normal maturity date of such bonds or to selected prior redemption dates, any redemption premiums, any commission and all estimated costs incidental to the

issuance of such bonds and to such refunding. The principal amount of project revenue refunding bonds may be equal to, less than or greater than the principal amount of the project revenue bonds to be refunded. Any such refunding may be effected whether the bonds to be refunded have matured or will thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded; provided that the holders of any project revenue bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Project revenue refunding bonds shall be payable from the revenues out of which other project revenue bonds are payable or from the amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts, or from any combination of the foregoing sources, and may be secured in the manner that other project revenue bonds issued pursuant to the Statewide Economic Development Finance Act may be secured.

B. Proceeds of project revenue refunding bonds shall either be applied immediately to the retirement of the project revenue bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers. Notwithstanding any other provision of law, the escrowed proceeds may be invested in short-term or long-term securities. Except to the extent inconsistent with the express terms of the Statewide Economic Development Finance Act, the resolution of the authority pursuant to which the project revenue bonds to be refunded were issued, including any mortgage or trust indenture securing the bonds, shall govern the establishment of any escrow in connection with the refunding bonds and the investment or reinvestment of any escrowed proceeds."

Chapter 103 Section 10 Laws 2005

Section 10. Section 6-25-10 NMSA 1978 (being Laws 2003, Chapter 349, Section 10) is amended to read:

"6-25-10. USE OF PROJECT REVENUE BOND PROCEEDS.--The proceeds from the sale of project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be applied only for the purpose for which the bonds were issued and costs related to the project. The cost of any project shall include the following:

A. all expenses in connection with the authorization, sale and issuance of the bonds; and

B. capitalized interest on the bonds for a reasonable time."

Chapter 103 Section 11 Laws 2005

Section 11. Section 6-25-11 NMSA 1978 (being Laws 2003, Chapter 349, Section 11) is amended to read:

"6-25-11. PROJECT REVENUE BONDS LEGAL INVESTMENTS.-- Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries, including the state investment council, may properly and legally invest funds."

Chapter 103 Section 12 Laws 2005

Section 12. Section 6-25-13 NMSA 1978 (being Laws 2003, Chapter 349, Section 13) is amended to read:

"6-25-13. ECONOMIC DEVELOPMENT REVOLVING FUND.--

A. The "economic development revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures for administering the fund in accordance with the Statewide Economic Development Finance Act.

B. Except as otherwise provided in the Statewide Economic Development Finance Act, money from payments of principal of, interest on and other fees or charges paid to the authority in connection with economic development revolving fund bonds, loans, project revenue bonds purchased with money on deposit in the fund, loan participations and loan guarantees shall be deposited in the fund.

C. Money in the economic development revolving fund is appropriated to the authority to:

(1) pay the reasonably necessary administrative and other costs incurred by the authority in evaluating, processing, originating and servicing economic development revolving fund bonds, loans, project revenue bonds, loan participations and loan guarantees;

(2) purchase loan participations for projects;

(3) make loans for projects;

(4) make loan guarantees for projects; and

(5) purchase project revenue bonds.

D. Money in the economic development revolving fund that is not needed for immediate disbursement, including money held in reserve, may be deposited or invested in the same manner as other funds administered by the authority.

E. Money on deposit in the economic development revolving fund may be designated as a reserve for economic development revolving fund bonds issued and for financing assistance provided from the fund by the authority pursuant to the Statewide Economic Development Finance Act and the authority may covenant in any resolution or trust indenture to maintain and replenish the reserve from money deposited in the fund.

F. Money in the economic development revolving fund may be used to purchase project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds shall not result in cancellation or merger of the bonds, notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the fund held by the authority is entitled to receive the required debt service payments."

Chapter 103 Section 13 Laws 2005

Section 13. Section 6-25-14 NMSA 1978 (being Laws 2003, Chapter 349, Section 14) is amended to read:

"6-25-14. TAX IMPACT FUND.--

A. The "tax impact fund" is created within the state treasury. The tax impact fund shall consist of money appropriated to the fund and money distributed to the fund by law. Money remaining in the tax impact fund at the end of each fiscal year shall not revert, but shall remain in the fund for the purposes set forth in the Statewide Economic Development Finance Act. For the purpose of mitigating the tax impact of a project, money in the tax impact fund shall be disbursed by warrant of the secretary of finance and administration, upon vouchers submitted by the department, to qualifying counties, school districts and, if applicable, qualifying municipalities as state in-lieu payments in the same proportion as property taxes are distributed.

B. The amount of state in-lieu payments shall be determined by the department, as specified in the opt-in agreement, and shall be subject to the availability of money in the tax impact fund in each fiscal year during the term of the opt-in agreement.

C. In each fiscal year during the term of an opt-in agreement, a county, school district and, if applicable, a municipality shall qualify to receive state in-lieu payments in connection with project when the following conditions are satisfied:

(1) title to the project has been transferred to the department in connection with financing assistance provided pursuant to the Statewide Economic Development Finance Act, resulting in an exemption from property taxes that the qualifying county, school district and, if applicable, qualifying municipality would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county, school district and, if applicable, qualifying municipality have certified to the department in advance that they support the project, subject to the project's compliance with the planning, zoning, subdivision, building code and other applicable laws and regulations governing land use;

(3) pursuant to an opt-in agreement, the county, the school district and, if applicable, the municipality and the department have agreed on the amount of the annual payment in lieu of taxes; and

(4) the department has determined that there is sufficient money on deposit in the tax impact fund in the current fiscal year to make distributions of state in-lieu payments for the project.

D. The department shall establish by rule procedures for certification by local governments concerning project support, notification of local school boards concerning financing and qualification for state in-lieu payments.

E. The amount of state in-lieu payments that a qualifying county, school district and, if applicable, qualifying municipality are entitled to receive shall be determined by the department based upon:

(1) the annual reduction in property tax revenue received by the qualifying county, school district and, if applicable, qualifying municipality that results from the transfer of title to the project to the department;

(2) the increase in local revenues that the qualifying county, school district and, if applicable, qualifying municipality are anticipated to receive as a result of the project;

(3) an allocation of the annual revenue deposited to the tax impact fund among the qualifying municipalities, counties and school districts that have qualified to receive state in-lieu payments; and

(4) such adjustments as the department may determine by rule are appropriate and necessary to carry out the purposes of the Statewide Economic Development Finance Act, including, without limitation, adjustments that are necessary or desirable to:

(a) overcome particular barriers to economic expansion in specific locales;

(b) mitigate the tax impact of a project that will not be offset by increased local gross receipts revenue production directly or indirectly resulting from the project; or

(c) encourage job growth in an area in which unemployment is a particular problem."

Chapter 103 Section 14 Laws 2005

Section 14. A new section of the Statewide Economic Development Finance Act is enacted to read:

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS OF THE AUTHORITY--USE--SECURITY.--

A. The authority may issue and sell economic development revolving fund bonds in principal amounts it determines necessary to provide sufficient money for any purpose of the Statewide Economic Development Finance Act, including:

(1) making loans;

(2) entering into loan participations;

(3) providing loan guarantees;

(4) purchasing project revenue bonds;

(5) paying, funding or refunding of the principal of or interest or redemption premiums on economic development revolving fund bonds issued by the authority, whether the economic development revolving fund bonds or interest to be paid, funded or refunded have or have not become due;

(6) establishing or increasing reserves or sinking funds to secure or to pay principal, premium, if any, or interest on economic development revolving fund bonds; and

(7) paying all other costs or expenses of the authority incident to and necessary or convenient to carry out its duties pursuant to the Statewide Economic Development Finance Act.

B. All economic development revolving fund bonds issued by the authority shall be payable solely from the fund and the revenues, income and fees deposited in the fund, and the economic development revolving fund bonds 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."

Chapter 103 Section 15 Laws 2005

Section 15. A new section of the Statewide Economic Development Finance Act is enacted to read:

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS--AUTHORIZATION FOR ISSUANCE--TERMS AND CONDITIONS.--

A. Economic development revolving fund bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The economic development revolving fund bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear or accrete interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the economic development revolving fund bonds provides. The economic development revolving fund bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

B. The economic development revolving fund bonds issued by the authority may be sold at any time at private or public sale at prices agreed upon by the authority.

C. Economic development revolving fund bonds may be issued pursuant to the Statewide Economic Development Finance Act without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in that act.

D. The economic development revolving fund bonds issued by the authority are negotiable instruments for all purposes of the Uniform Commercial Code.

E. Any resolution for the issuance of economic development revolving fund bonds shall provide that each economic development revolving fund bond authorized shall recite that it is issued by the authority. The recital shall clearly state that the economic development revolving fund bonds are in full compliance with all of the provisions of the Statewide Economic Development Finance Act."

Chapter 103 Section 16 Laws 2005

Section 16. A new section of the Statewide Economic Development Finance Act is enacted to read:

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS SECURED BY TRUST INDENTURE.--Economic development revolving fund bonds may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture shall contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the money. The authority shall provide by the trust indenture for the payment of the proceeds of the economic development revolving fund bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with such safeguards as the authority determines are necessary."

Chapter 103 Section 17 Laws 2005

Section 17. A new section of the Statewide Economic Development Finance Act is enacted to read:

"PUBLICATION OF NOTICE--VALIDATION--LIMITATION OF ACTION.--

A. After adoption of a resolution authorizing issuance of economic development revolving fund bonds or project revenue bonds in accordance with the Statewide Economic Development Finance Act, the authority shall publish notice of the adoption of the resolution once in a newspaper of general statewide circulation.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred."

Chapter 103 Section 18 Laws 2005

Section 18. A new section of the Statewide Economic Development Finance Act is enacted to read:

"REFUNDING BONDS.--The authority is authorized to issue economic development revolving fund bonds for the purpose of refunding any economic development revolving fund bonds then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding economic development revolving fund bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding economic development revolving fund bonds are applied to the purchase, retirement or redemption of the outstanding economic development revolving fund bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding economic development revolving fund bonds to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied, any balance may be

returned to the authority for use by it in any lawful manner. All such refunding bonds shall be issued and secured and shall be subject to the provisions of the Statewide Economic Development Finance Act in the same manner and to the same extent as any other bonds issued pursuant to that act."

Chapter 103 Section 19 Laws 2005

Section 19. A new section of the Statewide Economic Development Finance Act is enacted to read:

"ECONOMIC DEVELOPMENT REVOLVING FUND AND PROJECT REVENUE BOND ANTICIPATION NOTES.--The authority is authorized to issue negotiable economic development revolving fund and project revenue bond anticipation notes and may renew the notes from time to time, but the maximum maturity of such notes, including renewals of such notes, shall not exceed ten years from the date of issue of the original notes. The notes shall be payable from any available money of the authority from payments made by an eligible entity or from the proceeds of sale of the bonds of the authority in anticipation of which such notes were issued. The notes may be issued for any purpose of the authority authorized by the Statewide Economic Development Finance Act. All such notes shall be issued and secured and shall be subject to the provisions of that act in the same manner and to the same extent as bonds issued pursuant to that act."

Chapter 103 Section 20 Laws 2005

Section 20. A new section of the Statewide Economic Development Finance Act is enacted to read:

"REMEDIES OF HOLDERS OF ECONOMIC DEVELOPMENT REVOLVING FUND BONDS AND PROJECT REVENUE BONDS.--Any holder of economic development revolving fund bonds or project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act or a trustee under a trust indenture entered into pursuant to that act, except to the extent that his rights are restricted by any bond resolution or trust indenture may protect and enforce, by any suitable form of legal proceedings, any rights provided by the laws of this state or granted by the bond resolution or trust indenture. Such rights include the right to compel the performance of all duties of the authority or the department required by the Statewide Economic Development Finance Act, the bond resolution or the trust indenture and to enjoin unlawful activities."

Chapter 103 Section 21 Laws 2005

Section 21. A new section of the Statewide Economic Development Finance Act is enacted to read:

"AGREEMENT OF THE STATE.--The state pledges to and agrees with the holders of any economic development revolving fund bonds, project revenue bonds or notes issued by the authority under the Statewide Economic Development Finance Act that the state will not limit or alter the rights vested in the authority or the department to fulfill the terms of any agreements made with the holders of the economic development revolving fund bonds, project revenue bonds or notes or in any way impair the rights and remedies of those holders until the economic development revolving fund bonds, project revenue bonds or notes together with the interest on the economic development revolving fund bonds, project revenue bonds or notes, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the economic development revolving fund bonds, project revenue bonds or notes."

Chapter 103 Section 22 Laws 2005

Section 22. A new section of the Statewide Economic Development Finance Act is enacted to read:

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS--LEGAL INVESTMENTS.--The economic development revolving fund bonds or notes issued under the Statewide Economic Development Finance Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries, including the state investment council, may properly and legally invest funds."

Chapter 103 Section 23 Laws 2005

Section 23. A new section of the Statewide Economic Development Finance Act is enacted to read:

"TAX EXEMPTION.--The promotion of proposed projects pursuant to the Statewide Economic Development Finance Act is a public purpose. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of and payment for the economic development revolving fund bonds, that the economic development revolving fund bonds issued pursuant to that act and the income from the economic development revolving fund bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers."

Chapter 103 Section 24 Laws 2005

Section 24. A new section of the Statewide Economic Development Finance Act is enacted to read:

"PROPRIETARY INFORMATION--CONFIDENTIALITY--PENALTY.--

A. Information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act.

B. It is unlawful for any employee of the department or the authority, or any former employee of the department or the authority to reveal to any person other than another employee of the department or the authority any confidential information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity and not available from public sources, except in response to an order of a district court, an appellate court or a federal court.

C. Any employee or former employee of the department or the authority who reveals to another person any information that he is prohibited from lawfully revealing is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 103 Section 25 Laws 2005

Section 25. A new section of the Statewide Economic Development Finance Act is enacted to read:

"APPLICATION OF OTHER LAWS.--The Statewide Economic Development Finance Act shall be deemed to provide additional and alternative methods of financing projects authorized in that act and shall be deemed supplemental and additional to powers conferred by other laws."

Chapter 103 Section 26 Laws 2005

Section 26. TEMPORARY PROVISION--FUND NAME CHANGE--OUTSTANDING BONDS--FUND BALANCES.--Nothing in this act shall be deemed to impair economic development bonds or loan participations outstanding on the effective date of this act. The economic development revolving fund is the new name for the statewide loan participation fund and is not a new fund created by this act.

Chapter 103 Section 27 Laws 2005

Section 27. REPEAL.--Section 6-25-12 NMSA 1978 (being Laws 2003, Chapter 349, Section 12) is repealed.

Chapter 103 Section 28 Laws 2005

Section 28. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 518, AS AMENDED

WITH EMERGENCY CLAUSE

APPROVED APRIL 4, 2005

LAWS 2005, CHAPTER 104

AN ACT

RELATING TO TAXATION; PERMITTING AN INCOME TAX EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS; EXTENDING A PHASE-IN OF INCOME TAX RATE REDUCTIONS; PROVIDING INCOME TAX RELIEF TO HEADS OF HOUSEHOLD; PROVIDING FOR AN INCOME TAX EXEMPTION FOR CERTAIN MEDICAL CARE EXPENSES OF INDIVIDUALS SIXTY-FIVE YEARS OF AGE OR OLDER; EXPANDING CRITERIA FOR ELIGIBILITY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; ELIMINATING A TIME LIMITATION ON THE APPLICABILITY OF THE RURAL JOB TAX CREDIT; EXPANDING ELIGIBILITY FOR AND ADDING REQUIREMENTS TO THE FILM PRODUCTION TAX CREDIT; ENACTING THE RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT ACT; ENACTING THE AFFORDABLE HOUSING TAX CREDIT ACT; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS; EXPANDING A DEDUCTION FROM GROSS RECEIPTS FOR MAINTAINING, REFURBISHING, REMODELING OR MODIFYING TRANSPORT CATEGORY AIRCRAFT; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR RECEIPTS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY DURING A DESIGNATED THREE-DAY PERIOD IN AUGUST PRIOR TO THE BEGINNING OF EACH SCHOOL YEAR; PROVIDING FOR A GROSS RECEIPTS TAX OR GOVERNMENTAL GROSS RECEIPTS TAX CREDIT FOR THE SALE OF SERVICES FOR RESALE IN THE ORDINARY COURSE OF BUSINESS THAT ARE NOT DEDUCTIBLE; PROVIDING FOR ADJUSTED DISTRIBUTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 104 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION ADJUSTMENT--TAX ADMINISTRATION SUSPENSE FUND--CREDIT FOR CERTAIN SALES OF SERVICES FOR RESALE.--Distributions from the

tax administration suspense fund to the general fund of revenue attributable to the gross receipts tax or to the governmental gross receipts tax shall be adjusted for credits issued pursuant to the Gross Receipts and Compensating Tax Act for receipts from the sale of services for resale."

Chapter 104 Section 2 Laws 2005

Section 2. Section 7-2-7 NMSA 1978 (being Laws 2003, Chapter 2, Section 5) is amended to read:

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

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.7% of taxable income
Over \$4,000 but not over \$8,000	\$68.00 plus 3.2% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$196 plus 4.7% of excess over \$8,000
Over \$12,000	\$384 plus 5.8% of excess over \$12,000.

B. For heads of household, surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$8,000 but not over \$16,000	\$136 plus 3.2% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000	\$768 plus 5.8% of excess over \$24,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income

Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of excess over \$5,500
Over \$11,000 but not over \$16,000	\$269.50 plus 4.7% of excess over \$11,000
Over \$16,000	\$504.50 plus 5.8% of excess over \$16,000.

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

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

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

Chapter 104 Section 3 Laws 2005

Section 3. Section 7-2-7 NMSA 1978 (being Laws 2003, Chapter 2, Section 6) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 2007:

A. For married individuals filing separate returns:

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

B. For heads of household, surviving spouses and married individuals filing joint returns:

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

Over \$16,000 but not over \$24,000	\$392 plus 4.7% of excess over \$16,000
Over \$24,000	\$768 plus 5.3% of excess over \$24,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$5,500 but not over \$11,000	\$93.50 plus 3.2% of excess over \$5,500
Over \$11,000 but not over \$16,000 \$11,000	\$269.50 plus 4.7% of excess over \$11,000
Over \$16,000 \$16,000.	\$504.50 plus 5.3% of excess over \$16,000.

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

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

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

Chapter 104 Section 4 Laws 2005

Section 4. Section 7-2-7 NMSA 1978 (being Laws 2003, Chapter 2, Section 6, as amended by Section 3 of this act if it becomes law) is repealed and a new Section 7-2-7 NMSA 1978 is enacted to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 2008:

A. For married individuals filing separate returns:

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

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

B. For heads of household, surviving spouses and married individuals filing joint returns:

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

C. For single individuals and for estates and trusts:

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

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

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

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

Chapter 104 Section 5 Laws 2005

Section 5. A new section of the Income Tax Act is enacted to read:

"EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS.--

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number

of federal exemptions multiplied by two thousand five hundred dollars (\$2,500) of income includable, except for this exemption, in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

B. For a married individual filing a separate return with adjusted gross income up to twenty thousand three hundred thirty-three dollars (\$20,333):

(1) if the adjusted gross income is not over twelve thousand dollars (\$12,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over twelve thousand dollars (\$12,000) but not over twenty thousand three hundred thirty-three dollars (\$20,333), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

(b) twenty percent of the amount obtained by subtracting twelve thousand dollars (\$12,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to twenty-seven thousand one hundred ten dollars (\$27,110):

(1) if the adjusted gross income is not over sixteen thousand dollars (\$16,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over sixteen thousand dollars (\$16,000) but not over twenty-seven thousand one hundred ten dollars (\$27,110), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

(b) fifteen percent of the amount obtained by subtracting sixteen thousand dollars (\$16,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to forty thousand six hundred sixty-seven dollars (\$40,667):

(1) if the adjusted gross income is not over twenty-four thousand dollars (\$24,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over twenty-four thousand dollars (\$24,000) but not over forty thousand six hundred sixty-seven dollars (\$40,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

(b) ten percent of the amount obtained by subtracting twenty-four thousand dollars (\$24,000) from the adjusted gross income.

E. For the purposes of this section, "federal exemption" means an exemption allowable for federal income tax purposes for an individual included in the return who is domiciled in New Mexico."

Chapter 104 Section 6 Laws 2005

Section 6. A new section of the Income Tax Act is enacted to read:

"EXEMPTION--UNREIMBURSED OR UNCOMPENSATED MEDICAL CARE EXPENSES OF INDIVIDUALS SIXTY-FIVE YEARS OF AGE OR OLDER.--

A. Any individual sixty-five years of age or older may claim an additional exemption from income includable, except for this exemption, in net income in an amount equal to three thousand dollars (\$3,000) for medical care expenses paid by the individual for that individual or for the individual's spouse or dependent during the taxable year if those medical care expenses exceed twenty-eight thousand dollars (\$28,000) and if the medical care expenses are not reimbursed or compensated for by insurance or otherwise.

B. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual."

Chapter 104 Section 7 Laws 2005

Section 7. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit".

B. A person is eligible for the renewable energy production tax credit if the person:

(1) holds title to a qualified energy generator; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.

D. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

E. As used in this section:

(1) "biomass" means agricultural or animal waste; thinnings from trees less than fifteen inches in diameter, slash and brush; lumbermill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

(2) "qualified energy generator" means a facility with at least ten megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

F. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy

generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of Paragraph (2) of this subsection;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

H. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

I. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection F or G of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

J. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

K. The renewable energy production tax credit may be deducted from the taxpayer's New Mexico corporate income tax liability for a taxable year. If the amount of the tax credit claimed exceeds the taxpayer's corporate income tax liability, the excess may be carried forward for up to five consecutive taxable years."

Chapter 104 Section 8 Laws 2005

Section 8. Section 7-2E-1 NMSA 1978 (being Laws 1999, Chapter 183, Section 1, as amended) 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". Every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates. 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. The tax credit documents may be sold, exchanged or otherwise transferred and may 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."

Chapter 104 Section 9 Laws 2005

Section 9. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to fifteen percent of:

(1) direct production expenditures made in New Mexico that are directly attributable to the production in New Mexico of a film or commercial audiovisual product and that are subject to taxation by the state of New Mexico; and

(2) postproduction expenditures made in New Mexico that are:

(a) directly attributable to the production of a commercial film or audiovisual product;

(b) for services performed in New Mexico; and

(c) subject to taxation by the state of New Mexico.

B. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

C. A long-form narrative film production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment that the production was filmed in New Mexico.

D. To be eligible for the film production tax credit, a film production company shall submit to the New Mexico film division of the economic development department information required by the division to demonstrate conformity with the requirements of this section and shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;

(3) that outstanding obligations are not waived should a creditor fail to file by the specified date; and

(4) to delay filing of a claim for the film production tax credit until the New Mexico film division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit.

E. The New Mexico film division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

F. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

G. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded."

Chapter 104 Section 10 Laws 2005

Section 10. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2) is amended to read:

"7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F NMSA 1978:

A. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

B. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:

(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;

(2) payment to a personal services corporation for the services of a performing artist if:

(a) the personal services corporation pays gross receipts tax in New Mexico on those payments; and

(b) the performing artist receiving payments from the personal services corporation pays New Mexico income tax; and

(3) any of the following provided by a vendor:

- (a) the story and scenario to be used for a film;
- (b) set construction and operations, wardrobe, accessories and related services;
- (c) photography, sound synchronization, lighting and related services;
- (d) editing and related services;
- (e) rental of facilities and equipment;
- (f) leasing of vehicles;
- (g) food or lodging;
- (h) airfare if purchased through a New Mexico-based travel agency or travel company;
- (i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent; and
- (j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice;

C. "film" means a single media or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

D. "film production company" means a person that produces one or more films; and

E. "postproduction expenditure" means an expenditure that occurs after the completion of principal and ongoing photography, including an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments."

Chapter 104 Section 11 Laws 2005

Section 11. SHORT TITLE.--Sections 11 through 16 of this act may be cited as the "Research and Development Small Business Tax Credit Act".

Chapter 104 Section 12 Laws 2005

Section 12. DEFINITIONS.--As used in the Research and Development Small Business Tax 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. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(2) in which substantially all activities constitute elements of a process of experimentation related to new or improved function, performance, reliability or quality, but not related to style, taste, cosmetic or seasonal design factors;

C. "qualified research and development small business" means a business, including a corporation, general partnership, limited partnership, limited liability company, sole proprietorship or other similar entity, that:

(1) employed no more than twenty-five employees on a full-time-equivalent basis in any prior calendar month;

(2) had total revenues of no more than five million dollars (\$5,000,000) in any prior fiscal year;

(3) did not in any prior calendar month have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the qualified business owned directly or indirectly by another business; and

(4) has made qualified research expenditures for the period of twelve calendar months ending with the month for which the credit is sought of at least twenty percent of its total expenditures for those twelve calendar months;

D. "qualified research expenditure" means an expenditure directly related to qualified research, but does not include any expenditure on research funded by any grant, contract or similar mechanism by another person or governmental entity, and does not include any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project or expenditures for which the taxpayer has received any credit pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act; and

E. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or 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.

Chapter 104 Section 13 Laws 2005

Section 13. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT--AMOUNT--ELIGIBILITY.--

A. Until June 30, 2009, a taxpayer that is a qualified research and development small business is eligible for a credit in a reporting period in an amount equal to the sum of all gross receipts taxes, compensating taxes or withholding taxes due to the state or payable by the taxpayer with respect to that business for that reporting period. The credit provided in this section may be referred to as the "research and development small business tax credit".

B. A taxpayer is not eligible for the credit with respect to a reporting period month:

(1) before July 2005;

(2) that is more than thirty-five consecutive calendar months after the first month for which a claim for the credit is made by the taxpayer or by a person to whom the taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978;

(3) after which the qualified research and development small business employs more than twenty-five employees on a full-time-equivalent basis;

(4) in a fiscal year of the qualified research and development small business after the first fiscal year in which that business has total revenues in excess of five million dollars (\$5,000,000);

(5) after the calendar month in which more than fifty percent of the qualified research and development small business' voting securities or other equity interests having the right to designate or elect the board of directors or other governing body of that business are owned directly or indirectly by another business;

(6) if the business was not a qualified research and development small business in the twelve-calendar-month period ending with that calendar month;

(7) during which the taxpayer is the beneficiary of an industrial revenue bond issued by a municipality or county; or

(8) during which the taxpayer sold any goods of which the taxpayer is not the manufacturer, unless the taxpayer has received an appropriate nontaxable transaction certificate for such sale or sales.

Chapter 104 Section 14 Laws 2005

Section 14. CLAIMING THE CREDIT--CREDIT CLAIM FORMS.--The taxpayer shall claim the research and development small business tax credit within one year after the end of the reporting period to which the credit is applicable. The department shall provide credit claim forms for the research and development small business tax credit. A credit claim form shall accompany any return in which the taxpayer claims the credit, and the claim shall specify the amount of credit intended to apply to each return.

Chapter 104 Section 15 Laws 2005

Section 15. LIMITATION ON OTHER CREDITS.--Claiming the research and development small business tax credit with respect to a reporting period renders the taxpayer ineligible to claim a credit with respect to that same reporting period pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act.

Chapter 104 Section 16 Laws 2005

Section 16. ADMINISTRATION OF THE ACT.--The department shall administer the Research and Development Small Business Tax Credit Act pursuant to the Tax Administration Act.

Chapter 104 Section 17 Laws 2005

Section 17. SHORT TITLE.--Sections 17 through 22 of this act may be cited as the "Affordable Housing Tax Credit Act".

Chapter 104 Section 18 Laws 2005

Section 18. DEFINITIONS.--As used in the Affordable Housing Tax Credit Act:

A. "affordable housing project" means land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for residential housing that is approved by the authority and that includes only single family housing or multifamily housing located in a county with a population of less than one hundred thousand according to the most recent federal decennial census;

B. "authority" means the New Mexico mortgage finance authority;

C. "department" means the taxation and revenue department;

D. "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 the 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 affordable housing 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 and governmental gross receipts taxes; and

E. "person" means an individual, county, municipality, tribal government, housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization.

Chapter 104 Section 19 Laws 2005

Section 19. INVESTMENT VOUCHERS--ISSUANCE--TRANSFER.--

A. The authority may issue an investment voucher to a person who has made an investment of land, buildings, cash or services for an affordable housing project approved by the authority or for a trust fund administered by the authority. The value of the voucher shall equal fifty percent of the amount of cash invested or the fair market value of the land, building or service invested by that person. The authority may approve an investment voucher for any affordable housing project in accordance with Subsection B of this section and in accordance with rules adopted by the authority. An investment voucher that is approved for an affordable housing project shall equal fifty percent of the amount of cash invested or the fair market value of land, buildings or services invested in that affordable housing project by a person upon issuance of that investment voucher.

B. During the calendar year:

(1) beginning on January 1, 2006, the authority may issue or approve investment vouchers in an amount that shall not exceed two hundred thousand dollars (\$200,000) in aggregate value;

(2) beginning on January 1, 2007, the authority may issue or approve investment vouchers in an amount that shall not exceed five hundred thousand dollars (\$500,000) in aggregate value; and

(3) beginning on January 1, 2008 and during each subsequent calendar year, the authority may issue or approve investment vouchers for each calendar year in an amount that shall not exceed an aggregate value of a base rate of one dollar eighty-five cents (\$1.85) adjusted annually to account for inflation, multiplied by the state population during the calendar year as determined by the United States census bureau.

C. Any limitation on the issuance or approval of investment vouchers for a calendar year pursuant to Subsection B of this section shall not apply to an investment voucher issued by the authority during that calendar year that was approved by the authority during a previous calendar year.

D. At the beginning of each calendar year that begins on or after January 1, 2009, the department shall make an adjustment for inflation pursuant to Paragraph (3) of Subsection B of this section by multiplying the base rate by a fraction, the numerator of which is the consumer price index for the previous calendar year and the denominator of which is the same index for the 2007 calendar year prior to the calendar year for which a maximum aggregate value is determined for the issuance of investment vouchers pursuant to Paragraph (3) of Subsection B of this section.

E. An investment voucher issued by the authority shall be numbered for identification and may be sold, exchanged or otherwise transferred once in whole or in part to one or more persons. The parties to such a transaction shall notify the department and the authority of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

F. The authority shall adopt rules for the approval, issuance and administration of investment vouchers pursuant to this section.

Chapter 104 Section 20 Laws 2005

Section 20. AFFORDABLE HOUSING PROJECT COMPLETION NOTICE.--The authority shall certify to the department approval of an affordable housing project for which an investment voucher is issued pursuant to the Affordable Housing Tax Credit Act within twenty days of issuance of that voucher.

Chapter 104 Section 21 Laws 2005

Section 21. AFFORDABLE HOUSING TAX CREDIT.--

A. The tax credit provided in this section may be referred to as the "affordable housing tax credit". Except as otherwise provided by the Affordable Housing Tax Credit Act, a holder of an investment voucher that submits the investment voucher to the department may apply for, and the department may allow, a tax credit in an amount not to exceed the value of the investment voucher during the tax year in which the authority certifies to the department:

(1) completion of a service for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act; or

(2) approval by the authority or completion of an affordable housing project for which a land, building or cash donation has been made and for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act.

B. A holder of an investment voucher may apply all or a portion of the affordable housing tax credit against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of the affordable housing tax credit claimed may be carried forward for up to five years from the calendar year during which the authority certifies to the department approval of the affordable housing project for which the investment voucher used to claim the affordable housing tax credit is issued. No amount of the affordable housing tax credit may be applied against a local option gross receipts tax imposed by a municipality or county or against the government gross receipts tax.

C. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may disclose to a person the balance of the affordable housing tax credit remaining with respect to any investment voucher submitted by that person.

Chapter 104 Section 22 Laws 2005

Section 22. ADMINISTRATION OF THE ACT.--Unless otherwise provided by the Affordable Housing Tax Credit Act, the department shall administer the Affordable Housing Tax Credit Act pursuant to the Tax Administration Act.

Chapter 104 Section 23 Laws 2005

Section 23. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS.--

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test

facility bases pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2008.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation, and not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005."

Chapter 104 Section 24 Laws 2005

Section 24. Section 7-9-62.1 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 4, Section 2) is amended to read:

"7-9-62.1. DEDUCTION--GROSS RECEIPTS TAX--AIRCRAFT SERVICES.--Receipts from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight may be deducted from gross receipts."

Chapter 104 Section 25 Laws 2005

Section 25. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY--LIMITED PERIOD.--Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars (\$100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars (\$1,000) and any associated monitor,

speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars (\$500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures."

Chapter 104 Section 26 Laws 2005

Section 26. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"CREDIT--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--CERTAIN SALES FOR RESALE.--

A. A taxpayer may claim a credit against gross receipts tax or governmental gross receipts tax due for each reporting period beginning after June 2005 in an amount equal to ten percent of the receipts from selling a service for resale multiplied by:

(1) three and seven hundred seventy-five thousandths percent if the taxpayer's business location is within a municipality; or

(2) five percent if the taxpayer's business location is in the unincorporated area of a county.

B. A taxpayer may claim a credit pursuant to Subsection A of this section only if:

(1) the buyer resells the service in the ordinary course of business;

(2) the resale is not subject to the gross receipts tax or the governmental gross receipts tax; and

(3) the buyer delivers to the seller documentation in a form prescribed by the department clarifying that the service is purchased for resale in the ordinary course of business.

C. A credit permitted pursuant to this section does not apply to receipts from selling a service to a governmental entity or to a person who is a prime contractor that operates a facility in New Mexico designated as a national laboratory by an act of congress."

Chapter 104 Section 27 Laws 2005

Section 27. REPEAL.--Section 7-2E-2 NMSA 1978 (being Laws 1999, Chapter 183, Section 2, as amended) is repealed.

Chapter 104 Section 28 Laws 2005

Section 28. APPLICABILITY.--

A. The provisions of Section 5 of this act apply to taxable years beginning on or after January 1, 2006.

B. The provisions of Sections 6, 7 and 9 of this act apply to taxable years beginning on or after January 1, 2005.

Chapter 104 Section 29 Laws 2005

Section 29. EFFECTIVE DATES.--

A. The effective date of the provisions of Sections 1, 8 and 10 through 26 of this act is July 1, 2005.

B. The effective date of the provisions of Section 2 of this act is January 1, 2006.

C. The effective date of the provisions of Section 3 of this act is January 1, 2007.

D. The effective date of the provisions of Section 4 of this act is January 1, 2008."

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 410, 582,

844 AND 1086, AS AMENDED

LAWS 2005, CHAPTER 105

AN ACT

RELATING TO HOUSING; ENACTING THE NEW MEXICO HOUSING TRUST FUND ACT; CREATING THE NEW MEXICO HOUSING TRUST FUND; CREATING AN

ADVISORY COMMITTEE; PROVIDING CERTAIN POWERS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Chapter 105 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "New Mexico Housing Trust Fund Act".

Chapter 105 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the New Mexico Housing Trust Fund Act is to provide flexible funding for housing initiatives in order to produce significant additional housing investment in the state.

Chapter 105 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the New Mexico Housing Trust Fund Act:

A. "affordable housing" means residential housing primarily for persons or households of low or moderate income;

B. "authority" means the New Mexico mortgage finance authority;

C. "committee" means the New Mexico housing trust fund advisory committee;

D. "fund" means the New Mexico housing trust fund;

E. "persons of low or moderate income" means persons and households within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the New Mexico Housing Trust Fund Act, taking into consideration, without limitation, such factors as defined under that act; and

F. "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes and

housing intended to provide or providing transitional or temporary housing for homeless persons.

Chapter 105 Section 4 Laws 2005

Section 4. NEW MEXICO HOUSING TRUST FUND CREATED.--

A. The "New Mexico housing trust fund" is created in the authority. The fund shall consist of all distributions and appropriations made to the fund. Earnings of the fund shall be credited to the fund, and unexpended and unencumbered balances in the fund shall not revert to any other fund. The authority shall be the trustee for the fund, and the state investment council shall be the investment agent for the fund.

B. The fund shall consist of revenue from the following recurring sources:

- (1) appropriations and transfers from the general fund;
- (2) any other money appropriated or distributed to the fund; or
- (3) any private contributions to the fund.

C. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the New Mexico Housing Trust Fund Act.

Chapter 105 Section 5 Laws 2005

Section 5. ADVISORY COMMITTEE CREATED.--

A. The "New Mexico housing trust fund advisory committee" is created. The committee shall consist of the following nine members, who shall represent geographically the state, affordable housing advocates and practitioners:

- (1) three public members appointed by the governor;
- (2) three public members appointed by the president pro tempore of the senate; and
- (3) three public members appointed by the speaker of the house of representatives.

B. Members of the committee shall be appointed for two-year terms and shall be eligible for reappointment. Vacancies shall be filled by the appropriate appointing authority.

C. The committee shall be advisory to the authority and shall be subject to oversight by the Mortgage Finance Authority Act oversight committee.

D. The committee shall review all project applications and make recommendations to the authority for funding them. The committee shall not be involved in or advisory to the authority in matters relating to the investment of the fund.

E. The committee shall adopt rules regarding:

(1) the time, place and procedures of committee meetings; and

(2) the procedures for the review of and standards for recommending applications for loans or grant projects.

Chapter 105 Section 6 Laws 2005

Section 6. AWARD OF FUNDS--ACCOUNTABILITY.--

A. Trust funds shall be awarded on a competitive basis. The authority's staff shall work with the committee to develop an application and applicant scoring mechanism that encourages applicants to develop solutions that are responsive to local needs and are consistent with sound housing policy.

B. The authority's governing body shall be responsible for ensuring that on an annual basis the total funds awarded for housing activities attract at least three times as much funding from other sources.

Chapter 105 Section 7 Laws 2005

Section 7. USE OF FUNDS--ELIGIBLE ACTIVITIES.--Money from the fund and matching funds from other sources may be used to finance in whole or in part any loans or grant projects that will provide affordable housing. Money from the fund may also be used to reimburse the authority for actual expenses incurred in administering the fund in an amount not to exceed five percent of total funds disbursed from the fund.

Chapter 105 Section 8 Laws 2005

Section 8. CONFLICT WITH FEDERAL REQUIREMENTS.--If any part of the New Mexico Housing Trust Fund Act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the New Mexico Housing Trust Fund Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

Chapter 105 Section 9 Laws 2005

Section 9. MATCHING FUNDS.--Money from the fund may be used to match federal, local or private money to be used for projects authorized under the New Mexico Housing Trust Fund Act.

Chapter 105 Section 10 Laws 2005

Section 10. Section 58-18-5 NMSA 1978 (being Laws 1975, Chapter 303, Section 5, as amended) is amended to read:

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

- A. to sue and be sued;
- B. to have a seal and alter it at pleasure;
- C. to make and alter bylaws for its organization and internal management;
- D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;
- F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;
- G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;
- H. to procure or require the procurement of a policy of group or individual life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums for the policy;
- I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in amounts and from insurers, including the federal government, that the authority deems necessary or desirable; to procure liability insurance covering its members, officers and employees for acts performed within the scope of their authority as members, officers or employees; and to pay any premiums for insurance procured;
- J. subject to any agreement with bondholders or noteholders:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T. to employ architects, engineers, attorneys (other than and in addition to the attorney general of the state), accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

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

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

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

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

Y. to act as trustee and administer the land title trust fund created pursuant to Section 58-28-3 NMSA 1978;

Z. to act as trustee and administrator pursuant to the Low-Income Housing Trust Act;

AA. to act as trustee and statewide administrator of the New Mexico housing trust fund pursuant to and to receive funds under the New Mexico Housing Trust Fund Act;

BB. to act as a governmental entity or a qualifying grantee or as an intermediary for a governmental entity or a qualifying grantee pursuant to the Affordable Housing Act; and

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

Chapter 105 Section 11 Laws 2005

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 115, AS AMENDED

LAWS 2005, CHAPTER 106

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE AMOUNT OF THE ALLOWABLE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO FILM PRIVATE EQUITY FUNDS OR A NEW MEXICO FILM PROJECT.

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

Chapter 106 Section 1 Laws 2005

Section 1. Section 7-27-5.26 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to read:

"7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW MEXICO.--

A. No more than five percent of the market value of the severance tax permanent fund may be invested in New Mexico film private equity funds or a New Mexico film project under this section.

B. If an investment is made under this section, not more than 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 film private equity fund or any one New Mexico film project.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private equity investment advisory committee and the New Mexico film division of the economic development department. The state investment officer may make debt or equity investments pursuant to this section only in New Mexico film projects or New Mexico film private equity funds that invest only in film projects that:

(1) are filmed wholly or substantially in New Mexico;

(2) have shown to the satisfaction of the New Mexico film division that a distribution contract is in place with a reputable distribution company;

(3) have agreed that, while filming in New Mexico, a majority of the production crew will be New Mexico residents;

(4) have posted a completion bond that has been approved by the New Mexico film division; provided that a completion bond shall not be required if the fund or project is guaranteed pursuant to Paragraph (5) of this subsection; and

(5) have obtained a full, unconditional and irrevocable guarantee of repayment of the invested amount in favor of the severance tax permanent fund:

(a) from an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(b) from a substantial subsidiary of an entity that has a credit rating of not less than Baa or BBB by a national rating agency;

(c) by providing a full, unconditional and irrevocable letter of credit from a United States incorporated bank with a credit rating of not less than A by a national rating agency; or

(d) from a substantial and solvent entity as determined by the state investment council in accordance with its standards and practices; or

(6) if not guaranteed pursuant to Paragraph (5) of this subsection, have obtained no less than one-third of the estimated total production costs from other sources as approved by the state investment officer.

D. The state investment officer may purchase at a discount, from an eligible New Mexico film project, up to eighty percent of an expected and estimated film production tax credit available to a film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The state investment council shall establish guidelines for the state investment officer's initiation of a purchase and the terms of the purchase.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a New Mexico film private equity fund, which fixed amounts may be invested in that fund in one or more payments over time;

(2) "film project" means a single media or multimedia program, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and that is intended to be exhibited in theaters; licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means; or licensed for the home viewing market; and

(3) "New Mexico film private equity fund" means any limited partnership, limited liability company or corporation organized and operating in the United States that:

(a) has as its primary business activity the investment of funds in return for equity in film projects produced wholly or partly in New Mexico;

(b) holds out the prospects for capital appreciation from such investments; and

(c) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, and rules promulgated pursuant to that section."

Senate Bill 916

Approved April 4, 2005

LAWS 2005, CHAPTER 107

AN ACT

RELATING TO JURIES; EXPANDING THE JURY POOL TO INCLUDE PERSONAL INCOME TAX FILERS; MODIFYING EXCUSALS AND QUALIFICATIONS; ALLOWING POSTPONEMENTS; PROVIDING THAT THE SUPREME COURT DETERMINE LENGTH OF JURY TERMS; PROTECTING EMPLOYEES; UPDATING LANGUAGE ON RANDOM SELECTION OF JURORS TO REFLECT NEW TECHNOLOGY; RECONCILING MULTIPLE AMENDMENTS FROM LAWS 2003.

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

Chapter 107 Section 1 Laws 2005

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2003, Chapter 398, Section 5 and by Laws 2003, Chapter 439, Section 1) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

H. with reference to information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. the department shall furnish to the information systems division of the general services department, by electronic media, a database containing New Mexico personal income tax filers by county, which shall be updated quarterly. The database information shall be used only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978. The database shall not contain any financial information. If any information in the database is revealed by an employee of the administrative office of the courts or the information systems division to individuals other than employees of the administrative

office of the courts, the state courts, the information systems division or the department, the employee shall be subject to the penalty provisions of Section 7-1-76 NMSA 1978;

O. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

P. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

Q. 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;

R. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

S. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

T. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

U. 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;

V. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the

proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

W. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

X. 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;

Y. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

Z. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

AA. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

BB. information required by a provision of the Tax Administration Act to be made available to the public by the department;

CC. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

EE. 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;

FF. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

GG. 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;

HH. to the gaming control board, tax returns of license applicants and their affiliates as defined in Subsection E of Section 60-2E-14 NMSA 1978; and

II. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be provided."

Chapter 107 Section 2 Laws 2005

Section 2. A new section of Chapter 38, Article 5 NMSA 1978 is enacted to read:

"LEGISLATIVE DECLARATION.--It is the policy of this state that all qualified citizens have an obligation to serve on juries and to give truthful information concerning attitudes, opinions and feelings about topics relevant to the proceeding for which they are called to serve when summoned by the courts of this state."

Chapter 107 Section 3 Laws 2005

Section 3. A new section of Chapter 38, Article 5 NMSA 1978 is enacted to read:

"POSTPONEMENT OF PETIT JURY SERVICE.--

A. A person scheduled to appear for service on a petit jury may request a postponement of the date of initial appearance for jury service. The request for postponement shall be granted if the juror:

(1) has not previously been granted a postponement; and

(2) agrees to a future date, approved by the court, when the juror will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve.

B. A subsequent request to postpone jury service may be approved by the court only in the event of an emergency that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a subsequent postponement, the prospective juror must agree to a future date on which the juror will appear for jury service within six months of the postponement.

C. A court shall postpone and reschedule the service of a summoned juror, without affecting the summoned juror's right to request a postponement under Subsections A and B of this section, if the summoned juror is:

(1) employed by an employer with five or fewer full-time employees, or their equivalent, and another employee of the same employer is summoned to appear during the same period;

(2) the only person performing particular services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the business, commercial or agricultural enterprise that the enterprise must close or cease to function if the person is required to perform jury duty; or

(3) required to attend to an emergency as determined by the judge."

Chapter 107 Section 4 Laws 2005

Section 4. Section 38-5-1 NMSA 1978 (being Laws 1969, Chapter 222, Section 1, as amended) is amended to read:

"38-5-1. QUALIFICATION OF JURORS.-- A person who is at least eighteen years of age, a United States citizen and a resident of New Mexico residing in the county for which a jury may be convened is eligible and may be summoned for service as a juror by the courts, unless the person is incapable of rendering jury service because of:

A. physical or mental illness or infirmity; or

B. undue or extreme physical or financial hardship."

Chapter 107 Section 5 Laws 2005

Section 5. Section 38-5-2 NMSA 1978 (being Laws 1973, Chapter 150, Section 1, as amended) is amended to read:

"38-5-2. EXEMPTION FROM JURY SERVICE--EXCUSALS--SERVICE OF DISQUALIFIED JUROR.--

A. A person who has served as a member of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as a juror in a court of this state when the person requests to be exempted from service by reason of the exemption granted by this subsection.

B. A person may be excused from jury service at the discretion of the judge or the judge's designee, with or without the person's personal attendance upon the court, if:

(1) jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror's care or supervision;

(2) the person has an emergency that renders the person unable to perform jury service; or

(3) the person presents other satisfactory evidence to the judge or the judge's designee.

C. A person requesting an exemption or an excuse from jury service shall take all necessary action to obtain a ruling on the request no later than the date on which the person is scheduled to appear for jury duty.

D. The judge, in the judge's discretion, upon granting any excuse, may disallow the fees and mileage of the person excused.

E. The service upon a jury of a person disqualified shall, of itself, not vitiate any indictment found or any verdict rendered by that jury, unless actual injury to the person complaining of the injury is shown.

F. As used in this section and Section 38-5-1 NMSA 1978, "undue or extreme physical or financial hardship":

(1) means circumstances in which a person would:

(a) be required to abandon another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service;

(b) incur costs that would have a substantial adverse impact on the payment of necessary daily living expenses of the person or the person's dependent; or

(c) suffer physical hardship that would result in illness or disease; and

(2) does not exist solely because a prospective juror will be absent from employment."

Chapter 107 Section 6 Laws 2005

Section 6. Section 38-5-3 NMSA 1978 (being Laws 1991, Chapter 71, Section 2) is amended to read:

"38-5-3. SOURCE FOR JUROR SELECTION.--

A. Each county clerk shall make available to the secretary of state a database of registered voters of the clerk's county. The secretary of state shall preserve and make available to the information systems division of the general services department, by electronic media, a database of New Mexico registered voters, by county, which shall be updated monthly. The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the information systems division of the general services department a database of driver's license holders in each county, which shall be updated monthly. The secretary of taxation and revenue shall make available to the information systems division of the general services department, by electronic media, a database of New Mexico personal income tax filers by county, which shall be updated quarterly.

B. The information systems division of the general services department shall program the merger of the registered voter, driver's license and personal income tax filer databases from each county to form a master jury database and write a computer program so that a random selection of jurors can be made. A discrimination shall not be exercised except for the elimination of persons who are not eligible for jury service. The administrative office of the courts shall provide specifications for the merging of the registered voter, driver's license and personal income tax filer databases. The merged database information shall be the database that produces the random jury list for the selection of petit or grand jurors for the state courts.

C. The court shall, by order, designate the number of potential jurors to be selected and the date on which the jurors are to report for empaneling. Within fifteen days after receipt of a copy of the order, the administrative office of the courts shall

provide the random jury list to the court. The information systems division of the general services department shall print the random jury list and jury summons mailer forms within ten days after receiving the request from the administrative office of the courts. Upon issuance of the order, the information systems division of the general services department shall draw from the most current registered voter, driver's license and personal income tax filer databases to create the random jury list.

D. The information systems division of the general services department may transfer the master jury database to a court that has compatible equipment to accept such a transfer. The court accepting the master jury database shall transfer the information to a programmed computer used for the random selection of petit or grand jurors."

Chapter 107 Section 7 Laws 2005

Section 7. Section 38-5-11 NMSA 1978 (being Laws 1969, Chapter 222, Section 11, as amended) is amended to read:

"38-5-11. QUALIFYING JURY PANELS.--

A. The court shall empanel jurors in a random manner. The judge or the judge's designee shall preside over the empanelling of a petit jury panel. The district judge or the judge's designee shall preside over the empanelling of the grand jury panel. Jurors who appear for service shall be questioned under oath as to their eligibility for jury service by the judge or the judge's designee. Claims of exemption, requests for excuse from service or postponement of service shall be ruled upon by the judge or the judge's designee.

B. The judge or the judge's designee shall submit questionnaires to prospective jurors to:

(1) obtain any information that will aid the court in ruling on requests for exemption or excuse from service or postponement of service;

(2) aid the court and the parties in voir dire examination of jurors or in determining a juror's qualifications to serve on a particular petit jury

panel, trial jury or grand jury; or

(3) aid in the determination of challenges for cause and peremptory challenges.

C. The judge or the judge's designee shall certify a numbered list of the jury panel members' names when qualified. The certified list of jurors and the questionnaires obtained from jurors shall be made available for inspection and copying

by a party to a pending proceeding or their attorney or to any person having good cause for access to the list and the questionnaires."

Chapter 107 Section 8 Laws 2005

Section 8. Section 38-5-12 NMSA 1978 (being Laws 1969, Chapter 222, Section 12, as amended) is amended to read:

"38-5-12. PETIT JURY PANELS--NUMBER TO BE QUALIFIED--PERIOD OF SERVICE--TIME FOR SUMMONING.--

A. The judge shall determine the number of jurors to be summoned for service, the date and time for the appearance of jurors for qualification, the number of jurors to be qualified to provide panels of jurors for trial service and the size of trial jury panels. Procedures such as the use of alternate jury panels should be established where appropriate to lessen the burden of jury service on persons retained on petit jury panels. Jurors may be drawn, summoned and qualified by the judge at any time to supplement jury panels requiring replacement or augmentation. Petit jury panels may be qualified and may serve as the trial needs of the court require without regard to court terms.

B. The supreme court shall establish, by rule, the appropriate length of jury terms. The court shall consider the number of trials held, the availability of jurors and the administrative and financial impact."

Chapter 107 Section 9 Laws 2005

Section 9. Section 38-5-13 NMSA 1978 (being Laws 1969, Chapter 222, Section 13, as amended) is amended to read:

"38-5-13. DRAWING AND QUALIFYING TRIAL JURY.-- The district court of each county shall maintain a list of the names of the jurors duly empaneled and present for the trial of a case. The judge shall cause the names to be randomly selected until sufficient names have been drawn to provide the number of jurors required for the trial. The name and number of each juror shall be announced. Twelve or six jurors shall compose a petit jury in the district courts for the trial of civil causes. Twelve jurors shall compose a petit jury in criminal and children's court cases. Magistrate and metropolitan jury court selection shall be conducted in accordance with supreme court rules."

Chapter 107 Section 10 Laws 2005

Section 10. Section 38-5-18 NMSA 1978 (being Laws 1979, Chapter 47, Section 1) is amended to read:

"38-5-18. EMPLOYER PROHIBITED FROM PENALIZING EMPLOYEE FOR JURY SERVICE.--

A. An employer shall not deprive an employee of employment or threaten or otherwise coerce the employee because the employee receives a summons for jury service, responds to the summons, serves as a juror or attends court for prospective jury service.

B. An employer shall not require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury service, participating in the jury selection process or serving on a jury. Nothing in this subsection requires an employer to provide annual, vacation or sick leave to employees who are not otherwise entitled to those benefits under company policies."

Chapter 107 Section 11 Laws 2005

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILLS 240 AND 461

LAWS 2005, CHAPTER 108

AN ACT

RELATING TO TAXATION; CREATING THE TAX FRAUD INVESTIGATIONS DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; EXPANDING THE DUTIES AND POWERS OF THE TAXATION AND REVENUE DEPARTMENT; CREATING AND AMENDING TAX OFFENSES AND PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 108 Section 1 Laws 2005

Section 1. Section 7-1-4 NMSA 1978 (being Laws 1965, Chapter 248, Section 10, as amended) is amended to read:

"7-1-4. INVESTIGATIVE AUTHORITY AND POWERS.--

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax, for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act or

for the purpose of investigating possible criminal violations of the revenue laws of this state, including fraud or other crimes that may affect the taxes due to the state, the secretary or the secretary's delegate is authorized to examine equipment and to examine and require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. As a means for accomplishing the matters referred to in Subsection A of this section, the secretary is hereby invested with the power to issue subpoenas and summonses. In no case shall a subpoena or summons be made returnable less than ten days from the date of service.

C. Any subpoena or summons issued by the secretary 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 or summons; shall bear the seal of the department; and shall be attested by the secretary.

D. After service of a subpoena or summons upon the person, if any person neglects or refuses to appear in response to the summons or neglects or refuses to produce records or other evidence or to allow the inspection of equipment in response to the subpoena or neglects or refuses to give testimony as required, the department may invoke the aid of the court in the enforcement of the subpoena or summons. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. If a person, the extent of whose tax liability is being established, or that person's agent, nominee or other person acting under the direction or control of that person, files an action with the court to quash a subpoena or summons issued by that court pursuant to this section, the running of the period of limitations pursuant to Sections 7-1-18 and 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with respect to the tax liability under investigation shall be suspended for the period during which a proceeding and related appeals regarding the enforcement of the subpoena or summons is pending."

Chapter 108 Section 2 Laws 2005

Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2003, Chapter 398, Section 5 and by Laws 2003, Chapter 439, Section 1) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information

contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may affect taxes due to the state to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

H. with reference to information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13, 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

O. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

S. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

Z. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by a provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

EE. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

FF. to a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding;

GG. to the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

HH. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be disclosed;

II. to representatives of the workers' compensation administration, authorized by the director of the workers' compensation administration for this purpose, to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

JJ. to the secretary of labor or the secretary's delegate for use in enforcement of unemployment insurance collections pursuant to the terms of a reciprocal agreement entered into with the secretary of labor for exchange of information; the secretary of labor and employees of the labor department are subject to the provisions regarding confidentiality of information contained in the Tax Administration Act; and

KK. information that the department is authorized by the Tax Administration Act to release to a local body that licenses professions or occupations pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978."

Chapter 108 Section 3 Laws 2005

Section 3. Section 7-1-73 NMSA 1978 (being Laws 1965, Chapter 248, Section 74, as amended) is amended to read:

"7-1-73. FALSE STATEMENT AND FRAUD.--

A. A person is guilty of a felony if the person:

(1) willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe it to be true and correct as to every material matter;

(2) willfully assists in, willfully procures, willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department, knowing that it is fraudulent or knowing that it is false as to a material matter, whether or not that fraud or falsity is with knowledge or consent of:

(a) the taxpayer or other person liable for taxes owed on the return; or

(b) a person who signs a document stating that the return, affidavit, claim or other document is true, correct and complete to the best of that person's knowledge;

(3) files any return electronically, knowing the information in the return is not true and correct as to every material matter; or

(4) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals or releases any property on which levy is authorized or that is liable for payment of tax under the provisions of Section 7-1-61 NMSA 1978, or aids in accomplishing or causes the accomplishment of any of the foregoing is guilty of a felony and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or imprisoned not less than six months or more than three years, or both, together with costs of prosecution.

B. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously."

Chapter 108 Section 4 Laws 2005

Section 4. A new section of the Tax Administration Act is enacted to read:

"WILLFUL FAILURE TO COLLECT AND PAY OVER TAXES.--

A. A person who is required to collect, account for and pay over a tax imposed by the state and who willfully, with the intent to defraud, fails to collect or truthfully account for and pay over the tax due to the state is guilty of a felony, and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or imprisoned for a period of not less than six months and not more than three years, or both, together with the costs of prosecution.

B. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously."

Chapter 108 Section 5 Laws 2005

Section 5. Section 9-11-4 NMSA 1978 (being Laws 1977, Chapter 249, Section 4, as amended) is amended to read:

"9-11-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "taxation and revenue department". The department shall be a cabinet department and shall consist of, but not be limited to, an administrative services division and five program divisions as follows:

A. the audit and compliance division;

B. the property tax division;

C. the revenue processing division;

D. the tax fraud investigations division; and

E. the motor vehicle division."

Chapter 108 Section 6 Laws 2005

Section 6. A new section of the Taxation and Revenue Department Act is enacted to read:

"POWER TO EMPLOY LAW ENFORCEMENT OFFICERS FOR TAX FRAUD INVESTIGATIONS DIVISION.--

A. The secretary shall employ police officers as commissioned tax fraud enforcement officers as needed in the tax fraud investigations division of the department to enforce the tax laws or to investigate fraud and other crimes that may affect the collection of taxes due to the state.

B. Tax fraud enforcement officers shall be certified as having completed basic law enforcement training at the New Mexico law enforcement academy or at another recognized certified regional or federal law enforcement training program equivalent to or more stringent than the basic law enforcement training at the New Mexico law enforcement academy.

C. The secretary may require specialized training in addition to the requirements of Subsection B of this section.

D. The secretary shall require continuing in-service law enforcement training for tax fraud enforcement officers as required by the New Mexico law enforcement academy for all police officers."

Chapter 108 Section 7 Laws 2005

Section 7. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--No person shall be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed therefor within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five years from the time the crime was committed;

C. for a misdemeanor, within two years from the time the crime was committed;

D. for a petty misdemeanor, within one year from the time the crime was committed;

E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;

F. for a felony pursuant to Sections 7-1-72 or 7-1-73 NMSA 1978 or Section 4 of this 2005 act, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;

G. for any crime not contained in the Criminal Code or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

H. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

HOUSE BILL 411, AS AMENDED

LAWS 2005, CHAPTER 109

AN ACT

RELATING TO TAXATION; CREATING FILING AND PAYMENT REQUIREMENTS FOR GASOLINE AND SPECIAL FUEL RETAILERS, WHOLESALERS, RACK OPERATORS AND DISTRIBUTORS; MODIFYING CONFIDENTIALITY REQUIREMENTS; CLARIFYING LIABILITY PROVISIONS FOR THE SPECIAL FUEL INVENTORY TAX; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO TERMINATE INTERSTATE AGREEMENTS FOR SPECIAL FUEL TAX COLLECTIONS; PROVIDING A PENALTY.

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

Chapter 109 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"CIVIL PENALTY FOR FAILURE TO FILE AN INFORMATION RETURN.--A taxpayer who fails to file an information return on time pursuant to the Gasoline Tax Act or the Special Fuels Supplier Tax Act shall pay a penalty of fifty dollars (\$50.00) for each late report. This penalty shall be in addition to other applicable penalties."

Chapter 109 Section 2 Laws 2005

Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2003, Chapter 398, Section 5 and by Laws 2003, Chapter 439, Section 1) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's 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 another jurisdiction pursuant to an international fuel tax agreement, provided that the information is used for tax purposes only;

E. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's 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;

F. 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 E of this section;

G. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

I. with reference to information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

J. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

K. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

L. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

M. 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;

N. 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;

O. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

P. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

Q. 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;

R. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this section shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

S. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person

other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

T. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

U. 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;

V. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

W. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

X. 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;

Y. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

Z. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has

lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

AA. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

BB. information required by a provision of the Tax Administration Act to be made available to the public by the department;

CC. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

EE. 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;

FF. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

GG. 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;

HH. to the gaming control board, tax returns of license applicants and their affiliates as defined in Subsection E of Section 60-2E-14 NMSA 1978; and

II. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be provided."

Chapter 109 Section 3 Laws 2005

Section 3. Section 7-1-13.1 NMSA 1978 (being Laws 1988, Chapter 99, Section 3, as amended) is amended to read:

"7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2), (3) or (4) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars (\$25,000):

(1) Group 1: all taxes due under the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicle Gross Receipts Tax Act;

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act;

(3) Group 3: the tax due under the Natural Gas Processors Tax Act;
or

(4) Group 4: all taxes and fees due under the Gasoline Tax Act, the Special Fuels Supplier Tax Act and the Petroleum Products Loading Fee Act.

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

(2) currency of the United States;

(3) check drawn on and payable at any New Mexico financial institution provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due date; or

(4) check drawn on and payable at any domestic non-New Mexico financial institution provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

D. For the purposes of this section, "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group."

Chapter 109 Section 4 Laws 2005

Section 4. A new section of the Gasoline Tax Act is enacted to read:

"RETURNS BY RETAILERS--REQUIREMENTS--EXCEPTION.--Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel."

Chapter 109 Section 5 Laws 2005

Section 5. A new section of the Gasoline Tax Act is enacted to read:

"RETURNS BY RACK OPERATORS--REQUIREMENTS.--Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that an information return be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel."

Chapter 109 Section 6 Laws 2005

Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971, Chapter 207, Section 5, as amended) is amended to read:

"7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due. The department may require that the tax returns be provided through electronic means as long as an exception is provided for distributors with limited amounts of fuel distributed."

Chapter 109 Section 7 Laws 2005

Section 7. Section 7-13-6 NMSA 1978 (being Laws 1971, Chapter 207, Section 6, as amended) is amended to read:

"7-13-6. RETURNS BY WHOLESALERS--EXCEPTION.--Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department."

Chapter 109 Section 8 Laws 2005

Section 8. Section 7-16A-2 NMSA 1978 (being Laws 1992, Chapter 51, Section 2, as amended) is amended to read:

"7-16A-2. DEFINITIONS.--As used in the Special Fuels Supplier Tax Act:

A. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

B. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

C. "dealer" means any person who sells and delivers special fuel to a user;

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

E. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code issued by:

(1) the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities;
or

(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

F. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

J. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

K. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

L. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

M. "sale" means any delivery, exchange, gift or other disposition;

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

O. "special fuel" means any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

P. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

Q. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

R. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

S. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

T. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

U. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

V. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not deliver special fuel into the supply tanks of motor vehicles."

Chapter 109 Section 9 Laws 2005

Section 9. Section 7-16A-5 NMSA 1978 (being Laws 1992, Chapter 51, Section 5) is amended to read:

"7-16A-5. SPECIAL FUEL INVENTORIES.--

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax

due."

Chapter 109 Section 10 Laws 2005

Section 10. Section 7-16A-9 NMSA 1978 (being Laws 1992, Chapter 51, Section 9, as amended) is amended to read:

"7-16A-9. TAX RETURNS--PAYMENT OF TAX.--Rack operators and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received."

Chapter 109 Section 11 Laws 2005

Section 11. Section 7-16A-11 NMSA 1978 (being Laws 1992, Chapter 51, Section 11) is amended to read:

"7-16A-11. TAX RETURNS--PAYMENT OF TAX--SPECIAL FUEL USERS.--

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international fuel tax agreement to which the state is a party."

Chapter 109 Section 12 Laws 2005

Section 12. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY RETAILERS--REQUIREMENTS.--Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel."

Chapter 109 Section 13 Laws 2005

Section 13. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY WHOLESALERS.--Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of

the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold."

Chapter 109 Section 14 Laws 2005

Section 14. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY RACK OPERATORS--REQUIREMENTS.--Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is distributed in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel."

Chapter 109 Section 15 Laws 2005

Section 15. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"SPECIAL FUELS--AUTHORITY OF SECRETARY TO TERMINATE INTERSTATE AGREEMENTS.--The secretary may terminate:

A. a cooperative agreement involving the taxation of special fuels into which the secretary enters with another state, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States; or

B. a multistate agreement involving the taxation of special fuels into which the secretary enters."

Chapter 109 Section 16 Laws 2005

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

HOUSE BILL 424, AS AMENDED

LAWS 2005, CHAPTER 110

AN ACT

RELATING TO ORGANIZATION OF THE EXECUTIVE BRANCH; CREATING INFORMATION TECHNOLOGY DIVISIONS IN CERTAIN DEPARTMENTS.

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

Chapter 110 Section 1 Laws 2005

Section 1. Section 9-2A-4 NMSA 1978 (being Laws 1992, Chapter 57, Section 4, as amended) is amended to read:

"9-2A-4. DEPARTMENT CREATED--DIVISIONS.--

A. The "children, youth and families department" is created. The department is a cabinet department and consists of, but is not limited to, six divisions as follows:

- (1) the protective services division;
- (2) the juvenile justice division;
- (3) the prevention and intervention division;
- (4) the financial services division;
- (5) the employee support division; and
- (6) the information technology division.

B. The secretary is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions and to abolish or create divisions of the department by executive order in the interest of efficiency and economy."

Chapter 110 Section 2 Laws 2005

Section 2. Section 9-3-3 NMSA 1978 (being Laws 1977, Chapter 257, Section 3, as amended) is amended to read:

"9-3-3. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "corrections department". The department shall be a cabinet department and consist of, but not be limited to, six divisions as follows:

- A. the adult institutions division;

B. the adult probation and parole division;

C. the training academy division;

D. the corrections industries division, which shall have administrative supervision of the management of prison industries in every correctional facility under the jurisdiction of the department. Notwithstanding the provisions of Paragraph (10) of Subsection B of Section 9-3-5 NMSA 1978, the director of the corrections industries division shall be appointed by and serve at the pleasure of the secretary of corrections;

E. the administrative services division, which shall be supportive of and responsive to the divisions and shall provide administrative and personnel services to them; and

F. the information technology division."

Chapter 110 Section 3 Laws 2005

Section 3. Section 9-7-4 NMSA 1978 (being Laws 1991, Chapter 25, Section 16) is amended to read:

"9-7-4. DEPARTMENT ESTABLISHED.--

A. There is created in the executive branch the "department of health". The department shall be a cabinet department and shall include, but not be limited to, the programs and functions of the public health division, the behavioral health services division and the scientific laboratory.

B. All references in the law to the public health division of the health and environment department, the behavioral health services division of the health and environment department, the state department of public health, the public health department, the health services division or the state board of health shall be construed as referring to the department.

C. The administrative services division of the department shall provide clerical, recordkeeping and administrative support to the department, including, but not limited to, the areas of personnel, budget, procurement and contracting.

D. The information technology division shall have all those powers and duties conferred upon it by the secretary with the consent of the governor."

Chapter 110 Section 4 Laws 2005

Section 4. Section 9-7A-4 NMSA 1978 (being Laws 1991, Chapter 25, Section 4) is amended to read:

"9-7A-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "department of environment". The department shall be a cabinet department and shall include, but not be limited to, an information technology division and the programs and functions of the environmental improvement division. All references in the law to the environmental improvement agency or the environmental improvement division of the health and environment department shall be construed to mean the department. All references to the director of the environmental improvement division shall be construed to mean the secretary. The department shall consist of the staff of the environmental improvement division and such other powers, duties and personnel of the former health and environment department as may be assigned by the governor pursuant to executive order."

Chapter 110 Section 5 Laws 2005

Section 5. Section 9-8-4 NMSA 1978 (being Laws 1977, Chapter 252, Section 4, as amended) is amended to read:

"9-8-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "human services department". The department shall be a cabinet department and shall consist of, but not be limited to, three divisions as follows:

- A. the income support division;
- B. the social services division; and
- C. the information technology division."

Chapter 110 Section 6 Laws 2005

Section 6. Section 9-11-4 NMSA 1978 (being Laws 1977, Chapter 249, Section 4, as amended) is amended to read:

"9-11-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "taxation and revenue department". The department shall be a cabinet department and shall consist of, but not be limited to, six divisions as follows:

- A. the audit and compliance division;
- B. the property tax division;
- C. the revenue processing division;
- D. the motor vehicle division;
- E. the administrative services division; and

F. the information technology division."

Chapter 110 Section 7 Laws 2005

Section 7. Section 9-18-4 NMSA 1978 (being Laws 1987, Chapter 342, Section 4) is amended to read:

"9-18-4. LABOR DEPARTMENT ESTABLISHED.--There is created in the executive branch the "labor department". The department shall be a cabinet department and shall consist of, but not be limited to, five program divisions, an administrative division and an information technology division as follows:

- A. employment security division;
- B. workers' compensation division;
- C. labor and industrial division;
- D. human rights division;
- E. job training division;
- F. administrative services division; and
- G. information technology division."

Chapter 110 Section 8 Laws 2005

Section 8. Section 9-18-14 NMSA 1978 (being Laws 1987, Chapter 342, Section 14) is amended to read:

"9-18-14. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

A. Those organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws assigned to their organizational units for administration. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and the secretary shall retain the final decision-making authority and responsibility in accordance with the provisions of Subsection B of Section 9-18-7 NMSA 1978. The department shall have access to all records, data and information of other departments, agencies and institutions, including its own organizational units not specifically held confidential by law.

B. Subject to the provisions of Subsection B of Section 9-18-7 NMSA 1978:

(1) the employment security division shall have all those powers and duties conferred by law upon the former employment security department and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(2) the labor and industrial division shall have all those powers and duties conferred by law upon the former labor commissioner and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(3) the human rights division shall have all those powers and duties conferred by law upon the former executive director of the human rights commission and staff and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(4) the job training division shall have all those powers and duties conferred upon it by the governor pursuant to the Job Training Partnership Act and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(5) the administrative services division shall have all those powers and duties conferred upon it by the secretary. The secretary shall have the power, pursuant to Subsection B of Section 9-18-7 NMSA 1978, to transfer administrative functions and duties formerly conferred upon the chief administrative officer of any agency or department merged into the labor department by the Labor Department Act; and

(6) the information technology division shall have all those powers and duties conferred upon it by the secretary with the consent of the governor."

Chapter 110 Section 9 Laws 2005

Section 9. Section 9-19-4 NMSA 1978 (being Laws 1987, Chapter 254, Section 4, as amended) is amended to read:

"9-19-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to, five program divisions, an administrative division and an information technology division as follows:

- A. the New Mexico state police division;
- B. the special investigations division;
- C. the training and recruiting division;

- D. the technical and emergency support division;
- E. the administrative services division;
- F. the motor transportation division; and
- G. the information technology division."

HOUSE BILL 747, AS AMENDED

LAWS 2005, CHAPTER 111

AN ACT

RELATING TO LABOR; CREATING THE OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT; PROVIDING FOR THE OVERSIGHT AND COORDINATION OF WORKFORCE PROGRAMS; TRANSFERRING THE ADMINISTRATION OF THE WORKFORCE DEVELOPMENT ACT FROM THE LABOR DEPARTMENT AND THE ADMINISTRATION OF THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO THE OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 111 Section 1 Laws 2005

Section 1. Section 9-18-4 NMSA 1978 (being Laws 1987, Chapter 342, Section 4) is amended to read:

"9-18-4. LABOR DEPARTMENT ESTABLISHED.--There is created in the executive branch the "labor department". The department shall be a cabinet department and shall consist of, but not be limited to, three program divisions and two administrative divisions, as follows:

- A. employment security division;
- B. labor and industrial division;
- C. human rights division;
- D. information technology services division; and
- E. administrative services division."

Chapter 111 Section 2 Laws 2005

Section 2. Section 9-18-14 NMSA 1978 (being Laws 1987, Chapter 342, Section 14) is amended to read:

"9-18-14. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

A. Those organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws assigned to their organizational units for administration. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and the secretary shall retain the final decision-making authority and responsibility in accordance with the provisions of Subsection B of Section 9-18-7 NMSA 1978. The department shall have access to all records, data and information of other departments, agencies and institutions, including its own organizational units not specifically held confidential by law.

B. Subject to the provisions of Subsection B of Section 9-18-7 NMSA 1978:

(1) the employment security division shall have all those powers and duties conferred by law upon the former employment security department and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(2) the labor and industrial division shall have all those powers and duties conferred by law upon the former labor commissioner and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(3) the human rights division shall have all those powers and duties conferred by law upon the former executive director of the human rights commission and staff and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(4) the information technology services division shall have all those powers and duties conferred upon it by the secretary with the consent of the governor; and

(5) the administrative services division shall have all those powers and duties conferred upon it by the secretary. The secretary shall have the power, pursuant to Subsection B of Section 9-18-7 NMSA 1978, to transfer administrative functions and duties formerly conferred upon the chief administrative officer of any agency or department merged into the labor department by the Labor Department Act."

Chapter 111 Section 3 Laws 2005

Section 3. Section 50-14-1 NMSA 1978 (being Laws 1999, Chapter 260, Section 1) is amended to read:

"50-14-1. SHORT TITLE.--Chapter 50, Article 14 NMSA 1978 may be cited as the "Workforce Development Act"."

Chapter 111 Section 4 Laws 2005

Section 4. Section 50-14-2 NMSA 1978 (being Laws 1999, Chapter 260, Section 2) is amended to read:

"50-14-2. DEFINITIONS.--As used in the Workforce Development Act:

- A. "board" means the state workforce development board;
- B. "chief elected official" means the chief elected executive officer of a unit of general local government in a local area and in a case in which a local area includes more than one unit of general local government, "chief elected official" means the person designated under the agreement described in Section 117 (c)(1)(B) of the federal Workforce Investment Act of 1998;
- C. "employment training program" means a program or a part of a program, regardless of which state or local agency administers it, that has as its primary purpose assisting persons in obtaining or enhancing employment;
- D. "local board" means a local workforce development board; and
- E. "office" means the office of workforce training and development."

Chapter 111 Section 5 Laws 2005

Section 5. Section 50-14-3 NMSA 1978 (being Laws 1999, Chapter 260, Section 3, as amended) is amended to read:

"50-14-3. STATE WORKFORCE DEVELOPMENT BOARD.--

A. The "state workforce development board" is created. The board consists of members appointed as provided in the federal Workforce Investment Act of 1998.

B. Appointments of members shall have taken into consideration gender, ethnicity and geographic diversity.

C. A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

D. All terms of the public members shall be for four years.

E. The governor shall appoint one of the business representatives as chairman of the board.

F. The board shall meet at the call of the chair.

G. A majority of the board members constitutes a quorum.

H. Members are eligible to be paid pursuant to the Per Diem and Mileage Act.

I. A member of the board may not vote on a matter under consideration by the board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or the member's immediate family, or engage in any other activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998."

Chapter 111 Section 6 Laws 2005

Section 6. Section 50-14-4 NMSA 1978 (being Laws 1999, Chapter 260, Section 4) is amended to read:

"50-14-4. DUTIES OF THE BOARD.--

A. The board shall assist the governor in:

(1) developing a five-year state plan that shall be updated annually and revised in accordance with the requirements of the federal Workforce Investment Act of 1998;

(2) developing and improving the statewide activities funded pursuant to the workforce investment system and the one-stop delivery system, including development of linkages to ensure coordination and nonduplication among the programs and activities described in the federal Workforce Investment Act of 1998;

(3) reviewing local plans;

(4) commenting annually on the measures taken pursuant to Section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act;

(5) developing allocation formulas for adult and youth employment training program funds to local areas in accordance with the federal Workforce Investment Act of 1998;

(6) developing comprehensive state performance measures to assess the effectiveness of workforce investment activities pursuant to the federal Workforce Investment Act of 1998;

(7) designating local workforce development areas;

(8) developing the statewide employment statistics system; and

(9) preparing reports and applications required for submission to the federal government.

B. The board shall also:

(1) review, evaluate and report annually on the performance of all workforce development activities administered by state agencies involved with workforce development;

(2) develop linkages with the public education department and the commission on higher education to ensure coordination and nonduplication of vocational education, apprenticeship, adult education, employment training programs and vocational rehabilitation programs with other workforce development and training programs; and

(3) provide policy advice regarding the application of federal or state law that pertains to workforce development.

C. To assist the board in fulfilling its duties, it is authorized to establish committees, one of which shall be a "coordination oversight committee". Except as provided for the coordination oversight committee in Subsections D and E of this section, the board shall appoint committee members and assign duties to committees as the board deems appropriate. The chair of the board shall appoint committee chairs from among members of the board.

D. The coordination oversight committee shall consist of the secretaries of economic development, human services, labor and public education; a representative from community colleges; a representative from the commission on higher education; a representative of labor; two legislators from different political parties, one from the senate and one from the house of representatives; the director of the office; and the committee chair.

E. The duties of the coordination oversight committee include the following:

(1) the secretaries of economic development, labor and human services shall propose five-, ten- and fifteen-year regional and statewide strategic plans for employment growth and training in New Mexico for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(2) the secretary of public education and the representative from the commission on higher education shall propose appropriate education plans for secondary education that address the strategic plans proposed by the secretaries of economic development, human services and labor for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(3) the committee's proposals to the board shall facilitate a career pathways culture and, at a minimum, include reference to foundation skills as developed by the United States secretary of labor's commission on achieving necessary skills, a job analysis that the economic development department shall produce after consultation with incumbent workers and employers, an available skills assessment and training targets;

(4) the board member from the community colleges shall solicit input from the community college constituency and work with regional and statewide businesses and other partners and the economic development department to create career pathways and align curriculum and facilitate plans with the economic development department, human services department and labor department strategic plans;

(5) the committee shall, after consultation with the state chief information officer, develop and propose strategies for coordination of information technology for the purposes of providing participants access to all appropriate state services; collecting and managing data to allow reporting and analysis of uniform performance data related to all appropriate employment training programs; and sharing and integrating appropriate workforce data across agencies and appropriate nongovernmental partners for identifying needs, setting policy and coordinating strategies;

(6) the committee shall recommend for the board's approval the coordination of program designs to avoid duplication or unproductive segmentation of services; and

(7) the committee shall recommend for the board's approval the coordination of state agency efforts to progress toward comprehensive, customer-driven one-stop centers through co-location of mandatory and recommended partner service delivery points for workforce development.

F. All state agencies involved in workforce development activities shall annually submit to the board for its review and potential inclusion in the five-year plan their goals, objectives and policies. The plan shall include recommendations to the

legislature on the modification, consolidation, initiation or elimination of workforce training and education programs in the state."

Chapter 111 Section 7 Laws 2005

Section 7. Section 50-14-5 NMSA 1978 (being Laws 1999, Chapter 260, Section 5) is amended to read:

"50-14-5. LOCAL WORKFORCE DEVELOPMENT AREAS--LOCAL BOARDS--DUTIES AND RESPONSIBILITIES.--

A. The governor shall designate specified local workforce development areas based on population and geographic configuration and consistent with provisions of the federal Workforce Investment Act of 1998 upon recommendation of the board and consideration of needs expressed by chief elected officials, business, labor and other interested parties.

B. The chief elected officials of each workforce development area shall establish a local board and appoint members based on the criteria established by the governor, the board and the federal Workforce Investment Act of 1998.

C. Each local board shall:

(1) advise the board on issues relating to regional and local workforce development needs;

(2) develop and submit to the board and the office a local five-year workforce plan that shall be updated and revised annually in accordance with requirements of the federal Workforce Investment Act of 1998;

(3) designate or certify one-stop program operators in accordance with the federal Workforce Investment Act of 1998;

(4) terminate, for cause, the eligibility of one-stop operators;

(5) select and provide grants to youth activity providers in accordance with the federal Workforce Investment Act of 1998;

(6) identify eligible training and intensive service providers in accordance with the federal Workforce Investment Act of 1998;

(7) develop a budget subject to the approval of the chief elected official;

(8) develop and negotiate local performance measurements as described in the federal Workforce Investment Act of 1998 with the chief elected official and the office;

(9) assist in development of an employment statistics system;

(10) ensure linkages with economic development activities;

(11) encourage employer participation and assist employers in meeting hiring needs;

(12) in partnership with the chief elected official, conduct oversight of local programs of youth activities authorized pursuant to the federal Workforce Investment Act of 1998 and employment and training activities pursuant to that act, and the one-stop delivery system in the local area;

(13) if required by the federal Workforce Investment Act of 1998, or if not required, at the local board's discretion, establish as a subgroup a youth council, appointed by the local board in cooperation with the chief elected official;

(14) prior to submission of the local plan, provide information regarding the following:

(a) the local plan;

(b) membership;

(c) designation and certification of one-stop operators; and

(d) the award of grants or contracts to eligible providers of youth activities;

(15) approve employment training programs directly linked to occupations in demand in the local area in order to provide for self-sufficiency;

(16) approve employment training programs linked to sectors of the economy or industry clusters that have a high potential for sustained demand or growth;

(17) annually review the performance of employment training programs for the purposes of renewing or canceling their certifications;

(18) report to the office and the board quarterly on the progress and overall effectiveness of one-stop operator performance as set forth in rules promulgated by the office; and

(19) report to the office and the board quarterly on the progress and effectiveness of the provision of services to employers, including a needs assessment for local business communities.

D. The local board shall be appointed in accordance with criteria established by the office with a minimum of fifty-one percent of its members coming from the private sector and shall include representation of education, labor, government, economic development and community-based organizations and others as appropriate and shall be appointed or ratified by the local chief public official.

E. Nothing in the Workforce Development Act shall be construed to provide a local board with the authority to mandate curricula for schools.

F. A member of the local board may not vote on a matter under consideration by the local board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or the member's immediate family, or engage in an activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998."

Chapter 111 Section 8 Laws 2005

Section 8. Section 50-14-6 NMSA 1978 (being Laws 1999, Chapter 260, Section 6) is amended to read:

"50-14-6. YOUTH COUNCILS--MEMBERSHIP--DUTIES.--

A. The provisions of this section apply to the extent required by the federal Workforce Investment Act of 1998.

B. The membership of each youth council shall include:

(1) members of the local board with interest or expertise in youth policy; representatives of youth service agencies, including juvenile justice and law enforcement agencies; and representatives of local public housing;

(2) parents of eligible youth seeking assistance;

(3) persons, including former participants as defined pursuant to the New Mexico Works Act, and representatives of organizations, that have experience relating to youth activities;

(4) representatives of job corps, as appropriate; and

(5) other persons that the chairman of the local board, in cooperation with the chief elected official, determines to be appropriate.

C. Members of the youth council who are not members of the local board shall be voting members of the youth council and nonvoting members of the local board.

D. The duties of the youth council shall include:

(1) developing the portions of the local plan relating to eligible youth, as determined by the chairman of the local board;

(2) recommending eligible youth providers to the local board;

(3) conducting oversight of eligible providers of youth activities and coordinating youth activities authorized pursuant to the federal Workforce Investment Act of 1998 subject to the approval of the local board; and

(4) performing other duties as determined to be appropriate by the chairman of the local board.

E. A member of a local board or youth council may not vote on a matter under consideration by the local board regarding the provision of services by the member or by an entity that the member represents or that would provide direct financial benefit to the member or the immediate family of the member engaged in any activity determined by the governor to constitute a conflict of interest as specified in the state plan prepared pursuant to the federal Workforce Investment Act of 1998."

Chapter 111 Section 9 Laws 2005

Section 9. A new section of the Workforce Development Act is enacted to read:

"PURPOSE.--The purpose of the Workforce Development Act is to coordinate and maximize the effectiveness of workforce programs in New Mexico regardless of funding sources or primary administrative responsibilities."

Chapter 111 Section 10 Laws 2005

Section 10. A new section of the Workforce Development Act is enacted to read:

"OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT--CREATION--DIRECTOR.--

A. The "office of workforce training and development" is created as an agency administratively attached to the office of the governor.

B. The office shall be the recipient of all grants from the United States pursuant to the federal Workforce Investment Act of 1998 and shall disburse those grants consistent with that act and the Workforce Development Act.

C. The office shall administer the provisions of the Workforce Development Act and is the governor's designee for the state with authority to administer New Mexico's program pursuant to the federal Workforce Investment Act of 1998. In performance of that duty and the duties set forth in Section 11 of this 2005 act, the office has the general power to:

(1) sue and, subject to the provisions of the Tort Claims Act, be sued;

(2) enter into contracts, joint powers agreements and other contracts for workforce development services and administer related programs with other state agencies; local governments; state institutions of higher learning; Indian nations, tribes or pueblos; regional provider networks; and corporations authorized to do business in the state;

(3) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which the office is responsible and to enforce those orders and instructions by appropriate administrative actions or actions in courts;

(4) promulgate, following the procedure in Subsection E of Section 9-1-5 NMSA 1978, reasonable rules necessary to carry out the duties of the office; and

(5) take all other actions necessary to meet the purposes of the Workforce Development Act.

D. The governor shall appoint, with the advice and consent of the senate, a director of the office who shall be the administrative head of the office and exempt from the provisions of the Personnel Act.

E. The director of the office may, within the limits of available appropriations and pursuant to the provisions of the Personnel Act, employ such technical and administrative staff as are necessary to carry out the duties of the office."

Chapter 111 Section 11 Laws 2005

Section 11. A new section of the Workforce Development Act is enacted to read:

"OFFICE--DUTIES--LIMITATIONS.--

A. The office shall:

(1) provide technical, administrative and fiscal agent support to the board;

(2) develop a unified, comprehensive plan for streamlining and integrating employment training programs, including the consolidation of all employment training programs, into the office. The office shall report annually to the governor and the legislature generally the progress and effectiveness of the workforce development system no later than September 1;

(3) develop a performance-based system of accountability for employment training programs, including the board, local boards, one-stop centers and training providers, which system shall include key performance benchmarks to be used to monitor and assess performance;

(4) monitor compliance with performance-based and coordination standards, including such standards as the office establishes by rule, with approval of the board, or the board has adopted in the state plan, for the state's employment training programs regardless of funding source or the administrative agency that receives the funds. In performing this duty, the office:

(a) may issue subpoenas to appear and answer questions or produce documents;

(b) may investigate substantial allegations of improper financial or program activities;

(c) shall submit compliance reports to the governor; and

(d) shall, with approval of the governor, issue such corrective action orders as are necessary to enforce compliance, including orders that suspend funding for employment training programs or that transfer the programs to another agency;

(5) promote the active participation and partnership with community colleges wherever possible throughout the state, which shall include the use of community colleges in creating career pathways and the use of available partnership incentives with local boards to use community college facilities for one-stop locations, co-location opportunities and specifically designed training programs; and

(6) provide oversight and technical support for local boards to assist them in achieving independence and meeting performance standards while implementing statewide goals and directions.

B. The office shall not compete for a contract to provide one-stop services, act as a one-stop operator, accept revenues for one-stop contractor services for a local area of the state or receive funding from residual set-aside funds other than for usual and customary office activities; provided, however, that the office may, in its discretion and consistent with the state plan, promote and fund the establishment of all required

and allowable statewide investment activities consistent with Section 134 of the federal Workforce Investment Act of 1998 and in cooperation with local boards.

C. Nothing in the Workforce Development Act shall be construed to provide the office with authority to administer the unemployment compensation program, programs under 29 U.S.C. Sections 49 through 49c or a program currently administered by the labor department."

Chapter 111 Section 12 Laws 2005

Section 12. A new section of the Workforce Development Act is enacted to read:

"SKILLS COUNCIL.--The chair of the board and the chairs of each of the local boards shall appoint one member from each of their respective bodies to form an ad hoc skills council that shall identify state and regional industry clusters for the coordination oversight committee of the board for the purposes of developing coordinated, targeted workforce training programs."

Chapter 111 Section 13 Laws 2005

Section 13. A new section of the Workforce Development Act is enacted to read:

"COOPERATION WITH FEDERAL GOVERNMENT--AGENCY DESIGNATION.--

A. The office may cooperate with the federal government in the administration of employment training and public assistance programs in which financial or other participation by the federal government is authorized or mandated under federal laws, rules or orders.

B. The office, on behalf of the governor, may enter into agreements with agencies of the federal government to implement employment training and public assistance programs subject to availability of appropriated state funds and any provisions of state laws applicable to the agreements or participation by the state.

C. The governor may designate the office or any agency as the single state agency for the administration of an employment training program, either by the governor's own discretion or when the designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order; provided, however, that no designation of a single state agency under the authority granted in this section shall be made in contravention of state law."

Chapter 111 Section 14 Laws 2005

Section 14. A new section of the Workforce Development Act is enacted to read:

"AGENCY COOPERATION.--Notwithstanding any other provision of law, all agencies, institutions and political subdivisions of the state that administer employment training or public assistance programs shall, consistent with state and federal statutes, cooperate with the office in the exercise of its coordination and inspection authority."

Chapter 111 Section 15 Laws 2005

Section 15. Section 58-30-2 NMSA 1978 (being Laws 2003, Chapter 362, Section 2) is amended to read:

"58-30-2. DEFINITIONS.--As used in the Individual Development Account Act:

A. "account owner" means the person in whose name an individual development account is originally established;

B. "allowable use" means a use that complies with the provisions of the Individual Development Account Act, or rules adopted pursuant to that act;

C. "authorized financial institution" means a financial institution authorized by the office of workforce training and development to hold and manage individual development accounts and reserve accounts;

D. "director" means the director of the office;

E. "earned income" means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services;

F. "eligible individual" means a person who meets the criteria for opening an individual development account;

G. "financial institution" means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration;

H. "individual development account" means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the provisions of the Individual Development Account Act;

I. "individual development account program" means a program approved by the office to establish and administer individual development accounts and reserve accounts for eligible individuals and to provide financial training required by the office for account owners;

J. "matching funds" means money deposited in a reserve account to match the withdrawals for allowable uses from an individual development account according to a proportionate formula that complies with rules adopted by the director;

K. "nonprofit organization" means an instrumentality of the state or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation pursuant to Section 501(a) of that code;

L. "office" means the office of workforce training and development;

M. "program administrator" means a nonprofit organization or tribe that is determined by the director to be eligible to offer an individual development account program;

N. "reserve account" means an account established pursuant to the Individual Development Account Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner; and

O. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico."

Chapter 111 Section 16 Laws 2005

Section 16. Section 58-30-5 NMSA 1978 (being Laws 2003, Chapter 362, Section 5) is amended to read:

"58-30-5. RESPONSIBILITIES OF THE OFFICE.--

A. By December 31 following the effective date of the Individual Development Account Act, the director shall adopt rules implementing the provisions of that act.

B. The director shall make an annual report each November to the governor and to an appropriate interim committee of the legislature.

C. The office shall use no more than ten percent of the money appropriated to fund the Individual Development Account Act to administer that act."

Chapter 111 Section 17 Laws 2005

Section 17. Section 58-30-6 NMSA 1978 (being Laws 2003, Chapter 362, Section 6) is amended to read:

"58-30-6. ADVISORY COMMITTEE.--

A. An advisory committee shall be created to provide oversight of the administration of individual development account programs and to suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

B. The advisory committee shall meet at least two times in a calendar year to review the implementation of the Individual Development Account Act.

C. The advisory committee shall consist of the lieutenant governor and eight members appointed by the governor to represent the state geographically. The director or the director's designee shall serve as an ex-officio member of the advisory committee.

D. Members of the advisory committee who are account owners shall receive per diem and mileage pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their participation on the advisory committee.

E. The office shall provide adequate staff support and administrative services for the advisory committee."

Chapter 111 Section 18 Laws 2005

Section 18. Section 58-30-7 NMSA 1978 (being Laws 2003, Chapter 362, Section 7) is amended to read:

"58-30-7. ADMINISTRATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account may be established for an eligible individual; provided that the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents, unless otherwise approved by the program administrator.

B. An individual development account program shall be approved and monitored by the director for compliance with applicable law, the Individual Development Account Act and rules adopted pursuant to that act.

C. An individual development account program shall establish a reserve account sufficient to meet the matching fund commitments made to all account owners participating in the individual development account program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses.

D. An individual development account program shall provide financial education and other necessary training pertinent to allowable uses by account owners,

develop partnerships with financial institutions, develop matching funds and manage the operations of an individual development account that is established within the program.

E. The office shall adopt rules necessary to implement the Individual Development Account Act.

F. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account.

G. More than one eligible individual per household may hold an individual development account.

H. An account owner shall complete a financial education program prior to the withdrawal of money from the account owner's individual development account."

Chapter 111 Section 19 Laws 2005

Section 19. Section 58-30-9 NMSA 1978 (being Laws 2003, Chapter 362, Section 9) is amended to read:

"58-30-9. APPROVAL OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. Annually, the office shall solicit a request for proposals from nonprofit organizations or tribes interested in establishing an individual development account program.

B. The director shall determine if an interested nonprofit organization or tribe is eligible to be a program administrator.

C. Eligible program administrators shall develop individual development account programs that are subject to review and approval by the director.

D. The director shall approve an individual development account program submitted by a program administrator before the program establishes individual development accounts or reserve accounts or provides services required by the Individual Development Account Act to eligible individuals.

E. An individual development account and a reserve account may be established only in an authorized financial institution.

F. The director shall monitor all individual development account programs to ensure that individual development accounts and reserve accounts are being operated according to federal law, the provisions of the Individual Development Account Act and rules adopted pursuant to that act."

Chapter 111 Section 20 Laws 2005

Section 20. Section 58-30-10 NMSA 1978 (being Laws 2003, Chapter 362, Section 10) is amended to read:

"58-30-10. TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS.--

A. An individual development account program shall be terminated if the:

(1) office determines that the program is not being operated pursuant to the provisions of the Individual Development Account Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing an individual development account program.

B. If the director is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated individual development account program, money in a reserve account shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program."

Chapter 111 Section 21 Laws 2005

Section 21. Section 58-30-11 NMSA 1978 (being Laws 2003, Chapter 362, Section 11) is amended to read:

"58-30-11. REPORTING.--A program administrator operating an individual development account program pursuant to the Individual Development Account Act shall report at least annually to the director, as set forth in the rules of the office. Individual account owners shall not be identified in the report. The report shall include:

A. the number of eligible individuals making contributions to individual development accounts;

B. the total money contributed to each individual development account and deposited into each reserve account;

C. the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the individual development account program;

D. the amounts withdrawn from individual development accounts for either allowable uses or for uses other than allowable uses and the amounts withdrawn from reserve accounts;

E. the balances remaining in individual development accounts and reserve accounts; and

F. other information requested by the director to monitor the costs and outcomes of the individual development account program."

Chapter 111 Section 22 Laws 2005

Section 22. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, MONEY AND CONTRACTS.--On the effective date of this act:

A. all staff positions and all money, appropriations, records, furniture, equipment, supplies and other property belonging to the labor department or the job training division on the effective date of this act and funded or purchased by federal Workforce Investment Act of 1998 grants are transferred to the office of workforce training and development. The labor department shall produce an accounting of all staff positions funded and property purchased in any part by such grants. For those staff positions and items of property that the grants partially funded or purchased, the labor department shall transfer sufficient full-time-equivalent positions, money or property of sufficient value to the office of workforce training and development to achieve a complete transition to the office of workforce training and development;

B. all existing contracts, agreements and other

obligations in effect for the labor department or the job training division and funded by federal Workforce Investment Act of 1998 grants shall be binding on the office of workforce training and development;

C. all pending cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the labor department or the job training division and arise out of administration or enforcement of the federal Workforce Investment Act of 1998 or the Workforce Development Act shall be unaffected and shall continue in the name of the office of workforce training and development;

D. all rules, orders and other official acts of the labor department or the job training division arising out of the administration and enforcement of the federal Job Training Partnership Act, the federal Workforce Investment Act of 1998 and the Workforce Development Act shall continue in effect until amended, replaced or repealed by the office of workforce training and development; and

E. all references in law, rules, orders and other official acts to the labor department or the job training division and related to the administration and enforcement of the federal Workforce Investment Act of 1998 or the Workforce Development Act shall be construed to be references to the office of workforce training and development.

Chapter 111 Section 23 Laws 2005

Section 23. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, MONEY AND CONTRACTS FOR THE INDIVIDUAL DEVELOPMENT ACCOUNT ACT.--

A. On July 1, 2005, all staff positions and all money, appropriations, records, furniture, equipment, supplies and other property of the local government division of the department of finance and administration used to administer the Individual Development Account Act are transferred to the office of workforce training and development. All federal program grants and fund allocations or other payments made to the local government division for the Individual Development Account Act shall be transferred to the office of workforce training and development and shall not be commingled with other funds of the office or be used for any other purpose except for administration of the programs for which these funds were granted.

B. All existing contracts and agreements in effect pertaining to the local government division of the department of finance and administration's administration of the Individual Development Account Act shall be binding and effective on the office of workforce training and development.

C. The rules, orders and decisions of the local government division of the department of finance and administration pertaining to the Individual Development Account Act in effect on June 30, 2005 shall remain in effect until repealed or amended.

Chapter 111 Section 24 Laws 2005

Section 24. REPEAL.--Section 50-14-7 NMSA 1978 (being Laws 1999, Chapter 260, Section 7) is repealed.

Chapter 111 Section 25 Laws 2005

Section 25. DELAYED REPEAL.--The office of workforce training and development is terminated on July 1, 2011 pursuant to the Sunset Act. The office shall continue to operate according to the provisions of the Workforce Development Act until July 1, 2012. Effective July 1, 2012, the Workforce Development Act is repealed.

Chapter 111 Section 26 Laws 2005

Section 26. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 98, AS AMENDED, WITH

EMERGENCY CLAUSE SIGNED APRIL 4, 2005

LAWS 2005, CHAPTER 112

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR A SPECIAL ORGAN DONATION LICENSE PLATE; MAKING AN APPROPRIATION.

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

Chapter 112 Section 1 Laws 2005

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

"SPECIAL ORGAN DONATION AWARENESS REGISTRATION PLATE--PROCEDURES--FEE.--

A. The division shall establish and issue special registration plates pursuant to Section 66-3-424 NMSA 1978 with a logo promoting awareness about the urgent need for organ and tissue donation in New Mexico and shall adopt procedures for application for and issuance of the special organ donation awareness registration plates.

B. The division shall determine the design of the logo for the organ donation awareness registration plate in consultation with New Mexico donor services and other organizations with the purpose of promoting organ and tissue donation and education.

C. For a one-time fee of ten dollars (\$10.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special organ donation awareness registration plate. Thereafter, the owner of the motor vehicle shall pay the regular motor vehicle registration fees each year to retain and renew the special organ donation awareness registration plate.

D. Of the revenue from the special organ donation awareness registration plates, the ten-dollar (\$10.00) fee collected for each registration plate shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates."

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 284

LAWS 2005, CHAPTER 113

AN ACT

RELATING TO TAXATION; PROVIDING FOR AN INCOME TAX DEDUCTION FOR ORGAN DONATION-RELATED EXPENSES INCURRED BY TAXPAYERS OR THEIR DEPENDENTS.

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

Chapter 113 Section 1 Laws 2005

Section 1. A new section of the Income Tax Act is enacted to read:

"DEDUCTION--EXPENSES RELATED TO ORGAN DONATION.--

A. A taxpayer may claim a deduction from net income in an amount not to exceed ten thousand dollars (\$10,000) of organ donation-related expenses, including lost wages, lodging expenses and travel expenses, incurred during the taxable year by the taxpayer or the taxpayer's dependent as a result of the taxpayer's or dependent's donation of a human organ to another person for transfer of that human organ to the body of another person.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on a joint return.

C. For the purposes of this section:

(1) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered; and

(2) "human organ" means all or part of a heart, liver, pancreas, kidney, intestine, lung or bone marrow."

Chapter 113 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

HOUSE BILL 105, AS AMENDED

LAWS 2005, CHAPTER 114

AN ACT

RELATING TO THE GAME PROTECTION FUND; REVERTING A CERTAIN APPROPRIATION MADE FROM THAT FUND.

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

Chapter 114 Section 1 Laws 2005

Section 1. GAME PROTECTION FUND APPROPRIATION TO THE STATE ENGINEER REVERTED.--The one hundred thousand dollars (\$100,000) appropriated in Item (75) of Section 5 of Chapter 114 of Laws 2004 from the game protection fund to the state engineer for administration of Eagle Nest lake and reservoir shall not be expended for that purpose but shall revert to the game protection fund.

HOUSE BILL 31

LAWS 2005, CHAPTER 115

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR NUTRITION RULES GOVERNING FOODS AND BEVERAGES SOLD OUTSIDE OF SCHOOL MEAL PROGRAMS.

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

Chapter 115 Section 1 Laws 2005

Section 1. TEMPORARY PROVISION--FOOD AND BEVERAGES SOLD OUTSIDE OF SCHOOL MEAL PROGRAMS.--The public education department, in collaboration with the department of health and one representative each from the New Mexico action for healthy kids, parents, students, school food service directors, school boards, school administrators, agriculture, dairy producers and the food and beverage industry, shall adopt rules no later than December 31, 2005 governing foods and beverages sold in all public schools to students outside of federal department of agriculture school meal programs. The rules shall, at a minimum, address nutrition

standards, portion sizes and times when students may access these items. Nothing in this section shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers or groups when the items are intended for sale off the school campus.

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 61, AS AMENDED

LAWS 2005, CHAPTER 116

AN ACT

RELATING TO ELECTIONS; REQUIRING THE CORRECTIONS DEPARTMENT AND COURT CLERKS TO NOTIFY THE SECRETARY OF STATE WHEN A PERSON CONVICTED OF A FELONY BECOMES ELIGIBLE FOR REGISTRATION; REQUIRING THE CORRECTIONS DEPARTMENT TO PROVIDE A CERTIFICATE OF COMPLETION TO A PERSON CONVICTED OF A FELONY WHO HAS SATISFIED ALL CONDITIONS OF A SENTENCE.

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

Chapter 116 Section 1 Laws 2005

Section 1. Section 1-4-27.1 NMSA 1978 (being Laws 2001, Chapter 46, Section 1) is amended to read:

"1-4-27.1. 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 secretary of state. The secretary of state shall notify 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) state tracking number;
- (5) case number;
- (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 secretary of state that the person is eligible for registration. The secretary of state shall notify all county clerks 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 secretary of state that the person is eligible for registration. The secretary of state shall notify all county clerks 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 secretary of state that the person is eligible for registration. The secretary of state shall notify all county clerks that the person is eligible for registration."

Chapter 116 Section 2 Laws 2005

Section 2. Section 31-13-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-14, as amended) 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 the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship.

B. When a person has completed the terms of a suspended or deferred sentence imposed by a court for a felony conviction, the clerk of the district court shall notify the secretary of state. The secretary of state shall notify all county clerks that the person is eligible for registration.

C. A person who has served the entirety of a sentence imposed for a felony conviction, including a term of probation or parole shall be issued a certificate of completion by the corrections department. Upon issuance, the corrections department shall inform the person that the person is entitled to register to vote. The certificate of completion shall state that the person's voting rights are restored.

D. When the corrections department issues a person a certificate of completion, the corrections department shall notify the secretary of state that the person is entitled to register to vote. The secretary of state shall notify all county clerks that the person is eligible for registration. Additionally, a county clerk shall accept the following documents as proof that a person has served the entirety of the sentence for a felony conviction and is eligible for registration:

(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 the sentence;

(2) a certificate of completion from the corrections department; or

(3) a certificate of completion from another state or the federal government.

E. 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 the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship."

HOUSE BILL 64, AS AMENDED

LAWS 2005, CHAPTER 117

AN ACT

RELATING TO BRANCH COMMUNITY COLLEGES; PROVIDING FOR INCREASED AUTHORITY OF BOARDS TO PARTICIPATE IN THE SELECTION PROCESS OF BRANCH COMMUNITY COLLEGE DIRECTORS.

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

Chapter 117 Section 1 Laws 2005

Section 1. Section 21-14-2 NMSA 1978 (being Laws 1963, Chapter 162, Section 2, as amended) is amended to read:

"21-14-2. BOARD DUTIES--RELATIONSHIP WITH PARENT INSTITUTION--ELECTIONS.--

A. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local school board or the combined local school boards acting as a single board of the school district or the board of the branch community college elected pursuant to Section 21-14-2.1 NMSA 1978.

B. The duties of the board are to:

(1) enter into written agreements with the board of regents of the parent institution, subject thereafter to biennial review by all parties concerned and to the review and commentary of the commission on higher education;

(2) act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the branch community college;

(3) approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;

(4) certify to the board of county commissioners the tax levy; and

(5) conduct the election for tax levies for the branch community college.

C. The board and the board of regents of the parent institution of the branch community college shall jointly conduct a search for qualified candidates for director. The board of regents of the parent institution, after consultation with the board, shall then select a director for the branch community college.

D. The board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

(1) the higher education institution to have full authority and responsibility in relation to all academic matters;

(2) the higher education institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program offered;

(4) the cooperative use of physical facilities and teaching staff;

(5) consideration of applications of local qualified people before employing teachers of the local school system; and

(6) the detailed agreement of financing and financial control of the branch community college.

E. The agreement shall be binding upon both the board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice. However, if the branch community college has outstanding general obligation or revenue bonds, neither the board nor the board of regents may terminate the agreement until the outstanding bonds are retired, except as provided by Section 21-13-24.1 NMSA 1978. This provision shall apply to all agreements in existence between the branch community college and the board of regents of the parent institution.

F. All taxes levied to pay for principal and interest on bonds of the branch community college shall be in addition to the taxes levied for operating, maintaining and providing facilities for the branch community college pursuant to the College District Tax Act.

G. For the purpose of relating branch community colleges to existing laws, branch community college districts or branch community colleges shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the public education department; and

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned.

H. All elections held pursuant to the branch community college laws shall be as follows:

(1) the board calling the election shall give notice of the election in a newspaper of general circulation in the branch community college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election;

(2) the election shall be conducted and canvassed in the same manner as municipal school district elections unless otherwise provided in the branch community college laws; and

(3) any person or corporation may institute in the district court of any county in which the branch community college district affected lies an action or suit to contest the validity of any proceedings held under the branch community college laws, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

I. The tax rolls of the school districts comprising the branch community college district shall be adopted as the tax rolls of the branch community college district."

Chapter 117 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION.--The provisions of this act shall not affect agreements or contracts existing on the effective date of this act between a board of regents and a branch community college, except that a director of a branch community college selected after the effective date of this act shall be selected in accordance with the provisions of Section 1 of this act.

HOUSE BILL 67, AS AMENDED

LAWS 2005, CHAPTER 118

AN ACT

RELATING TO COUNTY ASSESSORS; PERMITTING THE REAL ESTATE APPRAISERS BOARD TO ESTABLISH COURSES AND QUALIFICATIONS FOR APPRAISER'S CERTIFICATES.

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

Chapter 118 Section 1 Laws 2005

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

"4-39-2. COURSES IN PROPERTY VALUATION AND PROPERTY TAX ADMINISTRATION AUTHORIZED--ISSUANCE OF CERTIFICATES.--The taxation and revenue department, in cooperation with the international association of assessing officers and the real estate appraisers board, may establish four grades of courses in the field of property valuation and property tax administration. The courses shall be graded in order of increasing difficulty and shall be administered by the department. Persons completing a course and passing an examination on a particular grade of property valuation and property tax administration shall be issued an appraiser's certificate of an appropriate grade. A person shall not be issued an appraiser's certificate of a particular grade unless the person has been issued an appraiser's certificate for each one of the lesser grades. The appraiser's certificates shall be denominated "Appraiser 1", "Appraiser 2", "Appraiser 3" and "Appraiser 4" and shall be granted in order of difficulty of the course and examination completed. The "Appraiser 4" certificate shall be granted for completion of the most difficult course. County assessors or appraisers who have been granted an "Appraiser 4" certificate shall be designated "New Mexico certified appraiser" and shall be provided by the taxation and revenue department with a certificate granting this designation."

Chapter 118 Section 2 Laws 2005

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

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

HOUSE BILL 130, AS AMENDED

LAWS 2005, CHAPTER 119

AN ACT

RELATING TO VOLUNTEER FIREFIGHTERS RETIREMENT; PROVIDING A PROCEDURE TO ADJUST SERVICE CREDIT FOR SERVICE PRIOR TO JANUARY 1, 2004; CLARIFYING APPLICABILITY.

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

Chapter 119 Section 1 Laws 2005

Section 1. Section 10-11A-6 NMSA 1978 (being Laws 1983, Chapter 263, Section 6, as amended) is amended to read:

"10-11A-6. DETERMINATION OF SERVICE CREDIT.--

A. A member may claim one year of service credit for each year in which a fire department certifies that the member:

(1) attended seventy-five percent of all scheduled fire drills;

(2) attended seventy-five percent of all scheduled business meetings; and

(3) participated in at least fifty percent of all emergency response calls for which the fire department held the member responsible to attend.

B. The chief of each fire department shall submit to the association by March 31 of each year the records of attendance of members for emergency response calls, fire drills and business meetings during the preceding calendar year; provided that the chief shall:

(1) submit such records on forms provided by the association;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chairman of the county commission, if distributions from the fire protection fund for the fire department are made to an independent fire district.

C. For service credit that has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for one or more calendar years prior to January 1, 2005, but for not more than five years of additional service credit, by filing with the association no later than December 31, 2005:

(1) a copy of the state fire marshal's records or the records of the member's fire department indicating the member's record of attendance for emergency calls, fire drills and business meetings during the calendar years for which service credit is claimed; and

(2) a completed "Corrected Qualification Record" or "Adjusted Qualification Record" as prescribed by the board.

D. Failure to timely provide the records required pursuant to Subsection C of this section shall result in the loss of the member's service credit not credited pursuant to Subsection B of this section."

Chapter 119 Section 2 Laws 2005

Section 2. APPLICABILITY.--Notwithstanding the provisions of Laws 1983, Chapter 263, Section 10, Laws 2003, Chapter 370, Section 2 shall apply to members retiring on or after June 20, 2003.

HOUSE BILL 142, AS AMENDED

LAWS 2005, CHAPTER 120

AN ACT

RELATING TO MECHANICS' AND MATERIALMEN'S LIENS; ALLOWING RECOVERY OF ATTORNEY FEES FOR THE PREVAILING PARTY IN A LIEN ACTION.

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

Chapter 120 Section 1 Laws 2005

Section 1. Section 48-2-14 NMSA 1978 (being Laws 1880, Chapter 16, Section 14, as amended) is amended to read:

"48-2-14. JOINDER OF ACTIONS--ATTORNEY FEES--COSTS.-- Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. The court may also allow the prevailing

party, as part of the costs, the money paid for filing and recording the lien and reasonable attorney fees in the district and supreme courts."

HOUSE BILL 147

LAWS 2005, CHAPTER 121

AN ACT

RELATING TO CULTURAL AFFAIRS; CREATING THE MUSEUM COLLECTIONS FUND; MAKING AN APPROPRIATION.

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

Chapter 121 Section 1 Laws 2005

Section 1. MUSEUM COLLECTIONS FUND--CREATED--PURPOSE--
NATIONAL MUSEUM ETHICAL GUIDELINES.--

A. The "museum collections fund" is created in the state treasury. The fund is a nonreverting fund, and income from investment of the fund shall be credited to the fund. The fund shall be administered by the cultural affairs department, and money in the fund is appropriated to the department as provided in Subsection B of this section.

B. The purpose of the fund is to receive proceeds from the deaccessioning of museum collection items of each state museum and to fund new acquisitions for the museums. To comply with national museum ethical guidelines, each museum may have a subaccount in the museum collections fund into which the proceeds of the deaccessioning of its collection items and income from investment of the proceeds are credited and out of which the museum may expend money for the sole purpose of acquiring objects for that museum's collection. Money in the fund shall be expended on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the appropriate museum division and the secretary of cultural affairs or the secretary's authorized representative.

HOUSE BILL 148

LAWS 2005, CHAPTER 122

AN ACT

RELATING TO HIGHWAYS; AMENDING SECTIONS OF CHAPTER 67 NMSA 1978 TO PROVIDE FOR COMMERCIAL GOODS AND SERVICES ON DEPARTMENT OF TRANSPORTATION FACILITIES.

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

Chapter 122 Section 1 Laws 2005

Section 1. Section 67-3-12 NMSA 1978 (being Laws 1929, Chapter 110, Section 1, as amended) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers now conferred upon it by law, the state transportation commission shall have the power and authority to:

A. declare abandoned and to close to public traffic all grade crossings of railroads by state highways in cases where grade separations or other adequate crossings are substituted therefor or where such grade crossings become unnecessary to the public convenience by reason of changes in highway locations;

B. offer and upon compliance with the conditions of such offer to pay rewards for information leading to the arrest and conviction of offenders in cases of theft, defacement or destruction of markers or highway signs, lights or other warning devices placed upon or along highways of this state under the supervision of the state transportation commission and for information leading to the arrest and conviction of offenders or for the return of property in case of theft or unlawful damaging of property under the control of the commission. All such rewards when paid shall be paid from the state road fund upon voucher drawn by the secretary of transportation or other authorized officer or agent of the department;

C. prescribe by rules and regulations the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be hereafter placed along, across, over or under all public highways in this state and to forcibly remove or cause to be removed any such pipelines, telephone, telegraph or electric transmission lines or ditches which may hereafter be placed along, across, over or under such public highways in violation of such rules and regulations;

D. employ an attorney to assist and advise the state transportation commission and all of the employees and agents thereof in the discharge of their duties and to appear and represent the interests of the commission or its employees in any case before any court or tribunal in which the official duties, powers, rights or privileges of the commission or any of its employees or agents may be involved or affected and to pay such attorney the reasonable value of his services out of the state road fund;

E. bring and maintain in the name of the state all actions and proceedings deemed necessary by the state transportation commission for the condemnation of

rights of way for public highways or for the removal or condemnation of buildings or other improvements that encroach in whole or part upon the rights of way of public highways or for the condemnation of gravel pits or other deposits of materials or supplies suitable for the construction of public highways.

The attorney general of New Mexico shall appear in and prosecute all such cases on behalf of the state upon request of the state transportation commission. All such proceedings shall be conducted in the same manner as other cases for the condemnation of real property. The damages assessed in proceedings brought under the provisions of this section shall be paid out of the state road fund from money furnished for that purpose by cooperative agreement between the state, federal government and the county within which the condemned property is situate or any such governmental bodies or out of money furnished for the construction of the highway in connection with which the condemnation is had, by the county in which the condemned property is situate; provided, however, that if no such money is available, the damages shall be advanced on behalf of said counties out of their money in the state road fund and the state treasurer shall thereafter reimburse the state road fund for the money advanced out of the next installment of money from motor vehicle license fees accruing to the road fund of the county for which such funds were so advanced;

F. designate in its discretion one of its employees as acting secretary to act at all times when the secretary is absent from the state capital. The acting secretary, when designated, has the right and is hereby given authority at all times when the secretary is absent from the state capital to sign all federal project statements, federal project agreements and federal vouchers with the same force and effect as if signed by the secretary in person, and the certificate of the acting secretary attached to any federal project statement, federal project agreement or federal voucher to the effect that the secretary was absent from the state capital at the time that the same was so signed by the acting secretary shall be conclusive evidence of the truth of such fact. The acting secretary may also be vested by the state transportation commission with power and authority to act for the secretary in such other matters as the state transportation commission may determine; and

G. may conduct, permit or authorize commercial enterprises or activities on department-owned land or land leased to or from the state for the purpose of providing goods and services to the users of the property or facilities. In furtherance of these activities, the commission may authorize the sale, exchange or lease of department property as it deems necessary. Any proceeds or payments that are derived from these activities shall be deposited into the state road fund. In connection with the development of any department-owned or controlled property, the commission shall adopt rules necessary to carry out the provisions of this subsection."

Chapter 122 Section 2 Laws 2005

Section 2. Section 67-11-9 NMSA 1978 (being Laws 1957, Chapter 234, Section 9, as amended) is amended to read:

"67-11-9. COMMERCIAL ENTERPRISES OR ACTIVITIES.--Commercial enterprises or activities may be conducted, permitted or authorized on department-owned land or land leased to or from the department, not including interstate highway rights of way, but including controlled-access facilities; or land owned or leased to or from the state, a county, city, town or village highway authority or by any other governmental agency for the purpose of providing goods and services to the public, including gasoline service stations or other commercial establishments that may be built on department-owned land or the property acquired for or in connection with the controlled-access facilities. In connection with the development of any department-owned land, including a controlled-access facility, the state, county, city, town or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or to designate as local service roads and streets any existing road or street in such manner as to facilitate the establishment and operation of competitive gasoline service stations and other commercial enterprises on private property abutting the service roads and streets. The state transportation commission is authorized to exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access facilities under the terms of Chapter 67, Article 11 NMSA 1978. The local service roads and streets shall be of appropriate design and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority."

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 152, AS AMENDED

LAWS 2005, CHAPTER 123

AN ACT

RELATING TO MOTORCYCLES; CREATING A SPECIAL MOTORCYCLE
REGISTRATION PLATE FOR THE CHILDREN'S TRUST FUND.

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

Chapter 123 Section 1 Laws 2005

Section 1. A new section of Chapter 66, Article 3 NMSA 1978 is enacted to read:

"MOTORCYCLE REGISTRATION PLATES TO BENEFIT THE CHILDREN'S
TRUST FUND--PROCEDURES--FEE.--

A. The division shall establish and issue special motorcycle registration plates featuring artwork of the children of New Mexico and shall adopt procedures for

application for and issuance of the special children's artwork motorcycle registration plates.

B. The children's trust fund board of trustees shall determine the color and design of the special children's artwork motorcycle registration plate and shall request that the division provide for its issuance.

C. For a fee of twenty dollars (\$20.00), which shall be in addition to the regular motorcycle registration fees, an owner of a motorcycle may apply for the issuance of a special children's artwork motorcycle registration plate. The owner of a motorcycle shall apply and pay a fee each year to retain and renew a special children's artwork registration plate.

D. The revenue from the special children's artwork registration plates shall be distributed as follows:

(1) five dollars (\$5.00) of the fee collected for each special children's artwork motorcycle registration plate shall be retained by the division in the first year of the issuance of each special children's artwork motorcycle registration plate and is appropriated to the division for the manufacture and issuance of the special children's artwork motorcycle registration plate. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) fifteen dollars (\$15.00) of the fee collected for each special children's artwork motorcycle registration plate shall be distributed to the children's trust fund for use in accordance with the provisions of Section 24-19-2 NMSA 1978."

HOUSE TRANSPORTATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 248

LAWS 2005, CHAPTER 124

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING AN EXTENSION OF THE EXPIRATION DATE OF VALID DRIVER'S LICENSES FOR MILITARY MEMBERS AND SPOUSES STATIONED AWAY FROM NEW MEXICO; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 124 Section 1 Laws 2005

Section 1. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"EFFECT OF MILITARY SERVICE ON DRIVER'S LICENSE.--

A. Unless the license is suspended, canceled or revoked as provided by law, a driver's license issued by this state that is held by a person who is on active duty in the armed forces of the United States and is absent from this state, or is in this state only on leave status, remains valid beyond the expiration date of the license.

B. If the person benefiting from this section is reassigned to this state or is discharged from military service, the driver's license remains valid until the thirty-first day after the person's return to this state or discharge.

C. A person benefiting from this section shall also show valid military identification or discharge documents when asked to show a driver's license.

D. The provisions of this section also apply to a spouse accompanying a person benefiting from this section."

Chapter 124 Section 2 Laws 2005

Section 2. Section 66-5-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 226, as amended) is amended to read:

"66-5-4. PERSONS EXEMPT FROM LICENSURE.--The following persons are exempt from licensure under the Motor Vehicle Code:

A. any employee of the United States while driving a motor vehicle owned by or leased to the United States and being driven on official business;

B. any person who is at least fifteen years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may drive a motor vehicle in this state, except that the person shall obtain a license upon becoming a resident and before he is employed for compensation by another for the purpose of driving a motor vehicle;

C. any nonresident who is at least eighteen years of age whose home state or country does not require the licensing of drivers may drive a motor vehicle for a period of not more than one hundred eighty days in any calendar year if the motor vehicle driven is duly registered in the home state or country of the nonresident;

D. any driver of a farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highway; and

E. any driver of an off-highway motorcycle."

HOUSE BILL 303

LAWS 2005, CHAPTER 125

AN ACT

RELATING TO LICENSURE; AMENDING ATHLETIC TRAINER STANDARDS;
EXPANDING BOARD DUTIES; CHANGING LICENSURE, EXAMINATION AND
PROVISIONAL PERMIT REQUIREMENTS.

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

Chapter 125 Section 1 Laws 2005

Section 1. Section 61-14D-7 NMSA 1978 (being Laws 1993, Chapter 325, Section 7) is amended to read:

"61-14D-7. BOARD CREATED.--

A. There is created the "athletic trainer practice board".

B. The board shall be administratively attached to the department.

C. The board shall consist of five members who are United States citizens and have been New Mexico residents for at least three years prior to their appointment. Members of the board shall be appointed by the governor for staggered terms of three years each. Three of the members shall be athletic trainers licensed pursuant to provisions of the Athletic Trainer Practice Act. One member shall be employed by a high school. Two members shall represent the public and have no financial interest, direct or indirect, in the occupation regulated. One public member shall be from any area north of interstate 40 in the state and one public member shall be from any area south of interstate 40 in the state. Board members shall reside in separate districts. Board members shall serve until their successors have been appointed.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. A simple majority of the board members currently serving shall constitute a quorum of the board.

F. The board shall meet at least once a year and at such other times as it deems necessary.

G. No board member shall serve more than two consecutive terms. Any member failing to attend three meetings, after proper notice, shall automatically be recommended to be removed as a board member, unless excused for reasons set forth in board regulations.

H. The board shall elect a chairman and other officers as deemed necessary to administer its duties."

Chapter 125 Section 2 Laws 2005

Section 2. Section 61-14D-8 NMSA 1978 (being Laws 1993, Chapter 325, Section 8) is amended to read:

"61-14D-8. DEPARTMENT DUTIES.--The department, in consultation with the board, shall:

A. process applications and conduct and review the required examinations;

B. issue licenses and provisional permits to applicants who meet the requirements of the Athletic Trainer Practice Act;

C. administer, coordinate and enforce the provisions of the Athletic Trainer Practice Act and investigate persons engaging in practices that may violate the provisions of that act;

D. conduct any required examinations of applicants;

E. hire staff as may be necessary to carry out the actions of the board;

F. maintain board records, including financial records; and

G. maintain a current register of licensees as a matter of public record."

Chapter 125 Section 3 Laws 2005

Section 3. Section 61-14D-9 NMSA 1978 (being Laws 1993, Chapter 325, Section 9) is amended to read:

"61-14D-9. BOARD POWERS AND DUTIES.--The board:

A. shall select and provide for the administration of examinations for licensure no less often than semiannually;

B. shall establish the passing scores for the New Mexico laws and regulation examinations;

C. shall determine eligibility of individuals for licensure;

D. shall set fees for administrative services and licenses as authorized by the Athletic Trainer Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

E. shall review license applications and recommend approval or disapproval;

F. may adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Athletic Trainer Practice Act;

G. may take any disciplinary action allowed by and in accordance with the provisions of the Uniform Licensing Act;

H. may conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license;

I. may adopt a code of ethics; and

J. may require and establish criteria for continuing education."

Chapter 125 Section 4 Laws 2005

Section 4. Section 61-14D-10 NMSA 1978 (being Laws 1993, Chapter 325, Section 10) is amended to read:

"61-14D-10. REQUIREMENTS FOR LICENSURE.--The board shall issue a license to practice as an athletic trainer to any person who files a completed application, accompanied by the required fees and documentation and who submits satisfactory evidence that the applicant:

A. has completed a baccalaureate degree;

B. is currently competent in cardiopulmonary resuscitation and in the use of automated electrical defibrillator units; and

C. demonstrates professional competence by passing the national certification examination recognized by the board and an examination on New Mexico laws and regulations pertaining to athletic trainers prescribed by the board."

Chapter 125 Section 5 Laws 2005

Section 5. Section 61-14D-11 NMSA 1978 (being Laws 1993, Chapter 325, Section 11) is amended to read:

"61-14D-11. EXAMINATIONS.--Applicants shall demonstrate professional competency by passing the New Mexico laws and regulations examination. The board shall establish the board-approved examinations application deadline and the requirements for re-examination if the applicant has failed the examination."

Chapter 125 Section 6 Laws 2005

Section 6. Section 61-14D-12 NMSA 1978 (being Laws 1993, Chapter 325, Section 12) is amended to read:

"61-14D-12. PROVISIONAL PERMIT.--

A. An applicant for licensure who has passed the New Mexico state law and regulations examination may obtain a provisional permit to engage in the practice of athletic training; provided that the applicant meets all licensure requirements except for passing the national certification exam for athletic trainers. The applicant must provide proof of registration to take the national certification examination.

B. The provisional permit is valid until the results of the national certification examination have been received in the board office.

C. If the applicant should fail or not take the national certification examination, upon proof of re-registration for the national certification examination, the applicant will be issued a second provisional permit. No more than two provisional permits shall be issued to an

individual."

Chapter 125 Section 7 Laws 2005

Section 7. Section 61-14D-13 NMSA 1978 (being Laws 1993, Chapter 325, Section 13) is amended to read:

"61-14D-13. LICENSE RENEWAL.--

A. Each licensee shall renew his license annually by submitting a renewal application on a form provided by the board.

B. The board may require proof of continuing education, current cardiopulmonary resuscitation certification and certification in the use of automated electrical defibrillator units as a requirement for renewal.

C. If a license is not renewed by the expiration date, the license will be considered expired and the licensee shall refrain from practicing. A licensee may renew a license within the allotted grace period by submitting to the board payment of the renewal fee and late fee and proof of compliance with all renewal requirements. Upon

receipt of payment and proof of meeting any continuing education requirements by the board, the licensee may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed athletic trainer from the requirements for renewal.

D. A license granted by the board shall automatically expire if the licensee fails to apply for the renewal license provided for in this section within thirty days of the renewal deadline. Reinstatement of an expired license will require the licensee to reapply and meet all current standards for licensure."

Chapter 125 Section 8 Laws 2005

Section 8. Section 61-14D-14 NMSA 1978 (being Laws 1993, Chapter 325, Section 14) is amended to read:

"61-14D-14. FEES.--The board shall establish a schedule of reasonable fees for applications, licenses, provisional permits, renewal of licenses, placement on inactive status and necessary administrative fees and initial prorated licensing fees."

Chapter 125 Section 9 Laws 2005

Section 9. Section 61-14D-16 NMSA 1978 (being Laws 1993, Chapter 325, Section 16) is amended to read:

"61-14D-16. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the provisions of the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Athletic Trainer Practice Act upon findings by the board that the licensee or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure a license provided for in the Athletic Trainer Practice Act;

(2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;

(3) is guilty of incompetence;

(4) is guilty of unprofessional conduct;

(5) is guilty of dispensing, administering, distributing or using a controlled substance, as defined in the Controlled Substances Act, or is addicted to any vice to such a degree that it renders him unfit to practice as an athletic trainer;

(6) has violated any provisions of the Athletic Trainer Practice Act;

(7) is guilty of willfully or negligently practicing beyond the scope of athletic training as defined in the Athletic Trainer Practice Act;

(8) is guilty of aiding or abetting the practice of athletic training by a person not licensed by the board;

(9) is guilty of practicing without a provisional permit or license in violation of the Athletic Trainer Practice Act and its regulations; or

(10) has had a license, certificate or registration to practice as an athletic trainer revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action shall be conclusive evidence of the revocation, suspension or denial.

B. Disciplinary proceedings may be instituted by the sworn complaint of any person and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action, provided the complaint is filed in good faith and without actual malice."

HOUSE BILL 309

LAWS 2005, CHAPTER 126

AN ACT

RELATING TO PUBLIC RECORDS; CREATING AN EXCEPTION TO THE RIGHT TO INSPECT PUBLIC RECORDS FOR FILED MILITARY DISCHARGE PAPERS.

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

Chapter 126 Section 1 Laws 2005

Section 1. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

A. Every person has a right to inspect public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums that are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;

(5) as provided by the Confidential Materials Act;

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education;

(8) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack;

(9) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have not been commingled with other recorded documents. These papers will be available only to the veteran who filed the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(10) discharge papers of a veteran of the armed forces of the United States filed with the county clerk before July 1, 2005 that have been commingled with other recorded documents if the veteran has recorded a request for exemption from public disclosure of discharge papers with the county clerk. If such a request has been recorded, the records may be released only to the veteran filing the papers, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records;

(11) discharge papers of a veteran of the armed forces of the United States filed with the county clerk after June 30, 2005. These papers will be available only to the veteran who filed them, the veteran's next of kin, the deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney or a person designated in writing by the veteran to receive the records; and

(12) as otherwise provided by law.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section."

Chapter 126 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

House Bill 353

LAWS 2005, CHAPTER 127

AN ACT

RELATING TO GENERAL WELFARE; LIMITING PERMISSIBLE USES OF SOCIAL SECURITY IDENTIFICATION NUMBERS.

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

Chapter 127 Section 1 Laws 2005

Section 1. Section 57-12B-1 NMSA 1978 (being Laws 2003, Chapter 169, Section 1) is amended to read:

"57-12B-1. SHORT TITLE.--Chapter 57, Article 12B NMSA 1978 may be cited as the "Privacy Protection Act"."

Chapter 127 Section 2 Laws 2005

Section 2. A new section of the Privacy Protection Act is enacted to read:

"USE OF SOCIAL SECURITY NUMBERS RESTRICTED--EXCEPTIONS.--

A. Except as provided in Subsection B of this section, a business shall not:

(1) make the entirety of a social security number available to the general public. This prohibition includes:

(a) intentionally communicating a social security number to the general public; and

(b) printing a social security number on a receipt issued for the purchase of products or services, including a receipt for the purchase of services from the state or its political subdivisions;

(2) require the use of a social security number:

(a) over the internet without a secure connection or encryption security; or

(b) to access an internet account unless a password or unique personal identification number or other personal authentication device is also required to access the account;

(3) print a social security number on materials mailed to a consumer unless authorized or required by federal or state law; provided that nothing in this paragraph prohibits a business from requiring a consumer, as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number, to enter a social security number on material to be mailed by the consumer as long as it is not required to be entered, in whole or in part:

(a) on a postcard or other mailer not requiring an envelope;

(b) on the envelope; or

(c) in any other manner in which the number may be visible without the envelope being opened;

(4) transmit material that associates a social security number with an account number for a bank, savings and loan association or credit union, unless both numbers are required as part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the social security, bank, savings and loan association or credit union account number; or

(5) refuse to transact business because of a refusal to provide the social security number for use of that number in a manner prohibited by Paragraphs (1) through (4) of this subsection.

B. The provisions of Subsection A of this section do not apply to:

(1) the use of a social security number by a business if the social security number:

(a) was furnished for a document generated prior to January 1, 2006 and the business is copying or reproducing that document; or

(b) exists on an original document generated prior to January 1, 2006;

(2) the collection, use or release of a social security number by a business if the business complies with Subsection D of Section 57-12B-3 NMSA 1978 and if the collection, use or release:

(a) is part of an application or enrollment process or is used to establish, amend or terminate an account, contract or policy;

(b) is required or authorized by federal or state law or is required for the business to comply with federal or state law; or

(c) is for internal verification or administrative purposes; or

(3) documents that are filed in court or public records or documents recorded in public records or required to be open to the public under federal law, state law, applicable case law, supreme court rule or the constitution of New Mexico."

Chapter 127 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR FOR HOUSE BILL 363, AS AMENDED

LAWS 2005, CHAPTER 128

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE SPACEPORT DEVELOPMENT ACT; CREATING THE SPACEPORT AUTHORITY; PROVIDING FOR BONDING AUTHORITY; CREATING THE SPACEPORT AUTHORITY FUND; MAKING AN APPROPRIATION.

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

Chapter 128 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Spaceport Development Act".

Chapter 128 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the Spaceport Development Act is to:

- A. encourage and foster development of the state and its cities and counties by developing spaceport facilities in New Mexico;
- B. actively promote and assist public and private sector infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state;
- C. create the statutory framework that will enable the state to design, finance, construct, equip and operate spaceport facilities necessary to ensure the timely, planned and efficient development of a southwest regional spaceport; and
- D. promote educational involvement in spaceport activities and education and training of the workforce to develop the skills needed for spaceport operations.

Chapter 128 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Spaceport Development Act:

- A. "authority" means the spaceport authority;

B. "project" means any land, building or other improvements acquired as part of a spaceport or associated with a spaceport or to aid commerce in connection with a spaceport and all real and personal property deemed necessary in connection with the spaceport;

C. "space vehicle" means any vehicle capable of being flown in space or launching a payload into space; and

D. "spaceport" means any facility in New Mexico at which space vehicles may be launched or landed, including all facilities and support infrastructure related to launch, landing or payload processing.

Chapter 128 Section 4 Laws 2005

Section 4. SPACEPORT AUTHORITY CREATED--MEMBERSHIP.--

A. The "spaceport authority" is created. The authority is a state agency and is administratively attached to the economic development department.

B. The authority shall consist of seven voting and two nonvoting members, six of whom shall be appointed by the governor with the consent of the senate; provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The lieutenant governor shall serve as a nonvoting ex-officio member. The executive director of the authority shall serve as a nonvoting member. The chair may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The members appointed by the governor shall be residents of the state and shall serve for terms of four years, except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years.

D. Appointed voting members of the authority shall be reimbursed for per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act that apply to nonsalaried public officers, unless a different provision of that act applies to a specific member, in which case that member shall be paid under the applicable provision. Members and advisors shall receive no other compensation, perquisite or allowance for serving as a member of or advisor to the authority.

E. The secretary of economic development or the secretary's designee shall serve as the chair of the authority. Authority members shall elect any other officers from the membership that the authority determines appropriate.

F. The chair, four other authority voting members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.

G. If a vacancy occurs among the appointed voting members of the authority, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member's term expires, the member shall continue to serve until the member is reappointed or another person is appointed and confirmed by the senate to replace the member.

H. The authority shall meet at the call of the chair and shall meet in regular session at least once every three months.

I. The authority shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act.

Chapter 128 Section 5 Laws 2005

Section 5. AUTHORITY POWERS AND DUTIES.--

A. The authority shall:

(1) hire an executive director who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently and shall direct the affairs and business of the authority, subject to the direction of the authority;

(2) be located within fifty miles of a southwest regional spaceport;

(3) advise the governor, the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving a southwest regional spaceport that may further stimulate space-related business and employment opportunities in New Mexico;

(4) initiate, develop, acquire, own, construct, maintain and lease space-related projects;

(5) make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

(6) create programs to expand high-technology economic opportunities within New Mexico;

(7) create avenues of communication among federal government agencies, the space industry, users of space launch services and academia concerning space business;

(8) promote legislation that will further the goals of the authority and development of space business;

(9) oversee and fund production of promotional literature related to the authority's goals;

(10) identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information;

(11) coordinate and expedite the involvement of the state executive branch's space-related development efforts; and

(12) perform environmental, transportation, communication, land use and other technical studies necessary or advisable for projects and programs or to secure licensing by appropriate United States agencies.

B. The authority may:

(1) advise and cooperate with municipalities, counties, state agencies and organizations, appropriate federal agencies and organizations and other interested persons and groups;

(2) solicit and accept federal, state, local and private grants of funds or property and financial or other aid for the purpose of carrying out the provisions of the Spaceport Development Act;

(3) adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

(4) operate spaceport facilities, including acquisition of real property necessary for spaceport facilities and the filing of necessary documents with appropriate agencies;

(5) construct, purchase, accept donations of or lease projects located within the state;

(6) sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

(7) issue revenue bonds and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and of securing the payment of the bonds or repayment of a loan;

(8) refinance a project;

(9) contract with any competent private or public organization or individual to assist in the fulfillment of its duties; and

(10) fix, alter, charge and collect tolls, fees or rentals and impose any other charges for the use of or for services rendered by any authority facility, program or service.

C. The authority shall not:

(1) operate a project as a business or in any manner except as lessor;

(2) incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or

(3) expend funds or incur debt for the improvement, maintenance, repair or addition to property not owned by the authority.

Chapter 128 Section 6 Laws 2005

Section 6. SPACEPORT AUTHORITY--BONDING AUTHORITY--POWER TO ISSUE REVENUE BONDS.--

A. The authority may act as an issuing authority for the purposes of the Private Activity Bond Act.

B. The authority may issue revenue bonds for authority projects. Revenue bonds so issued may be considered appropriate investments for the severance tax permanent fund or collateral for the deposit of public funds if the bonds are rated not less than "A" by a national rating service and both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by an agency of the United States government or by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service. All bonds issued by the authority are legal and authorized investments for banks, trust companies, savings and loan associations and insurance companies.

C. The authority may pay from the bond proceeds all expenses, premiums and commissions that the authority deems necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. Authority revenue bonds:

(1) may have interest or appreciated principal value or any part thereof payable at intervals determined by the authority;

(2) may be subject to prior redemption or mandatory redemption at the authority's option at the time and upon such terms and conditions with or without the payment of a premium as may be provided by resolution of the authority;

(3) may mature at any time not exceeding thirty years after the date of issuance;

(4) may be serial in form and maturity; consist of one or more bonds payable at one time or in installments; or may be in such other form as determined by the authority;

(5) may be in registered or bearer form or in book-entry form through facilities of a securities depository either as to principal or interest or both;

(6) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that conforms to the Public Securities Act; and

(7) may be sold at public or negotiated sale.

E. Subject to the approval of the state board of finance, the authority may enter into other financial arrangements if it determines that the arrangements will assist the authority.

Chapter 128 Section 7 Laws 2005

Section 7. AUTHORITY LOANS--TERMS.--If the authority borrows money from a financial institution or other entity:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the principal amount of the loan shall not exceed fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act; and

D. the loan shall be subject to approval of the state board of finance.

Chapter 128 Section 8 Laws 2005

Section 8. BONDS SECURED BY TRUST INDENTURE.--The bonds issued by the authority may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the project revenues or other funds. The authority may provide in a trust indenture for the payment of the proceeds of the bonds and the project revenue to the trustee under the trust indenture or other depository for disbursement with any safeguards the authority determines are necessary.

Chapter 128 Section 9 Laws 2005

Section 9. AUTHORITY REVENUE BONDS--LIMITATIONS--AUTHORIZATION--AUTHENTICATION.--

A. Revenue bonds or refunding bonds issued pursuant to the Spaceport Development Act and other loans to the authority are:

(1) not general obligations of the state or any other agency of the state or of the authority; and

(2) payable only from properly pledged revenues and each bond or loan shall state that it is payable solely from the properly pledged revenues and that the bondholders or lenders may not look to any other fund for the payment of the interest and principal of the bond or the loan.

B. Revenue or refunding bonds or loans may be authorized by resolution of the authority, which shall be approved by a majority of the voting members of the authority and by the state board of finance.

C. The bonds or loans shall be executed by the chair of the authority and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the authority. Bonds, notes or other certificates of indebtedness of the authority may be executed as provided under the Uniform Facsimile Signature of Public Officials Act, and the coupons, if any, shall bear the facsimile signature of the chair of the authority.

Chapter 128 Section 10 Laws 2005

Section 10. SECURITY FOR BONDS, NOTES OR CERTIFICATES OF INDEBTEDNESS.--The principal of and interest on any bonds, notes or other certificates of indebtedness issued pursuant to the provisions of the Spaceport Development Act shall be secured by a pledge of the revenues out of which the bonds shall be made payable, may be secured by a mortgage, deed of trust note or other certificate of indebtedness covering all or part of the project from which the revenues so

pledged may be derived, and may be secured by a pledge of any lease or installment sale agreement or other fees or revenues with respect to the project. The resolution of the authority under which bonds, notes, or other certificates of indebtedness are authorized to be issued or any mortgage, notes or certificates of indebtedness may contain any agreement and provisions customarily contained in instruments securing bonds, notes or certificates of indebtedness, including:

A. provisions respecting the fixing and collection of all revenues from any project covered by the proceedings or mortgage;

B. the terms to be incorporated in any lease or installment sale agreement with respect to the project;

C. the maintenance and insurance of the project; and

D. the creation and maintenance of special funds from the revenues with respect to the project and the rights and remedies available in the event of default to the bondholders, to the trustee under a mortgage, deed of trust or trust indenture or to a lender, all as the authority deems advisable and not in conflict with the provisions of the Spaceport Development Act. In making the agreements or provisions, the authority shall not have the power to obligate itself except with respect to the project and the application of the revenues from the project and shall not have the power to incur a pecuniary liability or charge upon the state general credit or against the state taxing powers. The resolution authorizing any bonds and any mortgage securing such bonds, any note or other certificate of indebtedness shall set forth the procedure and remedies in the event of default in payment of the principal of or the interest on the bond, note or certificate of indebtedness or in the performance of any agreement. A breach of any agreement shall not impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing powers.

Chapter 128 Section 11 Laws 2005

Section 11. REQUIREMENTS RESPECTING RESOLUTION AND LEASE.--

A. A resolution for the issuance of bonds shall set forth the determinations and findings of the authority required by this section.

B. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find that:

(1) the resolution is for the issuance of bonds and the principal and interest of the bonds to be issued shall be fully secured by:

(a) a lease agreement or installment sale agreement executed by an agency of the United States government;

(b) a state or local public agency or institution;

(c) a corporation organized and operating within the United States whose long-term debt is rated not less than "A" by a national rating service;

(d) an irrevocable letter of credit issued by a chartered financial institution approved for this purpose by the state board of finance; or

(e) a bond insurance policy issued by an insurance company rated not less than "AA" by a national rating service;

(2) revenues are available in an amount necessary in each year to pay the principal of and interest on the bonds proposed to be issued or the loan proposed to be obtained to finance the project; and

(3) revenues are available in an amount necessary to be paid each year into any reserve funds that the authority may deem advisable to establish in connection with the retirement of the proposed bonds or the repayment of the loan or the maintenance of the project.

C. Unless the terms under which the project is to be leased or sold provide that the lessee or purchaser shall maintain the project and carry all proper insurance with respect to the project, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

D. Prior to the issuance of the bonds or the closing of the loan, the authority may lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the authority of such rentals or payments as, upon the basis of such determinations and findings pursuant to provisions of this section, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the project; and

(3) pay the costs of maintaining the project in good repair and keep it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

E. With prior approval of the state board of finance, the authority may borrow funds to purchase, lease, acquire or develop water rights, a water system, a wastewater collection and treatment system, a natural gas distribution system, an electrical distribution system or other infrastructure needed to support the project;

provided that the authority does not obligate itself or the state to any debt or obligation that cannot be paid from funds derived from the project.

F. Upon prior approval of the state board of finance, the authority may obtain commitment from a financial institution to borrow money; provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the requirements of the Spaceport Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan.

Chapter 128 Section 12 Laws 2005

Section 12. USE OF PROCEEDS FROM SALE OF BONDS.--

A. The proceeds from the sale of any bonds issued pursuant to the Spaceport Development Act shall be applied only for the purpose for which the bonds were issued; provided that:

(1) any accrued interest and premiums received in any sale shall be applied to the payment of the principal of or the interest on the bonds sold;

(2) if for any reason any portion of such proceeds are not needed for the purpose for which the bonds were issued, the balance of the proceeds shall be applied to the payment of the principal of or the interest on the bonds; and

(3) any portion of the proceeds from the sale of the bonds or any accrued interest and premium received in any such sale may, in the event the money will not be needed or cannot be used effectively to the advantage of the authority for the purposes provided pursuant to the Spaceport Development Act, be invested in short-term interest-bearing securities if such investment will not interfere with the use of the funds for the primary purpose of the project.

B. The cost of acquiring any project shall be deemed to include the following:

(1) the actual cost of construction of any part of a project, including architect, attorney and engineer fees;

(2) the purchase price of any part of a project that may be acquired by purchase;

(3) the actual cost of the extension of any utility to the project site and all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

(4) the interest on those bonds for a reasonable time prior to construction, during construction and not exceeding six months after completion of construction.

Chapter 128 Section 13 Laws 2005

Section 13. SPACEPORT AUTHORITY REVENUE BONDS--REFUNDING AUTHORIZATION.--

A. The authority may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of outstanding authority revenue bonds:

(1) for the acceleration, deceleration or other modification of payment of such obligations, including, without limitation, any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) of reducing interest costs or effecting other economies; or

(3) of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating to the bonds.

B. The authority may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues that may be pledged to an original issue of bonds.

C. Bonds for refunding and bonds for any purpose permitted by the Spaceport Development Act may be issued separately or issued in a combination of one series or more.

Chapter 128 Section 14 Laws 2005

Section 14. SPACEPORT AUTHORITY REFUNDING BONDS--ESCROW.--

A. Refunding bonds issued pursuant to the Spaceport Development Act shall be authorized by resolution of the authority. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise pertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time provided in this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded; provided that provision is duly and sufficiently made for payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium pertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium pertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon, the principal thereof or both interest and principal as the authority may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation. Such proceeds and investments in escrow, together with any interest or other income to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the authority shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Spaceport Development Act is in no manner responsible for the application of the proceeds by the authority or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the authority subject to the limitations in this section.

Chapter 128 Section 15 Laws 2005

Section 15. AUTHORITY REFUNDING REVENUE BONDS--TERMS.--Authority refunding revenue bonds:

A. may have interest or appreciated principal value payable at intervals or at maturity;

B. may be subject to prior redemption at the authority's option at such time or times and upon such terms and conditions with or without the payment of premiums;

C. may be serial in form and maturity;

D. may consist of a single bond payable in one or more installments; and

E. shall be exchanged for the bonds and any mature unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act.

Chapter 128 Section 16 Laws 2005

Section 16. EXEMPTION FROM TAXATION.--Bonds authorized pursuant to the Spaceport Development Act and the income from those bonds, all mortgages or other security instruments executed as security for those bonds, all lease and installment purchase agreements made pursuant to the provisions of that act and revenue derived from any lease or sale by the authority shall be exempt from all taxation by the state or any subdivision thereof.

Chapter 128 Section 17 Laws 2005

Section 17. SPACEPORT AUTHORITY FUND CREATED.--

A. The "spaceport authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Spaceport Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Except as provided in this section, any money received by the authority shall be deposited in the fund, including, but not limited to:

(1) the proceeds of any bonds issued by the authority or from any loan to the authority made pursuant to the Spaceport Development Act;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) all lease or rental payments received from the authority from any project;

(6) all of the money received by the authority from any public or private source; and

(7) any fees, rents or other charges imposed and collected by the authority.

C. Any fees, rents or other charges imposed and collected by the authority in excess of those imposed and collected for an approved project and for all debt service and reserves for the bonds that financed the project may be expended only as appropriated pursuant to vouchers signed by the executive director of the authority or the director's designee pursuant to the Spaceport Development Act; provided that, in the event the position of executive director is vacant, vouchers may be signed by the chair of the authority.

D. Earnings on the balance in the fund shall be credited to the fund. In addition, in the event that the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on that money during the period commencing with the deposit in the state treasury until actual transfer of the money to the fund shall be credited to the fund.

HOUSE BILL 419, AS AMENDED

LAWS 2005, CHAPTER 129

AN ACT

RELATING TO TAXATION; REMOVING THE TIME LIMITATION FOR A MUNICIPALITY TO ENACT AN ORDINANCE IMPOSING THE MUNICIPAL CAPITAL OUTLAY GROSS RECEIPTS TAX; REMOVING THE TIME LIMITATION FOR A COUNTY TO ENACT AN ORDINANCE IMPOSING THE COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX; DECLARING AN EMERGENCY.

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

Chapter 129 Section 1 Laws 2005

Section 1. Section 7-19D-12 NMSA 1978 (being Laws 2001, Chapter 172, Section 1) is amended to read:

"7-19D-12. MUNICIPAL CAPITAL OUTLAY GROSS RECEIPTS TAX--PURPOSES--REFERENDUM.--

A. 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."

Chapter 129 Section 2 Laws 2005

Section 2. Section 7-20E-21 NMSA 1978 (being Laws 2001, Chapter 172, Section 2) is amended to read:

"7-20E-21. COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX--PURPOSES--
-
REFERENDUM.--

A. 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."

Chapter 129 Section 3 Laws 2005

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

HOUSE BILL 433, WITH EMERGENCY CLAUSE,

APPROVED APRIL 5, 2005

LAWS 2005, CHAPTER 130

AN ACT

RELATING TO TAXATION; INCLUDING HELIUM AND NON-HYDROCARBON GASES
IN THE DEFINITION OF PRODUCTS SUBJECT TO VARIOUS SEVERANCE TAXES.

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

Chapter 130 Section 1 Laws 2005

Section 1. Section 7-29-2 NMSA 1978 (being Laws 1959, Chapter 52, Section 2, as amended by Laws 1999, Chapter 7, Section 1 and also by Laws 1999, Chapter 256, Section 1) is amended to read:

"7-29-2. DEFINITIONS.--As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act, for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production

in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

P. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

Q. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

R. "tax" means the oil and gas severance tax."

Chapter 130 Section 2 Laws 2005

Section 2. Section 7-29-4 NMSA 1978 (being Laws 1980, Chapter 62, Section 5, as amended) is amended to read:

"7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--COLLECTION--
INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs (4), (6) and (7) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), (5), (8) and (9) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars (\$28.00) per barrel;

(4) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

(6) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided

the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(7) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(8) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(10) on carbon dioxide, helium and non-hydrocarbon gases, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

Chapter 130 Section 3 Laws 2005

Section 3. Section 7-29-4.1 NMSA 1978 (being Laws 1980, Chapter 62, Section 6, as amended) is amended to read:

"7-29-4.1. TAXABLE VALUE--METHOD OF DETERMINING.--To determine the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead, of carbon dioxide, of helium, of non-hydrocarbon gases, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990, there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market."

Chapter 130 Section 4 Laws 2005

Section 4. Section 7-30-2 NMSA 1978 (being Laws 1959, Chapter 53, Section 2, as amended) is amended to read:

"7-30-2. DEFINITIONS.--As used in the Oil and Gas Conservation 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. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, uranium, coal, geothermal energy, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products; and

J. "tax" means the oil and gas conservation tax."

Chapter 130 Section 5 Laws 2005

Section 5. Section 7-30-5 NMSA 1978 (being Laws 1959, Chapter 53, Section 5, as amended) is amended to read:

"7-30-5. TAXABLE VALUE--METHOD OF DETERMINING.--

A. To determine the taxable value of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or non-hydrocarbon gases, there shall be deducted from the value of products:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The taxable value of coal shall be the taxable value determined under Section 7-25-3 NMSA 1978, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

C. The taxable value of uranium shall be twenty-five percent of an amount equal to the difference between:

(1) the taxable value determined under Section 7-25-3 NMSA 1978; and

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

D. The taxable value of geothermal energy shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States."

Chapter 130 Section 6 Laws 2005

Section 6. Section 7-30-10 NMSA 1978 (being Laws 1959, Chapter 53, Section 10, as amended) is amended to read:

"7-30-10. OPERATOR'S REPORT--TAX REMITTANCE--ADDITIONAL INFORMATION.--Each operator shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. A uranium or a coal return shall be filed on or before the twenty-fifth day of the month following the month in which the taxable event occurs pursuant to Section 7-26-6 or 7-26-7 NMSA 1978. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required."

Chapter 130 Section 7 Laws 2005

Section 7. Section 7-31-2 NMSA 1978 (being Laws 1959, Chapter 54, Section 2, as amended) is amended to read:

"7-31-2. DEFINITIONS.--As used in the Oil and Gas Emergency School Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources

department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

L. "tax" means the oil and gas emergency school tax."

Chapter 130 Section 8 Laws 2005

Section 8. Section 7-31-4 NMSA 1978 (being Laws 1959, Chapter 54, Section 4, as amended) is amended to read:

"7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, helium and non-hydrocarbon gases, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section

7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law."

Chapter 130 Section 9 Laws 2005

Section 9. Section 7-32-2 NMSA 1978 (being Laws 1959, Chapter 55, Section 2, as amended) is amended to read:

"7-32-2. DEFINITIONS.--As used in the Oil and Gas Ad Valorem Production Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "assessed value" means the value against which tax rates are applied;
and

K. "tax" means the oil and gas ad valorem production tax."

Chapter 130 Section 10 Laws 2005

Section 10. Section 7-34-2 NMSA 1978 (being Laws 1969, Chapter 119, Section 2, as amended) is amended to read:

"7-34-2. DEFINITIONS.--As used in the Oil and Gas Production Equipment Ad Valorem Tax Act:

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

B. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

C. "operator" means any person engaged in the severance of products from a production unit;

D. "product" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

E. "severance" means taking any product from the soil in any manner;

F. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

G. "equipment" means wells and nonmobile equipment used at a production unit in connection with severance, treatment or storage of production unit products;

H. "value" means the actual price received for products at the production unit as established under the Oil and Gas Ad Valorem Production Tax Act;

I. "assessed value" means the value against which tax rates are applied;
and

J. "tax" means the oil and gas production equipment ad valorem tax."

Chapter 130 Section 11 Laws 2005

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

Approved April 5, 2005

LAWS 2005, CHAPTER 131

AN ACT

RELATING TO PROCUREMENT; INCREASING THE NEW MEXICO STATE FAIR CONCESSION CONTRACT AMOUNT; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 131 Section 1 Laws 2005

Section 1. Section 13-1-30 NMSA 1978 (being Laws 1984, Chapter 65, Section 3, as amended) is amended to read:

"13-1-30. APPLICATION OF THE CODE.--

A. Except as otherwise provided in the Procurement Code, that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction. That code also applies to concession contracts at the New Mexico state fair in excess of twenty thousand dollars (\$20,000), whether those concession contracts generate revenue and earnings or expand funds.

B. When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code."

HOUSE BILL 437

Approved April 4, 2005

LAWS 2005, CHAPTER 132

RELATING TO HEALTH INSURANCE; CLARIFYING THE APPLICABILITY OF THE HEALTH INSURANCE PREMIUM SURTAX ON INSURANCE PREMIUMS, INCLUDING HOSPITAL AND NONPROFIT HEALTH CARE SERVICE PLAN CONTRACTS; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 132 Section 1 Laws 2005

Section 1. Section 59A-6-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 102, as amended) is amended to read:

"59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

A. The premium tax provided for in this section shall apply as to the following taxpayers:

(1) each insurer authorized to transact insurance in New Mexico;

(2) each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except that this provision shall not apply as to an insurer that withdrew from New Mexico prior to March 26, 1955;

(3) each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978;

(4) each property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as to any consideration received as security or surety for a bail bond in connection with a judicial proceeding, which consideration shall be considered "gross premiums" for the purposes of this section; and

(5) each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico, except that this provision shall not apply if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

B. Each such taxpayer shall pay in accordance with this subsection a premium tax of three and three-thousandths percent of the gross premiums and membership and policy fees received by it on insurance or contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks.

C. In addition to the premium tax imposed pursuant to Subsection B of this section, each taxpayer described in Subsection A of this section that transacts health insurance in New Mexico or is a plan described in Chapter 59A, Article 46 or 47 NMSA 1978 shall pay a health insurance premium surtax of one percent of the gross health insurance premiums and membership and policy fees received by it on hospital and medical expense incurred insurance or contracts; nonprofit health care service plan contracts, excluding dental or vision only contracts; and health maintenance organization subscriber contracts covering health risks within this state during the

preceding calendar year, less all return health insurance premiums, including dividends paid or credited to policyholders or contract holders and health insurance premiums received for reinsurance on New Mexico risks. Except as provided in this section, all references in the Insurance Code to the premium tax shall include both the premium tax and the health insurance premium surtax.

D. For each calendar quarter, an estimated payment of the premium tax and the health insurance premium surtax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of either the payment made during the previous calendar year or eighty percent of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return, which shall be filed on April 15 of each year, at which time all taxes for that year are due. Dividends paid or credited to policyholders or contract holders and refunds, savings, savings coupons and similar returns or credits applied or credited to payment of premiums for existing, new or additional insurance shall, in the amount so used, constitute premiums subject to tax under this section for the year in which so applied or credited.

E. Exempted from the taxes imposed by this section are:

(1) premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees; and

(2) payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g)."

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 444

Approved April 5, 2005

LAWS 2005, CHAPTER 133

AN ACT

RELATING TO HEALTH INSURANCE COVERAGE; MANDATING COVERAGE FOR SCREENING FOR HUMAN PAPILLOMAVIRUS.

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

Chapter 133 Section 1 Laws 2005

Section 1. Section 59A-46-42 NMSA 1978 (being Laws 1992, Chapter 56, Section 1) is amended to read:

"59A-46-42. COVERAGE FOR CYTOLOGIC AND HUMAN PAPILOMAVIRUS SCREENING.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state shall provide coverage for cytologic and human papillomavirus screening to determine the presence of precancerous or cancerous conditions and other health problems. The coverage shall make available cytologic screening, as determined by the health care provider in accordance with national medical standards, for women who are eighteen years of age or older and for women who are at risk of cancer or at risk of other health conditions that can be identified through cytologic screening. The coverage shall make available human papillomavirus screening once every three years for women aged thirty and older.

B. Coverage for cytologic and human papillomavirus screening may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract.

C. For the purposes of this section:

(1) "cytologic screening" means a Papanicolaou test and pelvic exam for asymptomatic as well as symptomatic women;

(2) "health care provider" means any person licensed within the scope of his practice to perform cytologic and human papillomavirus screening, including physicians, physician assistants, certified nurse-midwives and certified nurse practitioners; and

(3) "human papillomavirus screening" means a test approved by the federal food and drug administration for detection of the human papillomavirus."

Chapter 133 Section 2 Laws 2005

Section 2. Section 59A-22-40 NMSA 1978 (being Laws 1992, Chapter 56, Section 2) is amended to read:

"59A-22-40. COVERAGE FOR CYTOLOGIC AND HUMAN PAPILOMAVIRUS SCREENING.--

A. Each individual and group health insurance policy, health care plan and certificate of health insurance delivered or issued for delivery in this state shall provide coverage for cytologic and human papillomavirus screening for determining the

presence of precancerous or cancerous conditions and other health problems. The coverage shall make available cytologic screening, as determined by the health care provider in accordance with national medical standards, for women who are eighteen years of age or older and for women who are at risk of cancer or at risk of other health conditions that can be identified through cytologic screening. The coverage shall make available human papillomavirus screening once every three years for women aged thirty and older.

B. Coverage for cytologic and human papillomavirus screening 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. For the purposes of this section:

(1) "cytologic screening" means a Papanicolaou test and a pelvic exam for asymptomatic as well as symptomatic women;

(2) "health care provider" means any person licensed within the scope of his practice to perform cytologic and human papillomavirus screening, including physicians, physician assistants, certified nurse midwives and certified nurse practitioners; and

(3) "human papillomavirus screening" means a test approved by the federal food and drug administration for detection of the human papillomavirus."

HOUSE BILL 477, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 134

AN ACT

RELATING TO HEALTH; EXPANDING THE NUMBER OF MEDICAL TESTS
REQUIRED FOR NEWBORN CHILDREN.

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

Chapter 134 Section 1 Laws 2005

Section 1. Section 24-1-6 NMSA 1978 (being Laws 1973, Chapter 359, Section 6, as amended) is amended to read:

"24-1-6. TESTS REQUIRED FOR NEWBORN INFANTS.--

A. The department shall adopt screening tests for the detection of congenital diseases that shall be given to every newborn infant, except that, after being informed of the reasons for the tests, the parents or guardians of the newborn child may waive the requirements for the tests in writing. The screening tests shall include at a minimum:

- (1) 3-methylcrotonyl-CoA deficiency;
- (2) 3-OH 3-CH₃ glutaric aciduria;
- (3) argininosuccinic acidemia;
- (4) mitochondrial acetoacetyl-CoA thiolase deficiency;
- (5) biotinidase deficiency;
- (6) carnitine uptake defect;
- (7) citrullinemia;
- (8) congenital adrenal hyperplasia;
- (9) congenital hypothyroidism;
- (10) cystic fibrosis;
- (11) galactosemia;
- (12) glutaric acidemia type I;
- (13) Hb S/beta-thalassemia;
- (14) hearing deficiency;
- (15) homocystinuria;
- (16) isovaleric acidemia;
- (17) long-chain L-3-OH acyl-CoA dehydrogenase deficiency;
- (18) maple syrup urine disease;

- (19) medium chain acyl-CoA dehydrogenase deficiency;
- (20) methylmalonic acidemia;
- (21) multiple carboxylase deficiency;
- (22) phenylketonuria;
- (23) propanic acidemia;
- (24) sickle cell anemia;
- (25) trifunctional protein deficiency;
- (26) tyrosinemia type I; and
- (27) very long-chain acyl-CoA dehydrogenase deficiency.

B. In determining which other congenital diseases to screen for, the secretary shall consider the recommendations of the New Mexico pediatrics society of the American academy of pediatrics.

C. The department shall institute and carry on such laboratory services or may contract with another agency or entity to provide such services as are necessary to detect the presence of congenital diseases.

D. The department shall, as necessary, carry on an educational program among physicians, hospitals, public health nurses and the public concerning congenital diseases.

E. The department shall require that all hospitals or institutions having facilities for childbirth perform or have performed screening tests for congenital diseases on all newborn infants except if the parents or guardians of a child object to the tests in writing."

Chapter 134 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The provisions of this act shall become effective upon appropriation to expand screening tests for newborn infants for detection of congenital diseases contained in Senate Bill 190 or similar legislation in the first session of the forty-seventh legislature becoming law.

Approved April 5, 2005

LAWS 2005, CHAPTER 135

AN ACT

RELATING TO CIVIL LAW; ENACTING THE STRUCTURED SETTLEMENT PROTECTION ACT.

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

Chapter 135 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Structured Settlement Protection Act".

Chapter 135 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Structured Settlement Protection Act:

A. "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

B. "court" means:

(1) the court of original jurisdiction that

authorized or approved a structured settlement; or

(2) if the court that authorized or approved the structured settlement no longer has jurisdiction to approve a transfer of payment rights under the structured settlement under the Structured Settlement Protection Act, a district court or a probate court located in the county in which the payee resides;

C. "dependents" includes a payee's spouse, minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

D. "discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service;

E. "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration;

F. "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

G. "interested party" means, with respect to any structured settlement:

(1) the payee;

(2) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(3) the annuity issuer;

(4) the structured settlement obligor; and

(5) any other party that has continuing rights or obligations under the structured settlement;

H. "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection E of Section 3 of the Structured Settlement Protection Act;

I. "payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to transfer payment rights under the structured settlement;

J. "periodic payments" includes both recurring payments and scheduled future lump-sum payments;

K. "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the Internal Revenue Code of 1986, as amended;

L. "settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

M. "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

N. "structured settlement agreement" means the agreement, judgment, stipulation or release embodying the terms of a structured settlement;

O. "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

P. "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

(1) the payee is domiciled in or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(2) the structured settlement agreement was authorized or approved by a court located in this state; or

(3) the structured settlement agreement is expressly governed by the laws of this state;

Q. "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of the court;

R. "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration, except that "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or its agent or successor in interest, or to enforce the blanket security interest against the structured settlement payment rights;

S. "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights;

T. "transfer expenses" means all the expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney fees, escrow fees, lien recording fees, judgment and lien search fees, finders' fees, commissions and other payments to a broker or other intermediary, except that "transfer expenses" does not include preexisting obligations of the payee payable on the payee's account from the proceeds of a transfer; and

U. "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Chapter 135 Section 3 Laws 2005

Section 3. REQUIRED DISCLOSURES TO PAYEE.--At least three days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type at least fourteen points in size, that states:

A. the amounts and due dates of the structured settlement payments to be transferred;

B. the aggregate amount of the payments;

C. the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating the discounted present value;

D. the gross advance amount;

E. an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of those expenses;

F. the net advance amount;

G. the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

H. a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the close of the third business day after the date the agreement is signed by the payee.

Chapter 135 Section 4 Laws 2005

Section 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.--No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

A. the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

B. the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and

C. the transfer does not contravene any applicable statute or an order of any court or other governmental authority.

Chapter 135 Section 5 Laws 2005

Section 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.--Following a transfer of structured settlement payment rights pursuant to the Structured Settlement Protection Act:

A. the structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

B. the transferee shall be liable to the structured settlement obligor and the annuity issuer:

(1) for any taxes incurred by the parties as a consequence of the transfer if the transfer contravenes the terms of the structured settlement; and

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

C. the transferee shall be liable to the payee:

(1) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the payee as a consequence of the transfer; and

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

D. neither the structured settlement obligor nor the annuity issuer may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

E. any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of the Structured Settlement Protection Act.

Chapter 135 Section 6 Laws 2005

Section 6. PROCEDURE FOR APPROVAL OF TRANSFERS.--

A. An application under the Structured Settlement Protection Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in court.

B. At least twenty days before the date of the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of the Structured Settlement Protection Act, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for authorization, including with the notice:

(1) a copy of the transferee's application;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under Section 3 of the Structured Settlement Protection Act;

(4) a listing of each of the payee's dependents, together with each dependent's age;

(5) notice that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

(6) notice of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed to be considered by the court.

C. Written responses to the application under Paragraph (6) of Subsection B of this section shall be filed on or before the fifteenth day after the date the transferee's notice is served.

Chapter 135 Section 7 Laws 2005

Section 7. GENERAL PROVISIONS--CONSTRUCTION.--

A. The provisions of the Structured Settlement Protection Act shall not be waived by any payee.

B. Any transfer agreement entered into by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. The transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. Transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and agreed to maintain procedures reasonably satisfactory to the structured settlement obligor and the annuity issuer for:

(1) periodically confirming the payee's survival; and

(2) giving the structured settlement obligor and the annuity issuer prompt written notice in the event of the payee's death.

D. A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of the Structured Settlement Protection Act.

E. Nothing contained in the Structured Settlement Protection Act may be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before July 1, 2005 is valid or invalid.

F. Compliance with the requirements in Section 3 of the Structured Settlement Protection Act and fulfillment of the conditions in Section 4 of that act are solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Chapter 135 Section 8 Laws 2005

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 495, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 136

AN ACT

RELATING TO HIGHER EDUCATION; CREATING A NURSE EDUCATORS FUND.

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

Chapter 136 Section 1 Laws 2005

Section 1. FUND CREATED.--There is created in the commission on higher education the "nurse educators fund". The state treasurer shall deposit in the fund all amounts appropriated to the fund. The fund shall be administered by the commission on higher education, which shall charge not more than a five percent administrative fee. 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. The purpose of the fund is to enhance the ability of college- and university-employed nursing educators to obtain bachelor of science, master of science and doctor of philosophy degrees. The commission on higher education shall develop rules for continuing employment or pay-back provisions for nursing educators who use the fund.

HOUSE BILL 509, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 137

AN ACT

RELATING TO THE PUBLIC EMPLOYEE LABOR RELATIONS BOARD; PERMITTING BOARD MEETINGS TO BE HELD IN ALBUQUERQUE.

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

Chapter 137 Section 1 Laws 2005

Section 1. Section 10-7E-12 NMSA 1978 (being Laws 2003, Chapter 4, Section 12 and Laws 2003, Chapter 5, Section 12) is amended to read:

"10-7E-12. HEARING PROCEDURES.--

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

(1) information gathering and inquiry;

(2) adopting rules; and

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

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

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

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

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

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

HOUSE BILL 529, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 138

AN ACT

RELATING TO HUMAN SERVICES; REQUIRING NOTIFICATION OF ELIGIBILITY FOR FOOD STAMPS.

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

Chapter 138 Section 1 Laws 2005

Section 1. A new section of Chapter 7, Article 1 NMSA 1978 is enacted to read:

"NOTICE OF POTENTIAL ELIGIBILITY REQUIRED.--The department shall include a notice with an income tax refund or other notice sent to a taxpayer whose income is within one hundred thirty percent of federal poverty guidelines as defined by the United States census bureau that the taxpayer may be eligible for food stamps. Included in the notice shall be general information about food stamps, such as where to apply for food stamps, based on information received by the department from the human services department by January 30 of each calendar year."

Chapter 138 Section 2 Laws 2005

Section 2. Section 27-2-10 NMSA 1978 (being Laws 1973, Chapter 376, Section 14) is amended to read:

"27-2-10. FOOD STAMP PROGRAM.--The income support division of the human services department:

A. is authorized to establish a food stamp program to carry out the federal Food Stamp Act, as may be amended from time to time, and regulations issued pursuant to that act, subject to the continuation of the federal food stamp program and the availability of federal funds; and

B. shall by January 30 of each calendar year notify the taxation and revenue department of the location of food stamp offices in New Mexico for inclusion in a notice sent with an income tax refund or other notice to a taxpayer whose income is within one hundred thirty percent of federal poverty guidelines."

HOUSE BILL 562

Approved April 5, 2005

LAWS 2005, CHAPTER 139

AN ACT

RELATING TO SUBDIVISIONS; PROVIDING FOR DELEGATION OF SUBDIVISION APPROVAL AUTHORITY IN CERTAIN CLASS A COUNTIES.

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

Chapter 139 Section 1 Laws 2005

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973, Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico Subdivision Act:

A. "board of county commissioners" means the governing board of a county;

B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;

C. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

E. "lease" means to lease or offer to lease land;

F. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

G. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

H. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it and need not be based upon an accurate and detailed survey of the land;

I. "sell" means to sell or offer to sell land;

J. "subdivide" means to divide a surface area of land into a subdivision;

K. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

L. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;

(6) the division of land for grazing or farming activities; provided the land continues to be used for grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501 (c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five-year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey shall be filed with the county clerk indicating the five-year holding period for both the original tract and the newly created tract;

M. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

N. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

O. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

P. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

Q. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

R. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and

S. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size."

Chapter 139 Section 2 Laws 2005

Section 2. Section 47-6-9 NMSA 1978 (being Laws 1973, Chapter 348, Section 9, as amended) is amended to read:

"47-6-9. SUBDIVISION REGULATION--COUNTY AUTHORITY.--

A. The board of county commissioners of each county shall regulate subdivisions within the county's boundaries. In regulating subdivisions, the board of county commissioners of each county shall adopt regulations setting forth the county's requirements for:

(1) preliminary and final subdivision plats, including their content and format;

(2) quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses;

(3) assessing water availability to meet the maximum annual water requirements of subdivisions;

(4) water conservation measures;

(5) water of an acceptable quality for human consumption and for protecting the water supply from contamination;

(6) liquid waste disposal;

(7) solid waste disposal;

(8) legal access to each parcel;

(9) sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles;

(10) utility easements to each parcel;

(11) terrain management;

(12) phased development;

(13) protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act;

(14) specific information to be contained in a subdivider's disclosure statement in addition to that required in Section 47-6-17 NMSA 1978;

(15) reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats;

(16) a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in Section 47-6-11 NMSA 1978;

(17) recording all conveyances of parcels with the county clerk;

(18) financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain;

(19) fencing subdivided land, where appropriate, in conformity with Section 77-16-1 NMSA 1978, which places the duty on the purchaser, lessee or other person acquiring an interest in the subdivided land to fence out livestock; and

(20) any other matter relating to subdivisions that the board of county commissioners feels is necessary to promote health, safety or the general welfare.

B. Subsection A of this section does not preempt the authority of any state agency to regulate or perform any activity that it is required or authorized by law to perform.

C. Nothing in the New Mexico Subdivision Act shall be construed to limit the authority of counties to adopt subdivision regulations with requirements that are more stringent than the requirements set forth in the New Mexico Subdivision Act, provided that:

(1) the county has adopted a comprehensive plan in accordance with Section 3-21-5 NMSA 1978;

(2) the comprehensive plan contains goals, objectives and policies that identify and explain the need for requirements that are more stringent; and

(3) the more stringent regulations are specifically identified in the comprehensive plan.

D. The board of county commissioners of a class A county with a population according to the most recent federal decennial census of greater than three hundred thousand may delegate the authority to review and approve preliminary plats and final plats to a county administrative officer or to the planning commission; provided that the delegation complies with the public hearing requirements contained in Section 47-6-14 NMSA 1978."

Chapter 139 Section 3 Laws 2005

Section 3. Section 47-6-15 NMSA 1978 (being Laws 1973, Chapter 348, Section 15, as amended) is amended to read:

"47-6-15. APPEALS.--

A. A party who is or may be adversely affected by a decision of a delegate of the board of county commissioners shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for appealing the decision of the board of county commissioners set out in Subsection B of this section shall apply.

B. A party who is or may be adversely affected by a decision of the board of county commissioners may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

HOUSE GOVERNMENT AND URBAN AFFAIRS

COMMITTEE SUBSTITUTE FOR HOUSE BILL 723

Approved April 5, 2005

LAWS 2005, CHAPTER 140

AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
PROVIDING RESPONSIBILITIES FOR THE NEW MEXICO MEDICAL BOARD AND
OTHER HEALTH PROFESSIONAL LICENSING BOARDS; ESTABLISHING CRITERIA
FOR CERTAIN ACTIONS; CREATING THE PAIN MANAGEMENT ADVISORY
COUNCIL.

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

Chapter 140 Section 1 Laws 2005

Section 1. Section 24-2D-2 NMSA 1978 (being Laws 1999, Chapter 126, Section 2) is amended to read:

"24-2D-2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice guideline for pain management developed by a national joint commission on accreditation of health care

organizations; the American pain society; an American geriatrics society; the agency for health care research and quality; a national cancer pain initiative or any other nationally recognized clinical or professional association; or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion whose guidelines have been accepted by the New Mexico medical board and by other boards of health care providers with prescriptive authority;

B. "board" means the licensing board of a health care provider;

C. "clinical expert" means a person who by reason of specialized education or substantial relevant experience in pain management has knowledge regarding current standards, practices and guidelines;

D. "disciplinary action" means a formal action taken by a board against a health care provider, upon a finding of probable cause that the health care provider has engaged in conduct that violates the provider's respective board's practice act;

E. "health care provider" means a person licensed or otherwise authorized by law to provide health care in the ordinary course of business or practice of the person's profession and to have prescriptive authority within the limits of the person's license;

F. "pain" means a condition of bodily sensation of serious physical discomfort that requires the services of a health care provider to alleviate, including discomfort that is persistent and chronic in duration; and

G. "therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management."

Chapter 140 Section 2 Laws 2005

Section 2. Section 24-2D-3 NMSA 1978 (being Laws 1999, Chapter 126, Section 3) is amended to read:

"24-2D-3. DISCIPLINARY ACTION--EVIDENTIARY REQUIREMENTS.--

A. A health care provider who prescribes, dispenses or administers medical treatment for the purpose of relieving pain and who can demonstrate by reference to an accepted guideline that the provider's practice substantially complies with that guideline and with the standards of practice identified in Section 24-2D-4 NMSA 1978 shall not be disciplined pursuant to board action or criminal prosecution, unless the showing of substantial compliance with an accepted guideline by the health care provider is rebutted by clinical expert testimony. If no currently accepted guidelines are available, then rules issued by the board may serve the function of such guidelines

for purposes of the Pain Relief Act. The board rules shall conform to the intent of that act. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as an "accepted guideline" when offered to limit treatment options otherwise covered within the Pain Relief Act.

B. In the event that a disciplinary action or criminal prosecution is pursued, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. A showing of substantial compliance with an accepted guideline shall only be rebutted by clinical expert testimony.

C. The provisions of this section apply to health care providers in the treatment of pain, regardless of a patient's prior or current chemical dependency or addiction. Each board shall adopt rules establishing standards and procedures for the application of the Pain Relief Act, including the care and treatment of chemically dependent individuals.

D. In an action brought by a board against a health care provider based on treatment of a patient for pain, the board shall consider the totality of the circumstances and shall not use as the sole basis of the action:

- (1) a patient's age;
- (2) a patient's diagnosis;
- (3) a patient's prognosis;
- (4) a patient's history of drug abuse;
- (5) the absence of consultation with a pain specialist; or
- (6) the quantity of medication prescribed or dispensed."

Chapter 140 Section 3 Laws 2005

Section 3. A new section of Chapter 24, Article 2D NMSA 1978 is enacted to read:

"PAIN MANAGEMENT ADVISORY COUNCIL CREATED--DUTIES.--

A. The "pain management advisory council" is created and shall be administratively attached to the department of health. Members of the council shall be appointed by the governor to consist of one representative each from the New Mexico medical board, the board of nursing, the board of pharmacy, the board of osteopathic medical examiners, the board of acupuncture and oriental medicine, the university of New Mexico health sciences center, a statewide medical association, a statewide

association of pharmacists, a statewide association of nurse practitioners, a statewide association of certified registered nurse anesthetists and a statewide association of osteopathic physicians; one person who is a consumer health care advocate; and three persons who have no direct ties or pecuniary interest in the health care fields.

B. The council shall meet at least quarterly to review current pain management practices in New Mexico and national pain management standards and educational efforts for both consumers and professionals and shall recommend pain management guidelines for each health care profession licensed in New Mexico with prescriptive authority to its respective board. Members who are not public employees shall receive per diem and mileage as provided in the Per Diem and Mileage Act. Public employee members shall receive mileage from their respective employers for attendance at council meetings."

Chapter 140 Section 4 Laws 2005

Section 4. A new section of Chapter 24, Article 2D NMSA 1978 is enacted to read:

"PAIN MANAGEMENT CONTINUING EDUCATION.--A board shall encourage pain management continuing education for all health care providers who have prescriptive authority and who treat patients with pain."

Chapter 140 Section 5 Laws 2005

Section 5. Section 61-6-5 NMSA 1978 (being Laws 1973, Chapter 361, Section 2, as amended) is amended to read:

"61-6-5. DUTIES AND POWERS.--The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act and the Impaired Health Care Provider Act;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the medical profession and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing medical education requirements for licensed physicians and continuing education requirements for physician assistants;

M. establish committees as it deems necessary for carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer; and

O. establish and maintain rules related to the management of pain based on review of national standards for pain management."

HOUSE BILL 727, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 141

AN ACT

RELATING TO SOIL AND WATER CONSERVATION DISTRICTS; CHANGING THE DATE OF REFERENDUMS AND ELECTIONS.

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

Chapter 141 Section 1 Laws 2005

Section 1. Section 73-20-34 NMSA 1978 (being Laws 1965, Chapter 137, Section 8, as amended) is amended to read:

"73-20-34. SOIL AND WATER CONSERVATION DISTRICTS--CREATION--REFERENDUM.--

A. When a final determination of the commission that a proposed district is necessary and desirable has been entered and recorded, the commission shall then determine whether the operation of the district is administratively practicable. To assist in this determination, the commission shall call for a referendum on the proposed district within the geographical boundaries of the district as defined by the commission, to be conducted on the next succeeding first Tuesday in May, if practicable. All registered voters residing within the proposed district shall be eligible to vote.

B. The commission shall:

(1) provide for due notice of a referendum within a proposed district;

(2) confirm eligibility of registered voters; and

(3) adopt and publish rules to govern the orderly conduct of a referendum.

C. A referendum may not be held during an interval when valid rules adopted and published by the commission are not in effect.

D. The proposal shall be presented to the voters on ballots that define, in general terms and by legal description, the area encompassed within the proposed district.

E. Informalities or irregularities in the conduct of a referendum shall have no effect upon its result if due notice requirements have been substantially complied with and balloting has been fairly conducted in substantial compliance with the rules adopted and published by the commission.

F. The commission shall publish referendum results and make a final determination of whether the proposed district is administratively practicable; provided, however, in the event that approval of the proposed district is not carried by a majority

of votes cast in a referendum, the commission shall deny the petition and shall enter and record its order."

Chapter 141 Section 2 Laws 2005

Section 2. Section 73-20-38 NMSA 1978 (being Laws 1965, Chapter 137, Section 12, as amended) is amended to read:

"73-20-38. DISTRICT SUPERVISORS--ELECTION AND APPOINTMENT--ORGANIZED DISTRICTS.--

A. Successors to supervisors whose terms end in a calendar year shall be elected on the first Tuesday in May of that year. Elections shall be called, conducted and returned in accordance with rules adopted and prescribed by the commission.

B. A canvassing board appointed by the commission shall determine the results of a district election, shall certify and publish the results and shall give the commission notice of its canvass within seven days of its completion. A canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board.

C. Rules adopted and published by the commission and the election provisions of the Soil and Water Conservation District Act shall be exclusive in the conduct of district elections. The commission may adopt and publish rules to carry out the provisions of the Soil and Water Conservation District Act.

D. By June 15 of each year, the district supervisors may submit to the commission a list of persons interested in the district and who by experience or training are qualified to serve as supervisors. The commission may appoint from the list submitted, or at will, two persons to serve as supervisors if it is the determination of the commission that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the commission by the supervisors by June 15, the commission may appoint at will two supervisors qualified to serve by training or experience. Appointed supervisors shall serve at the pleasure of the commission and shall have the same powers and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement-appointed supervisors in the event of vacancy, shall be appointed by the commission from a list of candidates or at will in accordance with the provisions of this subsection."

Chapter 141 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 752

Approved April 5, 2005

LAWS 2005, CHAPTER 142

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING THAT NOTICE OF AN AMBER ALERT BE GIVEN TO CERTAIN CELLULAR SERVICE COMPANIES AND PAGING SERVICE COMPANIES SO THAT A TEXT MESSAGE MAY BE SENT TO CUSTOMERS.

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

Chapter 142 Section 1 Laws 2005

Section 1. Section 29-15A-3 NMSA 1978 (being Laws 2003, Chapter 93, Section 3) is amended to read:

"29-15A-3. STATE POLICE--AMBER ALERT NOTIFICATION PLAN--
DECLARATION OF AMBER ALERT.--

A. The state police shall develop and implement an AMBER alert notification plan for the purpose of disseminating, as rapidly as possible, information about a child abduction so that law enforcement agencies and citizens throughout the state may be aware and vigilant. The plan shall:

(1) provide a procedure for notifying the lead station by the authorized requester that an AMBER alert has been declared. The procedure shall include codes for use by the authorized requester in communicating with the lead station to prevent false alerts;

(2) provide a procedure in which other state and private print, radio, television or other media may alert the members of the public of the abduction;

(3) include a procedure for notifying the radio communications bureau of the communications division of the general services department that an AMBER alert has been declared. The bureau shall immediately transmit the notification and related information to all state field operations employees so that they may be aware and vigilant in the course of their regular activities;

(4) include a procedure for notifying a representative of each cellular service company and paging service company operating in New Mexico so that a text message may be sent to the company's customers at no additional expense to

the recipient or to any service that accepts the information from the authorized requester and delivers it to the cellular service or paging service company;

(5) include a procedure for notifying all local and federal law enforcement agencies that an AMBER alert has been declared; and

(6) provide for dissemination of information about a child or a child's abductor to the lead station, the radio communications bureau and local law enforcement agencies when an AMBER alert has been declared.

B. The state police shall distribute the AMBER alert notification plan to all local law enforcement agencies and provide such training and other assistance as is necessary to ensure that the plan can be properly implemented.

C. The authorized requester may declare an AMBER alert when the requester has reason to believe that:

(1) a child under the age of eighteen has been abducted by an unrelated person;

(2) the child is in imminent danger of serious bodily harm or death;
and

(3) there is specific information available about the child or the child's abductor that may assist in an expedient and successful end to the abduction.

D. Once an AMBER alert has been declared, only the authorized requester may terminate the AMBER alert."

Chapter 142 Section 2 Laws 2005

Section 2. A new section of the Cellular Telephone Services Act is enacted to read:

"AMBER ALERT NOTIFICATION.--

A. Each cellular service company or paging service company that is authorized to conduct business in New Mexico and offers text messaging services to its customers shall file with the authorized requester, designated by the chief of the New Mexico state police pursuant to the AMBER Alert Law, the names and telephone numbers of representatives that will be available at all times for notification of an AMBER alert.

B. The authorized requester may designate one or more services to accept notification of an AMBER alert and deliver the notification to each cellular service company or paging service company. Connections with the services shall be made in

the most technically efficient manner possible, using standard network sharing protocol from authorized agencies or their respective communication contractors.

C. Upon notification of an AMBER alert by the requester, a representative of a cellular service company or paging service company may cause a text message to be sent to its customers that use a text messaging service, alerting them that an AMBER alert has been declared and containing such other information about the child and the abductor that may reasonably lead to the expedient and successful end to the abduction."

Chapter 142 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 828, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 143

AN ACT

RELATING TO PROBATE; ENACTING THE UNIFORM ESTATE TAX APPORTIONMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM PROBATE CODE.

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

Chapter 143 Section 1 Laws 2005

Section 1. Section 45-3-102 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-102, as amended) is amended to read:

"45-3-102. NECESSITY OF ORDER OF PROBATE FOR WILL.--Except as provided in Sections 45-3-1201, 45-3-1205 and 45-3-1301 NMSA 1978, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the probate court or an adjudication of probate by the district court."

Chapter 143 Section 2 Laws 2005

Section 2. Section 45-6-101 NMSA 1978 (being Laws 1992, Chapter 66, Section 17) is amended to read:

"45-6-101. NONPROBATE TRANSFERS ON DEATH.--A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is nontestamentary. This section includes a written provision that:

A. money or other benefits due to, controlled by or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

B. money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

C. any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later."

Chapter 143 Section 3 Laws 2005

Section 3. A new section of the Uniform Probate Code, Section 45-6-102 NMSA 1978, is enacted to read:

"45-6-102. LIABILITY OF NONPROBATE TRANSFEREES FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES.--

A. In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

B. Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

C. Nonprobate transferees are liable for the insufficiency described in Subsection B of this section in the following order of priority:

(1) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(2) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

(3) other nonprobate transferees, in proportion to the values received.

D. Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

E. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

F. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

G. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

H. A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty days after final allowance of the claim.

I. Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) payment or delivery of assets by a financial institution, registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered; and

(2) a trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary."

Chapter 143 Section 4 Laws 2005

Section 4. Section 45-6-309 NMSA 1978 (being Laws 1992, Chapter 66, Section 45) is amended to read:

"45-6-309. NONTESTAMENTARY TRANSFER ON DEATH.--A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and Sections 45-6-301 through 45-6-311 NMSA 1978 and is not testamentary."

Chapter 143 Section 5 Laws 2005

Section 5. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"SHORT TITLE.--Sections 5 through 17 of this act may be cited as the "Uniform Estate Tax Apportionment Act"."

Chapter 143 Section 6 Laws 2005

Section 6. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"DEFINITIONS.--As used in the Uniform Estate Tax Apportionment Act:

A. "apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) any claim or expense allowable as a deduction for purposes of the tax;

(2) the value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) any amount added to the decedent's gross estate because of a gift tax on transfers made before death;

B. "estate tax" means a federal, state or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death;

C. "gross estate" means, with respect to an estate tax, all interests in property subject to the tax;

D. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

E. "ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning;

F. "time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest; and

G. "value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment."

Chapter 143 Section 7 Laws 2005

Section 7. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"APPORTIONMENT BY WILL OR OTHER DISPOSITIVE INSTRUMENT.--

A. Except as otherwise provided in Subsection C of this section, the following rules apply:

(1) to the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly;

(2) any portion of an estate tax not apportioned pursuant to Paragraph (1) of this subsection must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(a) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(b) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision; and

(3) if any portion of an estate tax is not apportioned pursuant to Paragraph (1) or (2) of this subsection, and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

B. Subject to Subsection C of this section, and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) if an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(a) the tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or

(b) if the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;

(2) if an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;

(3) except as otherwise provided in Paragraph (4) of this subsection, if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under Section 11 of this act, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property; and

(4) if an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

C. A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power."

Chapter 143 Section 8 Laws 2005

Section 8. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"STATUTORY APPORTIONMENT OF ESTATE TAXES.--To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 7 of this act and except as otherwise provided in Sections 10 and 11 of this act, the following rules apply:

A. subject to Subsections B, C and D of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate;

B. a generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred;

C. if property is included in the decedent's gross estate because of Section 2044 of the federal Internal Revenue Code of 1986 or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate; and

D. except as otherwise provided in Paragraph (4) of Subsection B of Section 7 of this act and except as to property to which Section 11 of this act applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property."

Chapter 143 Section 9 Laws 2005

Section 9. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"CREDITS AND DEFERRALS.--Except as otherwise provided in Sections 10 and 11 of this act, the following rules apply to credits and deferrals of estate taxes:

A. a credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned;

B. a credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary; and

C. if payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property."

Chapter 143 Section 10 Laws 2005

Section 10. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"INSULATED PROPERTY--ADVANCEMENT OF TAX.--

A. In this section:

(1) "advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable;

(2) "advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under Subsection C of this section;

(3) "insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability;

(4) "uninsulated holder" means a person who has an interest in uninsulated property; and

(5) "uninsulated property" means property included in the apportionable estate other than insulated property.

B. If an estate tax is to be advanced pursuant to Subsection C of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which Section 11 of this act applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

C. Subject to Subsections B and D of Section 13 of this act, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under Paragraph (2) of Subsection A of Section 6 of this act as if those interests were in uninsulated property.

D. A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

E. When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

F. Upon a distribution of insulated property for which, pursuant to Subsection D of this section, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder."

Chapter 143 Section 11 Laws 2005

Section 11. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"APPORTIONMENT AND RECAPTURE OF SPECIAL ELECTIVE BENEFITS.--

A. In this section:

(1) "special elective benefit" means a reduction in an estate tax obtained by an election for:

(a) a reduced valuation of specified property that is included in the gross estate;

(b) a deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(c) an exclusion from the gross estate of specified property; and

(2) "specified property" means property for which an election has been made for a special elective benefit.

B. If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

C. An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture."

Chapter 143 Section 12 Laws 2005

Section 12. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"SECURING PAYMENT OF ESTATE TAX FROM PROPERTY IN POSSESSION OF FIDUCIARY.--

A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

B. A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

C. As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee."

Chapter 143 Section 13 Laws 2005

Section 13. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"COLLECTION OF ESTATE TAX BY FIDUCIARY.--

A. A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

B. Except as otherwise provided in Section 10 of this act, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) any person having an interest in the apportionable estate that is not exonerated from the tax;

(2) any other person having an interest in the apportionable estate;
and

(3) any person having an interest in the gross estate.

C. A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

D. The total tax collected from a person pursuant to the Uniform Estate Tax Apportionment Act may not exceed the value of the person's interest."

Chapter 143 Section 14 Laws 2005

Section 14. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"RIGHT OF REIMBURSEMENT.--

A. A person required under Section 13 of this act to pay an estate tax greater than the amount due from the person under Section 7 or 8 of this act has a right to reimbursement from another person to the extent that the other person has not paid the tax required by Section 7 or 8 of this act and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under Subsection B of Section 13 of this act.

B. A fiduciary may enforce the right of reimbursement under Subsection A of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person."

Chapter 143 Section 15 Laws 2005

Section 15. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"ACTION TO DETERMINE OR ENFORCE ACT.--A fiduciary, transferee or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce the Uniform Estate Tax Apportionment Act."

Chapter 143 Section 16 Laws 2005

Section 16. A new section of the Uniform Probate Code, Part 9A, is enacted to read:

"UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Estate Tax Apportionment 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."

Chapter 143 Section 17 Laws 2005

Section 17. A new section of the Uniform Probate Code is enacted to read:

"SEVERABILITY.--If any part or application of the Uniform Estate Tax Apportionment Act is held invalid, the remainder or its application to other situations or persons shall not be affected."

Chapter 143 Section 18 Laws 2005

Section 18. REPEAL.--Sections 45-3-916 and 45-6-215 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-916 and Laws 1992, Chapter 66, Section 28, as amended) are repealed.

Chapter 143 Section 19 Laws 2005

Section 19. APPLICABILITY.--

A. Sections 7 through 11 of this act do not apply to the estate of a decedent who dies on or within three years after the effective date of the Uniform Estate Tax Apportionment Act, nor to the estate of a decedent who dies more than three years after the effective date of the Uniform Estate Tax Apportionment Act if the decedent continuously lacked testamentary capacity from the expiration of the three-year period until the date of death.

B. For the estate of a decedent who dies on or after the effective date of the Uniform Estate Tax Apportionment Act to which Sections 7 through 11 of this act do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before the effective date of the Uniform Estate Tax Apportionment Act.

Chapter 143 Section 20 Laws 2005

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

House Bill 829

Approved April 5, 2005

LAWS 2005, CHAPTER 144

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING ARTICLES 1, 7 AND 9 OF THE UNIFORM COMMERCIAL CODE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978 TO ACCOMPLISH THE ADDITIONS TO, DELETIONS FROM AND CLARIFICATIONS OF THE UNIFORM COMMERCIAL CODE.

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

Chapter 144 Section 1 Laws 2005

Section 1. Section 55-1-101 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-101, as amended) is amended to read:

"55-1-101. SHORT TITLES.--

(a) Chapter 55 NMSA 1978 shall be known and may be cited as the "Uniform Commercial Code"; and

(b) Chapter 55, Article 1 NMSA 1978 shall be known and may be cited as the "Uniform Commercial Code-General Provisions."

Chapter 144 Section 2 Laws 2005

Section 2. Section 55-1-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-102) is repealed and a new Section 55-1-102 NMSA 1978 is enacted to read:

"55-1-102. SCOPE OF ARTICLE.--Chapter 55, Article 1 NMSA 1978 applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code."

Chapter 144 Section 3 Laws 2005

Section 3. Section 55-1-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-103) is repealed and a new Section 55-1-103 NMSA 1978 is enacted to read:

"55-1-103. CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES--APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.--

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify and modernize the law governing commercial transactions;

(2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause, supplement its provisions."

Chapter 144 Section 4 Laws 2005

Section 4. Section 55-1-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-104) is amended to read:

"55-1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL.--The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided."

Chapter 144 Section 5 Laws 2005

Section 5. Section 55-1-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-105, as amended) is repealed and a new Section 55-1-105 NMSA 1978 is enacted to read:

"55-1-105. SEVERABILITY.--If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable."

Chapter 144 Section 6 Laws 2005

Section 6. Section 55-1-106 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-106) is repealed and a new Section 55-1-106 NMSA 1978 is enacted to read:

"55-1-106. USE OF SINGULAR AND PLURAL--GENDER.--In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of any gender also refer to any other gender."

Chapter 144 Section 7 Laws 2005

Section 7. Section 55-1-107 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-107) is repealed and a new Section 55-1-107 NMSA 1978 is enacted to read:

"55-1-107. SECTION CAPTIONS.--Section captions are part of the Uniform Commercial Code."

Chapter 144 Section 8 Laws 2005

Section 8. Section 55-1-108 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-108) is repealed and a new Section 55-1-108 NMSA 1978 is enacted to read:

"55-1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--Chapter 55, Article 1 NMSA 1978 modifies, limits and

supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.*, except that nothing in this article modifies, limits or supersedes Section 7001(c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act."

Chapter 144 Section 9 Laws 2005

Section 9. Section 55-1-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-201, as amended) is repealed and a new Section 55-1-201 NMSA 1978 is enacted to read:

"55-1-201. GENERAL DEFINITIONS.--

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

(1) "action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined;

(2) "aggrieved party" means a party entitled to pursue a remedy;

(3) "agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing or usage of trade as provided in Section 55-1-303 NMSA 1978;

(4) "bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company;

(5) "bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title or certificated security that is payable to bearer or indorsed in blank;

(6) "bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt;

(7) "branch" includes a separately incorporated foreign branch of a bank;

(8) "burden of establishing" a fact means the burden of persuading the trier 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 the 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 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 preexisting 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. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(10) "conspicuous", with reference to a term, means so written, displayed or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text or in contrasting type, font or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text or in contrasting type, font or color to the surrounding text of the same size or set off from surrounding text of the same size by symbols or other marks that call attention to the language;

(11) "consumer" means an individual who enters into a transaction primarily for personal, family or household purposes;

(12) "contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws;

(13) "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;

(14) "defendant" includes a person in the position of defendant in a counterclaim, cross-claim or third-party claim;

(15) "delivery", with respect to an electronic document of title, means voluntary transfer of control, and with respect to an instrument, a tangible document of title or chattel paper, means voluntary transfer of possession;

(16) "document of title" means a record: (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold and dispose of the record and the goods the record covers; and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium;

(17) "fault" means a default, breach or wrongful act or omission;

(18) "fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent;

(19) "genuine" means free of forgery or counterfeiting;

(20) "good faith", except as otherwise provided in Chapter 55, Article 5 NMSA 1978, means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(21) "holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title;

(22) "insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved;

(23) "insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law;

(24) "money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries;

(25) "organization" means a person other than an individual;

(26) "party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code;

(27) "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;

(28) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into;

(29) "purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property;

(30) "purchaser" means a person that takes by purchase;

(31) "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;

(32) "remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal;

(33) "representative" means a person empowered to act for another, including an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate;

(34) "right" includes remedy;

(35) "security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" 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. "Security interest" does not include 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, 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 under Section 55-2-401 NMSA 1978 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to Section 55-1-203 NMSA 1978;

(36) "send" in connection with a writing, record or notice means:

(A) 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; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent;

(37) "signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing;

(38) "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;

(39) "surety" includes a guarantor or other secondary obligor;

(40) "term" means a portion of an agreement that relates to a particular matter;

(41) "unauthorized signature" means a signature made without actual, implied or apparent authority. The term includes a forgery;

(42) "warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire; and

(43) "writing" includes printing, typewriting or any other intentional reduction to tangible form. "Written" has a corresponding meaning."

Chapter 144 Section 10 Laws 2005

Section 10. Section 55-1-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-202) is repealed and a new Section 55-1-202 NMSA 1978 is enacted to read:

"55-1-202. NOTICE--KNOWLEDGE.--

(a) Subject to Subsection (f) of this section, a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn" or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to Subsection (f) of this section, a person "receives" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's 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 the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information."

Chapter 144 Section 11 Laws 2005

Section 11. Section 55-1-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-203) is repealed and a new Section 55-1-203 NMSA 1978 is enacted to read:

"55-1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST.--

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that 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 and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) 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;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) 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;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) 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

(6) 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.

(d) 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. Additional consideration is not nominal if:

(1) 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

(2) 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.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into."

Chapter 144 Section 12 Laws 2005

Section 12. Section 55-1-204 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-204) is repealed and a new Section 55-1-204 NMSA 1978 is enacted to read:

"55-1-204. VALUE.--Except as otherwise provided in Chapter 55, Articles 3, 4 and 5, a person gives value for rights if the person acquires them:

(1) 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;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract."

Chapter 144 Section 13 Laws 2005

Section 13. Section 55-1-205 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-205) is repealed and a new Section 55-1-205 NMSA 1978 is enacted to read:

"55-1-205. REASONABLE TIME--SEASONABLENESS.--

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time."

Chapter 144 Section 14 Laws 2005

Section 14. Section 55-1-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-206, as amended) is repealed and a new Section 55-1-206 NMSA 1978 is enacted to read:

"55-1-206. PRESUMPTIONS.--Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence."

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

Chapter 144 Section 15 Laws 2005

Section 15. A new section of the Uniform Commercial Code, Section 55-1-301 NMSA 1978, is enacted to read:

"55-1-301. TERRITORIAL APPLICABILITY; PARTIES' POWER TO CHOOSE APPLICABLE LAW.--

A. Except as otherwise 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 of such other state or nation shall govern their rights and duties.

B. In the absence of an agreement effective under Subsection A of this section, and except as provided in Subsection C of this section, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

C. If 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 so specified:

- (1) Section 55-2-402 NMSA 1978;
- (2) Sections 55-2A-105 and 55-2A-106 NMSA 1978;
- (3) Section 55-4-102 NMSA 1978;
- (4) Section 55-4A-507 NMSA 1978;
- (5) Section 55-5-116 NMSA 1978;
- (6) Section 55-8-110 NMSA 1978; and
- (7) Sections 55-9-301 through 55-9-307 NMSA 1978."

Chapter 144 Section 16 Laws 2005

Section 16. A new section of the Uniform Commercial Code, Section 55-1-302 NMSA 1978, is enacted to read:

"55-1-302. VARIATION BY AGREEMENT.--

(a) Except as otherwise provided in Subsection (b) of this section or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The

parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section."

Chapter 144 Section 17 Laws 2005

Section 17. A new section of the Uniform Commercial Code, Section 55-1-303 NMSA 1978, is enacted to read:

"55-1-303. COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE.--

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in Subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 55-2-209 NMSA 1978, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party."

Chapter 144 Section 18 Laws 2005

Section 18. A new section of the Uniform Commercial Code, Section 55-1-304 NMSA 1978, is enacted to read:

"55-1-304. OBLIGATION OF GOOD FAITH.--Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement."

Chapter 144 Section 19 Laws 2005

Section 19. A new section of the Uniform Commercial Code, Section 55-1-305 NMSA 1978, is enacted to read:

"55-1-305. REMEDIES TO BE LIBERALLY ADMINISTERED.--

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect."

Chapter 144 Section 20 Laws 2005

Section 20. A new section of the Uniform Commercial Code, Section 55-1-306 NMSA 1978, is enacted to read:

"55-1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.--A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record."

Chapter 144 Section 21 Laws 2005

Section 21. A new section of the Uniform Commercial Code, Section 55-1-307 NMSA 1978, is enacted to read:

"55-1-307. PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS.--A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party."

Chapter 144 Section 22 Laws 2005

Section 22. A new section of the Uniform Commercial Code, Section 55-1-308 NMSA 1978, is enacted to read:

"55-1-308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.--

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction."

Chapter 144 Section 23 Laws 2005

Section 23. A new section of the Uniform Commercial Code, Section 55-1-309 NMSA 1978, is enacted to read:

"55-1-309. OPTION TO ACCELERATE AT WILL.--A term providing that one party or that party's successor in interest may accelerate payment or performance or

"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; and
"termination"	Section 55-2-106 NMSA 1978.

(3) "Control", as provided in Section 55-7-106 NMSA 1978, and 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."

Chapter 144 Section 26 Laws 2005

Section 26. Section 55-2-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-104) is amended to read:

"55-2-104. DEFINITIONS--"MERCHANT"--"BETWEEN MERCHANTS"--
"FINANCING AGENCY".--

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 55-2-707 NMSA 1978).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."

Chapter 144 Section 27 Laws 2005

Section 27. Section 55-2-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-202) is amended to read:

"55-2-202. FINAL WRITTEN EXPRESSION--PAROL OR EXTRINSIC EVIDENCE.--Terms with respect to which the confirmatory memoranda of the parties agree or that are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing or usage of trade (Section 55-1-303 NMSA 1978); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

Chapter 144 Section 28 Laws 2005

Section 28. Section 55-2-310 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-310) is amended to read:

"55-2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT--AUTHORITY TO SHIP UNDER RESERVATION.--Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 55-2-513 NMSA 1978); and

(c) if delivery is authorized and made by way of documents of title otherwise than by Subsection (b) of this section then payment is due regardless of where the goods are to be received: (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

Chapter 144 Section 29 Laws 2005

Section 29. Section 55-2-323 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-323) is amended to read:

"55-2-323. FORM OF BILL OF LADING REQUIRED ON OVERSEAS SHIPMENT--"OVERSEAS".--

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within Subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (Subsection (1) of Section 55-2-508 NMSA 1978); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity that the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as, by usage of trade or agreement, it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce."

Chapter 144 Section 30 Laws 2005

Section 30. Section 55-2-401 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-401) is amended to read:

"55-2-401. PASSING OF TITLE--RESERVATION FOR SECURITY--LIMITED APPLICATION OF THIS SECTION.--Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material, the following rules apply:

(1) title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 55-2-501 NMSA 1978), and unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by the Uniform Commercial Code. Any retention or reservation by the seller of the title

(property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of Chapter 55, Article 9 NMSA 1978, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties;

(2) unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there;

(3) unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting; and

(4) a rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

Chapter 144 Section 31 Laws 2005

Section 31. Section 55-2-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-503) is amended to read:

"55-2-503. MANNER OF SELLER'S TENDER OF DELIVERY.--

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within Section 55-2-504 NMSA 1978 respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that the seller comply with Subsection (1) of this section and also in any appropriate case tender documents as described in Subsections (4) and (5) of this section.

(4) Where goods are in the possession of the bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgement of the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 55, Article 9 NMSA 1978, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) the seller must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (Subsection (2) of Section 55-2-323 NMSA 1978); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection."

Chapter 144 Section 32 Laws 2005

Section 32. Section 55-2-505 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-505) is amended to read:

"55-2-505. SELLER'S SHIPMENT UNDER RESERVATION.--

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named; and

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection (2) of Section 55-2-507 NMSA 1978) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title."

Chapter 144 Section 33 Laws 2005

Section 33. Section 55-2-506 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-506) is amended to read:

"55-2-506. RIGHTS OF FINANCING AGENCY.--

(1) A financing agency by paying or purchasing for value a draft that relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods, including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency that has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document that was apparently regular."

Chapter 144 Section 34 Laws 2005

Section 34. Section 55-2-509 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-509) is amended to read:

"55-2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.--

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 55-2-505 NMSA 1978); but

(b) if it does require the seller to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgement by the bailee of the buyer's right to possession of the goods; or

(c) after the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in Paragraph (b) of Subsection (4) of Section 55-2-503 NMSA 1978.

(3) In any case not within Subsection (1) or (2) of this section, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Section 55-2-327 NMSA 1978) and on effect of breach on risk of loss (Section 55-2-510 NMSA 1978)."

Chapter 144 Section 35 Laws 2005

Section 35. Section 55-2-605 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-605) is amended to read:

"55-2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE.--

(1) The buyer's failure to state in connection with rejection a particular defect that is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents."

Chapter 144 Section 36 Laws 2005

Section 36. Section 55-2-705 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-705) is amended to read:

"55-2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.--

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (Section 55-2-702 NMSA 1978) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer, the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

Chapter 144 Section 37 Laws 2005

Section 37. 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 that person 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 acquiring goods or documents of title under a preexisting 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 that person 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 acquiring goods or documents of title under a preexisting 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 NMSA 1978;

"construction mortgage" Section 55-2A-309 NMSA 1978;

"encumbrance" Section 55-2A-309 NMSA 1978;

"fixtures" Section 55-2A-309 NMSA 1978;

"fixture filing" Section 55-2A-309 NMSA 1978; and

"purchase money lease" Section 55-2A-309 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" 2-103 NMSA 1978;	Paragraph (a) of Subsection (1) of Section 55-
"chattel paper" 55-9-102 NMSA 1978;	Paragraph (11) of Subsection (a) of Section
"consumer goods" 55-9-102 NMSA 1978;	Paragraph (23) of Subsection (a) of Section
"document" 55-9-102 NMSA 1978;	Paragraph (30) of Subsection (a) of Section
"entrusting" 1978;	Subsection (3) of Section 55-2-403 NMSA
"general intangible" 55-9-102 NMSA 1978;	Paragraph (42) of Subsection (a) of Section
"instrument" 55-9-102 NMSA 1978;	Paragraph (47) of Subsection (a) of Section
"merchant" 1978;	Subsection (1) of Section 55-2-104 NMSA
"mortgage" 55-9-102 NMSA 1978;	Paragraph (55) of Subsection (a) of Section
"pursuant to commitment" 55-9-102 NMSA 1978;	Paragraph (68) of Subsection (a) of Section
"receipt" 2-103 NMSA 1978;	Paragraph (c) of Subsection (1) of Section 55-
"sale" 1978;	Subsection (1) of Section 55-2-106 NMSA
"sale on approval"	Section 55-2-326 NMSA 1978;
"sale or return"	Section 55-2-326 NMSA 1978; and
"seller" Section 55-2-103 NMSA 1978.	Paragraph (d) of Subsection (1) of

(4) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 144 Section 38 Laws 2005

Section 38. Section 55-2A-501 NMSA 1978 (being Laws 1992, Chapter 114, Section 56) is amended to read:

"55-2A-501. DEFAULT--PROCEDURE.--

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration or the like, in accordance with this article.

(4) Except as otherwise provided in Subsection (a) of Section 55-1-305 NMSA 1978 or this article or the lease agreement, the rights and remedies referred to in Subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply."

Chapter 144 Section 39 Laws 2005

Section 39. Section 55-2A-514 NMSA 1978 (being Laws 1992, Chapter 114, Section 69) is amended to read:

"55-2A-514. WAIVER OF LESSEE'S OBJECTIONS.--

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 55-2A-513 NMSA 1978); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents."

Chapter 144 Section 40 Laws 2005

Section 40. Section 55-2A-518 NMSA 1978 (being Laws 1992, Chapter 114, Section 73) is amended to read:

"55-2A-518. COVER--SUBSTITUTE GOODS.--

(1) After a default by a lessor under the lease contract of the type described in Subsection (1) of Section 55-2A-508 NMSA 1978, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Section 55-1-302 NMSA 1978 and Section 55-2A-503 NMSA 1978), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages: (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 55-2A-519 NMSA 1978 governs."

Chapter 144 Section 41 Laws 2005

Section 41. Section 55-2A-519 NMSA 1978 (being Laws 1992, Chapter 114, Section 74) is amended to read:

"55-2A-519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION, DEFAULT AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.--

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of Section 55-2A-518 NMSA 1978, or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (Subsection (3) of Section 55-2A-516 NMSA 1978), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty."

Chapter 144 Section 42 Laws 2005

Section 42. Section 55-2A-526 NMSA 1978 (being Laws 1992, Chapter 114, Section 81) is amended to read:

"55-2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.--

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under Subsection (1) of this section, the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(4) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(5) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

Chapter 144 Section 43 Laws 2005

Section 43. Section 55-2A-527 NMSA 1978 (being Laws 1992, Chapter 114, Section 82) is amended to read:

"55-2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.--

(1) After a default by a lessee under the lease contract of the type described in Subsection (1) or Paragraph (a) of Subsection (3) of Section 55-2A-523 NMSA 1978 or after the lessor refuses to deliver or takes possession of goods (Section 55-2A-525 or 55-2A-526 NMSA 1978), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages: (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement; (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and (iii) any incidental damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 55-2A-528 NMSA 1978 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Subsection (5) of Section 55-2A-508 NMSA 1978)."

Chapter 144 Section 44 Laws 2005

Section 44. Section 55-2A-528 NMSA 1978 (being Laws 1992, Chapter 114, Section 83) is amended to read:

"55-2A-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION OR OTHER DEFAULT.--

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of Section 55-2A-527 NMSA 1978, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Subsection (1) or Paragraph (a) of Subsection (3) of Section 55-2A-523 NMSA 1978, or, if agreed, for other default of the lessee: (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and (iii) any incidental damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in Subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any

incidental damages allowed under Section 55-2A-530 NMSA 1978, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition."

Chapter 144 Section 45 Laws 2005

Section 45. Section 55-3-103 NMSA 1978 (being Laws 1992, Chapter 114, Section 90) is amended to read:

"55-3-103. DEFINITIONS.--

(a) In this article:

- (1) "acceptor" means a drawee who has accepted a draft;
- (2) "drawee" means a person ordered in a draft to make payment;
- (3) "drawer" means a person who signs or is identified in a draft as a person ordering payment;
- (4) [Reserved];
- (5) "maker" means a person who signs or is identified in a note as a person undertaking to pay;
- (6) "order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;
- (7) "ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Chapter 55, Article 4 NMSA 1978;
- (8) "party" means a party to an instrument;
- (9) "promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;

(10) "prove" with respect to a fact means to meet the burden of establishing the fact (Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978); and

(11) "remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"acceptance"	Section 55-3-409 NMSA 1978;
"accommodated party"	Section 55-3-419 NMSA 1978;
"accommodation party"	Section 55-3-419 NMSA 1978;
"alteration"	Section 55-3-407 NMSA 1978;
"anomalous indorsement"	Section 55-3-205 NMSA 1978;
"blank indorsement"	Section 55-3-205 NMSA 1978;
"cashier's check"	Section 55-3-104 NMSA 1978;
"certificate of deposit"	Section 55-3-104 NMSA 1978;
"certified check"	Section 55-3-409 NMSA 1978;
"check"	Section 55-3-104 NMSA 1978;
"consideration"	Section 55-3-303 NMSA 1978;
"draft"	Section 55-3-104 NMSA 1978;
"holder in due course"	Section 55-3-302 NMSA 1978;
"incomplete instrument"	Section 55-3-115 NMSA 1978;
"indorsement"	Section 55-3-204 NMSA 1978;
"indorser"	Section 55-3-204 NMSA 1978;
"instrument"	Section 55-3-104 NMSA 1978;
"issue"	Section 55-3-105 NMSA 1978;

"issuer" Section 55-3-105 NMSA 1978;
"negotiable instrument" Section 55-3-104 NMSA 1978;
"negotiation" Section 55-3-201 NMSA 1978;
"note" Section 55-3-104 NMSA 1978;
"payable at a definite time" Section 55-3-108 NMSA 1978;
"payable on demand" Section 55-3-108 NMSA 1978;
"payable to bearer" Section 55-3-109 NMSA 1978;
"payable to order" Section 55-3-109 NMSA 1978;
"payment" Section 55-3-602 NMSA 1978;
"person entitled to enforce" Section 55-3-301 NMSA 1978;
"presentment" Section 55-3-501 NMSA 1978;
"reacquisition" Section 55-3-207 NMSA 1978;
"special indorsement" Section 55-3-205 NMSA 1978;
"teller's check" Section 55-3-104 NMSA 1978;
"transfer of instrument" Section 55-3-203 NMSA 1978;
"traveler's check" Section 55-3-104 NMSA 1978; and
"value" Section 55-3-303 NMSA 1978.

(c) The following definitions in other articles apply to this article:

"bank" Section 55-4-105 NMSA 1978;
"banking day" Section 55-4-104 NMSA 1978;
"clearing house" Section 55-4-104 NMSA 1978;
"collecting bank" Section 55-4-105 NMSA 1978;
"depository bank" Section 55-4-105 NMSA 1978;

"documentary draft"	Section 55-4-104 NMSA 1978;
"intermediary bank"	Section 55-4-105 NMSA 1978;
"item"	Section 55-4-104 NMSA 1978;
"payor bank"	Section 55-4-105 NMSA 1978;

and

"suspends payments"	Section 55-4-104 NMSA 1978.
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(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 144 Section 46 Laws 2005

Section 46. Section 55-4-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-104, as amended) is amended to read:

"55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS.--

(a) In Chapter 55, Article 4 NMSA 1978, unless the context otherwise requires:

(1) "account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft or like account, other than an account evidenced by a certificate of deposit;

(2) "afternoon" means the period of a day between noon and midnight;

(3) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "clearinghouse" means an association of banks or other payors regularly clearing items;

(5) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities pursuant to Section 55-8-102 NMSA 1978 or instructions for uncertificated securities pursuant to

Section 55-8-102 NMSA 1978, or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the drafts;

(7) "draft" means a draft as defined in Section 55-3-104 NMSA 1978 or an item, other than an instrument, that is an order;

(8) "drawee" means a person ordered in a draft to make payment;

(9) "item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 55, Article 4A NMSA 1978 or a credit or debit card slip;

(10) "midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance or otherwise as agreed. A settlement may be either provisional or final; and

(12) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to Chapter 55, Article 4 NMSA 1978 and the sections in which they appear are:

"agreement for electronic presentment"	Section 55-4-110 NMSA 1978;
"bank"	Section 55-4-105 NMSA 1978;
"collecting bank"	Section 55-4-105 NMSA 1978;
"depository bank"	Section 55-4-105 NMSA 1978;
"intermediary bank"	Section 55-4-105 NMSA 1978;
"payor bank"	Section 55-4-105 NMSA 1978;
"presenting bank"	Section 55-4-105 NMSA 1978;

and

"presentment notice" Section 55-4-110 NMSA 1978.

(c) "Control", as provided in Section 55-7-106 NMSA 1978, and the following definitions in other articles apply to Chapter 55, Article 4 NMSA 1978:

"acceptance" Section 55-3-409 NMSA 1978;

"alteration" Section 55-3-407 NMSA 1978;

"cashier's check" Section 55-3-104 NMSA 1978;

"certificate of

deposit" Section 55-3-104 NMSA 1978;

"certified check" Section 55-3-409 NMSA 1978;

"check" Section 55-3-104 NMSA 1978;

"holder in due

course" Section 55-3-302 NMSA 1978;

"instrument" Section 55-3-104 NMSA 1978;

"notice of dishonor" Section 55-3-503 NMSA 1978;

"order" Section 55-3-103 NMSA 1978;

"ordinary care" Section 55-3-103 NMSA 1978;

"person entitled

to enforce" Section 55-3-301 NMSA 1978;

"presentment" Section 55-3-501 NMSA 1978;

"promise" Section 55-3-103 NMSA 1978;

"prove" Section 55-3-103 NMSA 1978;

"teller's check" Section 55-3-104 NMSA 1978;

and

"unauthorized signature" Section 55-3-403 NMSA 1978.

(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 144 Section 47 Laws 2005

Section 47. 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 the 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 the 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 possession or control of the 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."

Chapter 144 Section 48 Laws 2005

Section 48. Section 55-4A-105 NMSA 1978 (being Laws 1992, Chapter 114, Section 201) is amended to read:

"55-4A-105. OTHER DEFINITIONS.--

(a) In this article:

(1) "authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank; if a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account;

(2) "bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company; a branch or separate office of a bank is a separate bank for purposes of this article;

(3) "customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders;

(4) "funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing and transmittal of payment orders and cancellations and amendments of payment orders;

(5) "funds-transfer system" means a wire transfer network, automated clearinghouse or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed;

(6) [Reserved]; and

(7) "prove" with respect to a fact means to meet the burden of establishing the fact (Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978).

(b) Other definitions applying to this article and the sections in which they appear are:

"acceptance" Section 55-4A-209 NMSA 1978;

"beneficiary" Section 55-4A-103 NMSA 1978;

"beneficiary's bank" Section 55-4A-103 NMSA 1978;

"executed" Section 55-4A-301 NMSA 1978;

"execution date" Section 55-4A-301 NMSA 1978;

"funds transfer"	Section 55-4A-104 NMSA 1978;
"funds-transfer system rule"	Section 55-4A-501 NMSA 1978;
"intermediary bank"	Section 55-4A-104 NMSA 1978;
"originator"	Section 55-4A-104 NMSA 1978;
"originator's bank"	Section 55-4A-104 NMSA 1978;
"payment by beneficiary's bank to beneficiary"	Section 55-4A-405 NMSA 1978;
"payment by originator to beneficiary"	Section 55-4A-406 NMSA 1978;
"payment by sender to receiving bank"	Section 55-4A-403 NMSA 1978;
"payment date"	Section 55-4A-401 NMSA 1978;
"payment order"	Section 55-4A-103 NMSA 1978;
"receiving bank"	Section 55-4A-103 NMSA 1978;
"security procedure"	Section 55-4A-201 NMSA 1978;
and	
"sender"	Section 55-4A-103 NMSA 1978.

(c) The following definitions in Chapter 55, Article 4 NMSA 1978 apply to this article:

"clearinghouse"	Section 55-4-104 NMSA 1978;
"item"	Section 55-4-104 NMSA 1978;
and	
"Suspends payments"	Section 55-4-104 NMSA 1978.

(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 144 Section 49 Laws 2005

Section 49. Section 55-4A-106 NMSA 1978 (being Laws 1992, Chapter 114, Section 202) is amended to read:

"55-4A-106. TIME PAYMENT ORDER IS RECEIVED.--

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 55-1-202 NMSA 1978. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article."

Chapter 144 Section 50 Laws 2005

Section 50. Section 55-4A-204 NMSA 1978 (being Laws 1992, Chapter 114, Section 208) is amended to read:

"55-4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.--

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender that is: (i) not authorized and not effective as the order of the customer under Section 55-4A-202 NMSA 1978; or (ii) not enforceable, in whole or in part, against the customer under Section 55-4A-203 NMSA 1978, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized

by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under Subsection (a) of this section may be fixed by agreement as stated in Subsection (b) of Section 55-1-302 NMSA 1978, but the obligation of a receiving bank to refund payment as stated in Subsection (a) of this section may not otherwise be varied by agreement."

Chapter 144 Section 51 Laws 2005

Section 51. Section 55-5-103 NMSA 1978 (being Laws 1997, Chapter 75, Section 5) is amended to read:

"55-5-103. SCOPE.--

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, Subsections (a) and (d) of this section, Paragraphs (9) and (10) of Subsection (a) of Section 55-5-102 NMSA 1978, Subsection (d) of Section 55-5-106 NMSA 1978 and Subsection (d) of Section 55-5-114 NMSA 1978, and except to the extent prohibited in Section 55-1-302 NMSA 1978 and Subsection (d) of Section 55-5-117 NMSA 1978, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary."

ARTICLE 7

DOCUMENTS OF TITLE

Chapter 144 Section 52 Laws 2005

Section 52. Section 55-7-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-102) is repealed and a new Section 55-7-102 NMSA 1978 is enacted to read:

"55-7-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

(a) In Chapter 55, Article 7 NMSA 1978, unless the context otherwise requires:

(1) "bailee" means a person that by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them;

(2) "carrier" means a person that issues a bill of lading;

(3) "consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery;

(4) "consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment;

(5) "delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier or other person that in the ordinary course of business issues warehouse receipts or bills of lading;

(6) Reserved;

(7) "goods" means all things that are treated as movable for the purposes of a contract for storage or transportation;

(8) "issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed or in any other respect the agent or employee violated the issuer's instructions;

(9) "person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title;

(10) Reserved;

(11) "sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol or process;

(12) "shipper" means a person that enters into a contract of transportation with a carrier; and

(13) "warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) "contract for sale", Section 55-2-106 NMSA 1978;

(2) "lessee in the ordinary course of business", Section 55-2A-103 NMSA 1978; and

(3) "receipt" of goods, Section 55-2-103 NMSA 1978.

(c) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 144 Section 53 Laws 2005

Section 53. Section 55-7-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-103) is repealed and a new Section 55-7-103 NMSA 1978 is enacted to read:

"55-7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.--

(a) Chapter 55, Article 7 NMSA 1978 is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute or regulatory statute is applicable.

(b) Chapter 55, Article 7 NMSA 1978 does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This Uniform Commercial Code modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit or supersede Section 101(c) of that act (15

U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and Chapter 55, Article 7 NMSA 1978, Chapter 55, Article 7 NMSA 1978 governs."

Chapter 144 Section 54 Laws 2005

Section 54. Section 55-7-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-104) is repealed and a new Section 55-7-104 NMSA 1978 is enacted to read:

"55-7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.--

(a) Except as otherwise provided in Subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in Subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable."

Chapter 144 Section 55 Laws 2005

Section 55. Section 55-7-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-105) is repealed and a new Section 55-7-105 NMSA 1978 is enacted to read:

"55-7-105. REISSUANCE IN ALTERNATIVE MEDIUM.--

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with Subsection (a) of this section:

(1) the electronic document ceases to have any effect or validity;
and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with Subsection (c) of this section:

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer."

Chapter 144 Section 56 Laws 2005

Section 56. A new Section 55-7-106 NMSA 1978 is enacted to read:

"55-7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.--

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies Subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the document exists that is unique, identifiable and, except as otherwise provided in Paragraphs (4), (5) and (6) of this subsection, unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document 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 amendments 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 amendment of the authoritative copy is readily identifiable as authorized or unauthorized."

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Chapter 144 Section 57 Laws 2005

Section 57. Section 55-7-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-201) is repealed and a new Section 55-7-201 NMSA 1978 is enacted to read:

"55-7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT--STORAGE UNDER BOND.--

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse."

Chapter 144 Section 58 Laws 2005

Section 58. Section 55-7-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-202) is repealed and a new Section 55-7-202 NMSA 1978 is enacted to read:

"55-7-202. FORM OF WAREHOUSE RECEIPT--EFFECT OF OMISSION.--

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under Section 55-7-403 NMSA 1978 or its duty of care under Section 55-7-204 NMSA 1978. Any contrary provision is ineffective."

Chapter 144 Section 59 Laws 2005

Section 59. Section 55-7-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-203) is repealed and a new Section 55-7-203 NMSA 1978 is enacted to read:

"55-7-203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION.--A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that

relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity or condition or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain" or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription."

Chapter 144 Section 60 Laws 2005

Section 60. Section 55-7-204 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-204) is repealed and a new Section 55-7-204 NMSA 1978 is enacted to read:

"55-7-204. DUTY OF CARE--CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY.--

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement."

Chapter 144 Section 61 Laws 2005

Section 61. Section 55-7-205 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-205) is repealed and a new Section 55-7-205 NMSA 1978 is enacted to read:

"55-7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.--A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated."

Chapter 144 Section 62 Laws 2005

Section 62. Section 55-7-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-206) is repealed and a new Section 55-7-206 NMSA 1978 is enacted to read:

"55-7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.--

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 55-7-210 NMSA 1978.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in Subsection (a) of this section and Section 55-7-210 NMSA 1978, the warehouse may specify in the notice given under Subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under Chapter 55, Article 7 NMSA 1978 upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods."

Chapter 144 Section 63 Laws 2005

Section 63. Section 55-7-207 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-207) is repealed and a new Section 55-7-207 NMSA 1978 is enacted to read:

"55-7-207. GOODS MUST BE KEPT SEPARATE--FUNGIBLE GOODS.--

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated."

Chapter 144 Section 64 Laws 2005

Section 64. Section 55-7-208 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-208) is repealed and a new Section 55-7-208 NMSA 1978 is enacted to read:

"55-7-208. ALTERED WAREHOUSE RECEIPTS.--If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor."

Chapter 144 Section 65 Laws 2005

Section 65. Section 55-7-209 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-209) is repealed and a new Section 55-7-209 NMSA 1978 is enacted to read:

"55-7-209. LIEN OF WAREHOUSE.--

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable

warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in Subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Chapter 55, Article 9 NMSA 1978.

(c) A warehouse's lien for charges and expenses under Subsection (a) of this section or a security interest under Subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 55-7-403 NMSA 1978; or

(C) power of disposition under Section 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2) of Section 55-2A-305, Section 55-9-320 or Subsection (c) of Section 55-9-321 NMSA 1978, or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under Subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver."

Chapter 144 Section 66 Laws 2005

Section 66. Section 55-7-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-210, as amended) is repealed and a new Section 55-7-210 NMSA 1978 is enacted to read:

"55-7-210. ENFORCEMENT OF WAREHOUSE'S LIEN.--

(a) Except as otherwise provided in Subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) all persons known to claim an interest in the goods must be notified;

(2) the notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification and a conspicuous statement that, unless the claim is paid within that time, the goods will be advertised for sale and sold by auction at a specified time and place;

(3) the sale must conform to the terms of the notification;

(4) the sale must be held at the nearest suitable place to where the goods are held or stored; and

(5) after the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general

circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and Chapter 55, Article 7 NMSA 1978.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with Subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

Chapter 144 Section 67 Laws 2005

Section 67. Section 55-7-301 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-301) is repealed and a new Section 55-7-301 NMSA 1978 is enacted to read:

"55-7-301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION--"SAID TO CONTAIN"--"SHIPPER'S WEIGHT, LOAD AND COUNT"--IMPROPER HANDLING.--

(a) A consignee of a nonnegotiable bill of lading that has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or

misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and shall ascertain the kind and quantity if shipped in bulk; and

(2) words such as "shipper's weight, load and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper."

Chapter 144 Section 68 Laws 2005

Section 68. Section 55-7-302 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-302) is repealed and a new Section 55-7-302 NMSA 1978 is enacted to read:

"55-7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE.--

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other

document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in Subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach."

Chapter 144 Section 69 Laws 2005

Section 69. Section 55-7-303 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-303) is repealed and a new Section 55-7-303 NMSA 1978 is enacted to read:

"55-7-303. DIVERSION--RECONSIGNMENT--CHANGE OF INSTRUCTIONS.--

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in Subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms."

Chapter 144 Section 70 Laws 2005

Section 70. Section 55-7-304 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-304) is repealed and a new Section 55-7-304 NMSA 1978 is enacted to read:

"55-7-304. TANGIBLE BILLS OF LADING IN A SET.--

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill."

Chapter 144 Section 71 Laws 2005

Section 71. Section 55-7-305 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-305) is repealed and a new Section 55-7-305 NMSA 1978 is enacted to read:

"55-7-305. DESTINATION BILLS.--

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 55-7-105 NMSA 1978, may procure a substitute bill to be issued at any place designated in the request."

Chapter 144 Section 72 Laws 2005

Section 72. Section 55-7-306 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-306) is repealed and a new Section 55-7-306 NMSA 1978 is enacted to read:

"55-7-306. ALTERED BILLS OF LADING.--An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor."

Chapter 144 Section 73 Laws 2005

Section 73. Section 55-7-307 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-307) is repealed and a new Section 55-7-307 NMSA 1978 is enacted to read:

"55-7-307. LIEN OF CARRIER.--

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under Subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under Subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver."

Chapter 144 Section 74 Laws 2005

Section 74. Section 55-7-308 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-308) is repealed and a new Section 55-7-308 NMSA 1978 is enacted to read:

"55-7-308. ENFORCEMENT OF CARRIER'S LIEN.--

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either Subsection (a) of this section or the procedure set forth in Subsection (b) of Section 55-7-210 NMSA 1978.

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

Chapter 144 Section 75 Laws 2005

Section 75. Section 55-7-309 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-309) is repealed and a new Section 55-7-309 NMSA 1978 is enacted to read:

"55-7-309. DUTY OF CARE--CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.--

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods that a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement."

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Chapter 144 Section 76 Laws 2005

Section 76. Section 55-7-401 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-401) is repealed and a new Section 55-7-401 NMSA 1978 is enacted to read:

"55-7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.--The obligations imposed by Chapter 55, Article 7 NMSA 1978 on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of Chapter 55, Article 7 NMSA 1978 or of any other statute, rule or regulation regarding its issuance, form or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

(4) the person issuing the document is not a warehouse, but the document purports to be a warehouse receipt."

Chapter 144 Section 77 Laws 2005

Section 77. Section 55-7-402 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-402) is repealed and a new Section 55-7-402 NMSA 1978 is enacted to read:

"55-7-402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE.--A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts; overissue of documents for fungible goods; substitutes for lost, stolen or destroyed documents; or substitute documents issued pursuant to Section 55-7-105 NMSA 1978. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation."

Chapter 144 Section 78 Laws 2005

Section 78. Section 55-7-403 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-403) is repealed and a new Section 55-7-403 NMSA 1978 is enacted to read:

"55-7-403. OBLIGATION OF BAILEE TO DELIVER--EXCUSE.--

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with Subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to Section 55-2-705 NMSA 1978 or by a lessor of its right to stop delivery pursuant to Section 55-2A-526 NMSA 1978;

(5) a diversion, reconsignment or other disposition pursuant to Section 55-7-303 NMSA 1978;

(6) release, satisfaction or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under Subsection (a) of Section 55-7-503 NMSA 1978:

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated."

Chapter 144 Section 79 Laws 2005

Section 79. Section 55-7-404 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-404) is repealed and a new Section 55-7-404 NMSA 1978 is enacted to read:

"55-7-404. NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO DOCUMENT OF TITLE.--A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to Chapter 55, Article 7 NMSA 1978 is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods."

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:

NEGOTIATION AND TRANSFER

Chapter 144 Section 80 Laws 2005

Section 80. Section 55-7-501 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-501) is repealed and a new Section 55-7-501 NMSA 1978 is enacted to read:

"55-7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION.--

(a) The following rules apply to a negotiable tangible document of title:

(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone;

(2) if the document's original terms run to bearer, it is negotiated by delivery alone;

(3) if the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated;

(4) negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery; and

(5) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) if the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document;

(2) if the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated; and

(3) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation;

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods."

Chapter 144 Section 81 Laws 2005

Section 81. Section 55-7-502 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-502) is repealed and a new Section 55-7-502 NMSA 1978 is enacted to read:

"55-7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.--

(a) Subject to Sections 55-7-205 and 55-7-503 NMSA 1978, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under Chapter 55, Article 7 NMSA 1978, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 55-7-503 NMSA 1978, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person."

Chapter 144 Section 82 Laws 2005

Section 82. Section 55-7-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-503, as amended) is repealed and a new Section 55-7-503 NMSA 1978 is enacted to read:

"55-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.--

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 55-7-403 NMSA 1978; or

(C) power of disposition under Section 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2) of Section 55-2A-305, Section 55-9-320 or Subsection (c) of Section 55-9-321 NMSA 1978 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That 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.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver."

Chapter 144 Section 830 Laws 2005

Section 83. Section 55-7-504 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-504) is repealed and a new Section 55-7-504 NMSA 1978 is enacted to read:

"55-7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION--
EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.--

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor that could treat the transfer as void under Section 55-2-402 or 55-2A-308 NMSA 1978;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading that causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 55-2-705 NMSA 1978 or a lessor under Section 55-2A-526 NMSA 1978, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense."

Chapter 144 Section 84 Laws 2005

Section 84. Section 55-7-505 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-505) is repealed and a new Section 55-7-505 NMSA 1978 is enacted to read:

"55-7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES.--The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers."

Chapter 144 Section 85 Laws 2005

Section 85. Section 55-7-506 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-506) is repealed and a new Section 55-7-506 NMSA 1978 is enacted to read:

"55-7-506. DELIVERY WITHOUT INDORSEMENT--RIGHT TO COMPEL INDORSEMENT.--The transferee of a negotiable tangible document of title has a

specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied."

Chapter 144 Section 86 Laws 2005

Section 86. Section 55-7-507 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-507) is repealed and a new Section 55-7-507 NMSA 1978 is enacted to read:

"55-7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF DOCUMENT OF TITLE.--If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 55-7-508 NMSA 1978, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) the document is genuine;

(2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents."

Chapter 144 Section 87 Laws 2005

Section 87. Section 55-7-508 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-508) is repealed and a new Section 55-7-508 NMSA 1978 is enacted to read:

"55-7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE.--A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected."

Chapter 144 Section 88 Laws 2005

Section 88. Section 55-7-509 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-509) is repealed and a new Section 55-7-509 NMSA 1978 is enacted to read:

"55-7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.--Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease or the conditions of a letter of credit is determined by Article 2, 2A or 5 of the Uniform Commercial Code."

WAREHOUSE RECEIPTS AND BILLS OF LADING:

MISCELLANEOUS PROVISIONS

Chapter 144 Section 89 Laws 2005

Section 89. Section 55-7-601 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-601) is repealed and a new Section 55-7-601 NMSA 1978 is enacted to read:

"55-7-601. LOST, STOLEN OR DESTROYED DOCUMENTS OF TITLE.--

(a) If a document of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery."

Chapter 144 Section 90 Laws 2005

Section 90. Section 55-7-602 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-602) is repealed and a new Section 55-7-602 NMSA 1978 is enacted to read:

"55-7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY NEGOTIABLE DOCUMENT OF TITLE.--Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process."

Chapter 144 Section 91 Laws 2005

Section 91. Section 55-7-603 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-603) is repealed and a new Section 55-7-603 NMSA 1978 is enacted to read:

"55-7-603. CONFLICTING CLAIMS--INTERPLEADER.--If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action."

Chapter 144 Section 92 Laws 2005

Section 92. Section 55-8-102 NMSA 1978 (being Laws 1996, Chapter 47, Section 6) is amended to read:

"55-8-102. DEFINITIONS.--

(a) In this article:

(1) "adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset;

(2) "bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement;

(3) "broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity;

(4) "certificated security" means a security that is represented by a certificate;

(5) "clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority;

(6) "communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information;

(7) "entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Paragraph (2) or (3) of Subsection (b) of Section 55-8-501 NMSA 1978, that person is the entitlement holder;

(8) "entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

(9) "financial asset", except as otherwise provided in Section 55-8-103 NMSA 1978, means:

(i) a security;

(ii) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate or a security entitlement;

(10) [Reserved];

(11) "indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem it;

(12) "instruction" means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;

(13) "registered form", as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer or the security certificate so states;

(14) "securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

(15) "security", except as otherwise provided in Section 55-8-103 NMSA 1978, means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer:

(i) that is represented by a security certificate in bearer or registered form or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) that is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and

(iii) that:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this article;

(16) "security certificate" means a certificate representing a security;

(17) "security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this article; and

(18) "uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this article and the sections in which they appear are:

appropriate person	Section 55-8-107 NMSA 1978;
control	Section 55-8-106 NMSA 1978;
delivery	Section 55-8-301 NMSA 1978;
investment company	
security	Section 55-8-103 NMSA 1978;
issuer	Section 55-8-201 NMSA 1978;
overissue	Section 55-8-210 NMSA 1978;
protected purchaser	Section 55-8-303 NMSA 1978; and
securities account	Section 55-8-501 NMSA 1978.

(c) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business or transaction for purposes of this article does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule."

Chapter 144 Section 93 Laws 2005

Section 93. Section 55-8-103 NMSA 1978 (being Laws 1996, Chapter 47, Section 7, as amended) 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 Chapter 55, Article 8 NMSA 1978 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.

(g) A document of title is not a financial asset unless Subparagraph (iii) of Paragraph (9) of Subsection (a) of Section 55-8-102 NMSA 1978 applies."

Chapter 144 Section 94 Laws 2005

Section 94. Section 55-9-102 NMSA 1978 (being Laws 2001, Chapter 139, Section 2) is amended 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 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:

(A) an individual incurs an obligation primarily for personal, family or household purposes;

(B) a security interest secures the obligation; and

(C) 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 (b) 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) [Reserved];

(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 or to be 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 paragraph 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 record 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) "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;

(68) "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;

(69) "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;

(70) "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;

(71) "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;

(72) "security agreement" means an agreement that creates or provides for a security interest;

(73) "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;

(74) "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;

(75) "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;

(76) "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;

(77) "tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium;

(78) "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

(79) "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) "Control", as provided in Section 55-7-106 NMSA 1978, and 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;
"issuer" (with respect to documents of title)	Section 55-7-102 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."

Chapter 144 Section 95 Laws 2005

Section 95. Section 55-9-203 NMSA 1978 (being Laws 2001, Chapter 139, Section 13) is amended 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, letter-of-credit rights or electronic documents, and the secured party has control under Section 55-7-106, 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."

Chapter 144 Section 96 Laws 2005

Section 96. Section 55-9-207 NMSA 1978 (being Laws 2001, Chapter 139, Section 17) is amended 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 55-7-106, 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 consignee:

(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."

Chapter 144 Section 97 Laws 2005

Section 97. Section 55-9-208 NMSA 1978 (being Laws 2001, Chapter 139, Section 18) is amended 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 that 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;

(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; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document 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 document 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."

Chapter 144 Section 98 Laws 2005

Section 98. Section 55-9-301 NMSA 1978 (being Laws 2001, Chapter 139, Section 21) is amended 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 tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

filing; (A) perfection of a security interest in the goods by filing a fixture

(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."

Chapter 144 Section 99 Laws 2005

Section 99. Section 55-9-304 NMSA 1978 (being Laws 2001, Chapter 139, Section 24) is amended 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 its customer 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."

Chapter 144 Section 100 Laws 2005

Section 100. Section 55-9-309 NMSA 1978 (being Laws 2001, Chapter 139, Section 29) is amended 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;

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance."

Chapter 144 Section 101 Laws 2005

Section 101. Section 55-9-310 NMSA 1978 (being Laws 2001, Chapter 139, Section 30) is amended 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 that 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 that is perfected without filing, control 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 that 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, electronic documents, investment property or letter-of-credit rights that 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."

Chapter 144 Section 102 Laws 2005

Section 102. Section 55-9-312 NMSA 1978 (being Laws 2001, Chapter 139, Section 32) is amended 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 or control 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."

Chapter 144 Section 103 Laws 2005

Section 103. Section 55-9-313 NMSA 1978 (being Laws 2001, Chapter 139, Section 33) is amended 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 tangible 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 Chapter 55, Article 9 NMSA 1978 otherwise provides."

Chapter 144 Section 104 Laws 2005

Section 104. Section 55-9-314 NMSA 1978 (being Laws 2001, Chapter 139, Section 34) is amended to read:

"55-9-314. PERFECTION BY CONTROL.--

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper or electronic documents may be perfected by control of the collateral under Section 55-7-106, 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, letter-of-credit rights or electronic documents is perfected by control under Section 55-7-106, 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."

Chapter 144 Section 105 Laws 2005

Section 105. Section 55-9-317 NMSA 1978 (being Laws 2001, Chapter 139, Section 37) is amended 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, tangible 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, electronic documents, 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 that arise between the time the security interest attaches and the time of filing."

Chapter 144 Section 106 Laws 2005

Section 106. Section 55-9-338 NMSA 1978 (being Laws 2001, Chapter 139, Section 58) is amended 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 that 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 tangible chattel paper, tangible documents, goods, instruments or a security certificate, receives delivery of the collateral."

Chapter 144 Section 107 Laws 2005

Section 107. Section 55-9-515 NMSA 1978 (being Laws 2001, Chapter 139, Section 86, as amended) is amended 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 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 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 or an amendment.

(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."

Chapter 144 Section 108 Laws 2005

Section 108. Section 55-9-525 NMSA 1978 (being Laws 2001, Chapter 139, Section 96, as amended) is amended 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; and

(ii) twenty dollars (\$20.00) if the record consists of more than fifteen thousand bytes.

(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 states that a debtor is a transmitting utility; and

(2) 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 of 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 that 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.

(e) The secretary of state is authorized to establish additional fees for sale of data or records by adopting and publishing rules, pursuant to Section 55-9-526 NMSA 1978, to implement the requirements set forth in Chapter 55, Article 9 NMSA 1978."

Chapter 144 Section 109 Laws 2005

Section 109. Section 55-9-601 NMSA 1978 (being Laws 2001, Chapter 139, Section 98) is amended 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 55-7-106, 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."

Chapter 144 Section 110 Laws 2005

Section 110. TEMPORARY PROVISION--EFFECTIVENESS.--This act applies to a document of title that is issued or a bailment that arises on or after the effective date of this act. This act does not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after the effective date of this act. This act does not apply to a right of action regarding a document of title or bailment that has accrued before the effective date of this act.

Chapter 144 Section 111 Laws 2005

Section 111. TEMPORARY PROVISION--EFFECTIVENESS.--A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated or enforced under that statute or other rule.

Chapter 144 Section 112 Laws 2005

Section 112. TEMPORARY PROVISION--EFFECTIVENESS.--Paragraphs 5 and 46 of Subsection A of Section 55-9-102 and Section 55-9-304 NMSA 1978 as amended

by Sections 94 and 99 of this act shall be construed as declaring the law as it existed prior to the enactment of this act and not as modifying it.

Chapter 144 Section 113 Laws 2005

Section 113. REPEAL.--Sections 55-1-109, 55-1-207, 55-1-208, 55-1-209, 55-2-208, 55-2A-207, 55-7-701 through 55-7-706 and 55-7-801 through 55-7-807 NMSA 1978 (being Laws 1961, Chapter 96, Sections 1-109, 1-207 and 1-208, Laws 1992, Chapter 114, Section 5, Laws 1961, Chapter 96, Section 2-208, Laws 1992, Chapter 114, Section 23 and Laws 1961, Chapter 96, Sections 7-701 through 7-706 and Sections 7-801 through 7-807, as amended) are repealed.

Chapter 144 Section 114 Laws 2005

Section 114. APPLICABILITY.--Section 100 of this act applies to a sale of an account described in Subsection (14) of Section 55-9-309 NMSA 1978 even if the sale was entered into before that subsection took effect. However, if the relative priorities of conflicting claims to the account were established before that subsection took effect, Chapter 55, Article 9 NMSA 1978 as in effect immediately prior to the date that subsection took effect determines priority.

Chapter 144 Section 115 Laws 2005

Section 115. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

HOUSE BILL 834

Approved April 5, 2005

LAWS 2005, CHAPTER 145

AN ACT

RELATING TO AGRICULTURE; REPEALING THE IMITATION HONEY ACT.

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

Chapter 145 Section 1 Laws 2005

Section 1. REPEAL.--Sections 25-9-1 through 25-9-5 NMSA 1978 (being Laws 1977, Chapter 243, Sections 1 through 5) are repealed.

HOUSE BILL 848

Approved April 5, 2005

LAWS 2005, CHAPTER 146

AN ACT

RELATING TO INFRASTRUCTURE; ENACTING THE TRIBAL INFRASTRUCTURE ACT; CREATING A BOARD; PRESCRIBING POWERS AND DUTIES; CREATING A TRUST FUND; CREATING A PROJECT FUND; MAKING APPROPRIATIONS.

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

Chapter 146 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Tribal Infrastructure Act".

Chapter 146 Section 2 Laws 2005

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) tribes lack basic infrastructure resulting in poor social, health and economic conditions of tribal communities;

(2) adequate infrastructure such as water and wastewater systems, major water systems, electrical power lines, communications, roads, health and emergency response facilities and infrastructure needed for economic development are essential to improved health, safety and welfare of all New Mexicans, including residents of tribal communities;

(3) local tribal efforts and resources have been insufficient to develop and maintain a consistent and adequate level of infrastructure in tribal communities;

(4) addressing the urgent need of replacing, improving and developing tribal infrastructure through the use of an alternative financing mechanism is a long-term cost savings benefit to both the state and the tribes; and

(5) adequate infrastructure development on tribal land will allow tribal members to achieve the basic conditions necessary to improve the quality of their lives.

B. The purposes of the Tribal Infrastructure Act are to:

(1) ensure adequate financial resources for infrastructure development for tribal communities;

(2) provide for the planning and development of infrastructure in an efficient and cost-effective manner; and

(3) develop infrastructure in tribal communities to improve the quality of life and encourage economic development.

Chapter 146 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Tribal Infrastructure Act:

A. "board" means the tribal infrastructure board;

B. "department" means the Indian affairs department;

C. "financial assistance" means providing grants or loans on terms and conditions approved by the board;

D. "governor" means the governor of New Mexico;

E. "project fund" means the tribal infrastructure project fund;

F. "qualified project" means a tribal infrastructure project selected by the board for financial assistance pursuant to the Tribal Infrastructure Act;

G. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions; and

H. "trust fund" means the tribal infrastructure trust fund.

Chapter 146 Section 4 Laws 2005

Section 4. TRIBAL INFRASTRUCTURE BOARD CREATED.--

A. The "tribal infrastructure board" is created and is administratively attached to the department.

B. The board shall consist of nine voting members and four non-voting members.

C. The voting ex-officio members are:

(1) the secretary of Indian affairs, or the secretary's designee from the department, who shall be chair of the board;

(2) the secretary of finance and administration or the secretary's designee from the department of finance and administration;

(3) the secretary of health or the secretary's designee from the department of health;

(4) the secretary of environment or the secretary's designee from the department of environment; and

(5) the executive director of the New Mexico finance authority or the executive director's designee from the New Mexico finance authority.

D. The following four voting members who have experience with capital projects development or administration from tribes shall be appointed by the governor:

(1) one person who is a member of a pueblo;

(2) one person who is a member of the Jicarilla Apache Nation;

(3) one person who is a member of the Mescalero Apache Tribe;
and

(4) one person who is a member of the Navajo Nation.

E. There shall be four non-voting members as follows:

(1) one representative from the federal bureau of Indian affairs, Albuquerque area office, designated by the regional director;

(2) one representative from the federal bureau of Indian affairs Navajo area office designated by the regional director;

(3) one representative from the Albuquerque area Indian health services designated by the area director; and

(4) one representative from the Navajo area Indian health services designated by the area director.

F. The board shall meet at the call of the chair or whenever four voting members submit a request in writing to the chair, but not less than twice 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 shall be necessary for an action to be taken by the board.

G. Each member of the board appointed by the governor shall be appointed to a two-year term. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

H. Members of the board appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Chapter 146 Section 5 Laws 2005

Section 5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms, conditions and priorities for providing financial assistance to tribes, including developing application and evaluation procedures and forms and qualifications for applicants and for projects;

B. provide financial assistance to tribes for qualified projects on terms and conditions established by the board;

C. authorize funding for qualified projects, including:

(1) planning, designing, constructing, improving, expanding or equipping water and wastewater facilities, major water systems, electrical power lines, communications infrastructure, roads, health infrastructure, emergency response facilities and infrastructure needed to encourage economic development;

(2) developing engineering feasibility reports for infrastructure projects;

(3) inspecting construction of qualified projects;

(4) providing special engineering services;

(5) completing environmental assessments or archaeological clearances and other surveys for infrastructure projects;

(6) acquiring land, easements or rights of way; and

(7) paying legal costs and fiscal agent fees associated with development of qualified projects.

Chapter 146 Section 6 Laws 2005

Section 6. TRIBAL INFRASTRUCTURE TRUST FUND--CREATED-- INVESTMENT--DISTRIBUTION.--

A. The "tribal infrastructure trust fund" is created in the state treasury. The trust fund shall consist of money that is appropriated, donated or otherwise accrues to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the trust fund shall be credited to the fund. Money in the trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to this section.

B. On July 1 of each year in which adequate money is available in the trust fund, an annual distribution shall be made from the trust fund to the project fund in the amount of ten million dollars (\$10,000,000) until the distribution is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the 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 trust fund for the immediately preceding five calendar years.

Chapter 146 Section 7 Laws 2005

Section 7. TRIBAL INFRASTRUCTURE PROJECT FUND--CREATED-- PURPOSE--APPROPRIATIONS.--

A. The "tribal infrastructure project fund" is created in the state treasury and:

(1) the department of finance and administration shall administer the project fund;

(2) the project fund shall consist of:

(a) distributions made to it from the trust fund;

(b) payments of principal and interest on loans for qualified projects;

(c) other money appropriated by the legislature or distributed or otherwise allocated to the project fund for the purpose of supporting qualified projects; and

(d) income from investment of the money in the project fund that shall be credited to the project fund;

(3) balances in the project fund at the end of a fiscal year shall not revert to the trust fund or to the general fund; and

(4) the project fund may consist of subaccounts as determined to be necessary by the department of finance and administration.

B. The department of finance and administration may establish procedures and adopt rules as required to administer the project fund and to originate grants or loans for qualified projects approved by the board.

C. Beginning in fiscal year 2006 and in subsequent years, the lesser of one percent of the project fund or one hundred thousand dollars (\$100,000) is appropriated from the project fund to the department of finance and administration for expenditure in the fiscal year in which it is appropriated, to administer the project fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

D. Beginning in fiscal year 2006 and in each subsequent year, the lesser of five percent of the project fund or five hundred thousand dollars (\$500,000) is appropriated from the project fund to the Indian affairs department for expenditure in the fiscal year in which it is appropriated to administer the Tribal Infrastructure Act, to pay per diem and mileage as required by that act and for operation of the board. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

E. The balance in the project fund not otherwise appropriated in this section is appropriated to the department of finance and administration for expenditure in fiscal year 2006 and in subsequent fiscal years to carry out the provisions of the Tribal Infrastructure Act by providing grants or loans for qualified projects. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the project fund.

Chapter 146 Section 8 Laws 2005

Section 8. LEGISLATIVE OVERSIGHT--RULE REVIEW--REPORT.--

A. Rules proposed by the board and the department of finance and administration pursuant to the Tribal Infrastructure Act shall be reviewed by the legislative interim Indian affairs committee prior to approval.

B. The legislative interim Indian affairs committee shall be briefed by the board on grant and loan proposals submitted to the board and shall review the list of grants and loans made by the board.

C. The board shall report to the legislative interim Indian affairs committee no later than October 1 of each year regarding the total expenditures from the project

fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session.

HOUSE BILL 868, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 147

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AUTHORIZING THE RETIREMENT BOARD OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION TO CONSTRUCT A NEW OFFICE BUILDING; DECLARING AN EMERGENCY.

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

Chapter 147 Section 1 Laws 2005

Section 1. Section 10-11-130 NMSA 1978 (being Laws 1987, Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the trustee of the association and the funds created by the state retirement system acts and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public Employees Retirement Act but without limiting the generality of the foregoing, the power to:

(1) administer the state retirement system acts, including the management of the association and making effective the provisions of those acts, as well as to administer and manage any other employee benefit acts as provided by law;

(2) in addition to utilizing services of the attorney general and notwithstanding any other provision of law, employ or contract with and compensate competent legal counsel to handle the legal matters and litigation of the retirement board and the association and to give advice and counsel in regard to any matter connected with the duties of the retirement board;

(3) administer oaths;

(4) adopt and use a seal for authentication of records, processes and proceedings;

(5) create and maintain records relating to all members, affiliated public employers and all activities and duties required of the retirement board;

(6) issue subpoenas and compel the production of evidence and attendance of witnesses in connection with any hearings or proceedings of the retirement board;

(7) make and execute contracts;

(8) purchase, acquire or hold land adjacent to the state capitol grounds or other suitable location and build thereon a building to house the association and its employees and, in the event additional office space is available in the building after the retirement board and its employees have been housed, to rent or lease the additional space to any public agency or private person; provided that first priority for the rental or leasing shall be to public agencies and further provided that for the purpose of purchasing, acquiring or holding the land and the building thereon, the retirement board may use funds from the income fund and any other funds controlled by the retirement board the use of which for such purposes is not prohibited by law;

(9) after the sale of the land and building acquired pursuant to Paragraph (8) of this subsection, acquire land and build thereon a new building to house the association and its employees and hold the building and land in fee simple in the name of the association. In order to acquire the land and plan, design and construct the building, the retirement board may expend the proceeds of the sale of the land and building acquired pursuant to Paragraph (8) of this subsection or any funds controlled by the board, the use of which for such purposes is not otherwise prohibited by law;

(10) make and adopt such reasonable rules as may be necessary or convenient to carry out the duties of the retirement board and activities of the association, including any rules necessary to preserve the status of the association as a qualified pension plan under the provisions of the Internal Revenue Code of 1986, as amended, or under successor or related provisions of law; and

(11) designate committees and designate committee members, including individuals who may not be members of the association.

B. The retirement board consists of:

(1) the secretary of state;

(2) the state treasurer;

(3) four members under a state coverage plan to be elected by the members under state coverage plans;

(4) four members under a municipal coverage plan to be elected by the members under municipal coverage plans, provided one member shall be a municipal member employed by a county; and

(5) two retired members to be elected by the retired members of the association.

C. The results of elections of elected members of the retirement board shall be certified at the annual meeting of the association. Elections shall be conducted according to rules the retirement board adopts from time to time.

D. The regular term of office of the elected members of the retirement board is four years. The term of one retirement board member under a state coverage plan expires annually on December 31. The terms of retirement board members under a municipal coverage plan expire on December 31 of noncoinciding years in the pattern set by the retirement board. Members of the retirement board serve until their successors have qualified.

E. A member elected to the retirement board who fails to attend four consecutively scheduled meetings of the retirement board, unless in each case excused for cause by the retirement board members in attendance, is considered to have resigned from the retirement board, and the retirement board shall by resolution declare the office vacated as of the date of adoption of the resolution. A vacancy occurring on the retirement board, except in the case of an elected official, shall be filled by the remaining retirement board members, without requirement that a quorum be present. The member appointed to fill the vacancy serves for the remainder of the vacated term.

F. Members of the retirement board serve without salary for their services as retirement board members, but they shall receive those amounts authorized under the Per Diem and Mileage Act.

G. The retirement board shall hold four regular meetings each year and shall designate in advance the time and place of the meetings. Special meetings and emergency meetings of the retirement board may be held upon call of the chairman or any three members of the retirement board. Written notice of special meetings shall be sent to each member of the retirement board at least seventy-two hours in advance of the special meeting. Verbal notice of emergency meetings shall be given to as many members as is feasible at least eight hours before the emergency meeting, and the meeting shall commence with a statement of the nature of the emergency. The retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the retirement board shall comply with the Open Meetings Act. A majority of retirement board members shall constitute a quorum. Each attending member of the retirement board is entitled to one vote on each question before the

retirement board, and at least a majority of a quorum shall be necessary for a decision by the retirement board.

H. Annual meetings of the members of the association shall be held in Santa Fe at such time and place as the retirement board shall from time to time determine. Special meetings of the members of the association shall be held in Santa Fe upon call of any seven retirement board members. The retirement board shall send a written notice to the last known residence address of each member currently employed by an affiliated public employer at least ten days prior to any meeting of the members of the association. The notice shall contain the call of the meeting and the principal purpose of the meeting. All meetings of the association shall be public and shall be conducted according to procedures the retirement board shall from time to time adopt. The retirement board shall keep a record of the proceedings of each meeting of the association.

I. Neither the retirement board nor the association shall allow public inspection of, or disclosure of, information from any member or retiree file unless a prior release and consent, in the form prescribed by the association, has been executed by the member or retiree; except that applicable coverage plans, amounts of retirement plan contributions made by members and affiliated public employers, pension amounts paid and the names and addresses of public employees retirement association members or retirees requested for election purposes by candidates for election to the retirement board may be produced or disclosed without release or consent."

Chapter 147 Section 2 Laws 2005

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

HOUSE BILL 1045, WITH EMERGENCY CLAUSE

Approved April 5, 2005

LAWS 2005, CHAPTER 148

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR INSURANCE OF RAILROAD OPERATIONS OF THE STATE.

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

Chapter 148 Section 1 Laws 2005

Section 1. Section 56-7-1 NMSA 1978 (being Laws 1971, Chapter 107, Section 1, as amended by Laws 2003, Chapter 309, Section 1 and by Laws 2003, Chapter 421, Section 1) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS
VOID.--

A. A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.

B. A construction contract may contain a provision that, or shall be enforced only to the extent that, it:

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

(2) requires a party to the contract to purchase a project-specific insurance policy, including an owner's or contractor's protective insurance, project management protective liability insurance or builder's risk insurance.

C. This section does not apply to indemnity of a surety by a principal on any surety bond or to an insurer's obligation to its insureds.

D. The state, a state agency or a political subdivision of the state may enter into a contract for the construction, operation or maintenance of a public transportation system, including a railroad and related facilities, that includes a continuous obligation to procure an insurance policy, including an owner's, operator's or contractor's protective or liability insurance, project management protective liability insurance, builder's risk insurance, railroad protective insurance or other policy of insurance against the negligence of another party to the contract. If the state, a state agency or a political subdivision of the state insured by the risk management division of the general services department enters into a contract to procure insurance as permitted by this section, the cost of any insurance shall be paid by the risk management division of the general services department and shall not be a general obligation of the state, the state agency or the political subdivision of the state.

E. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or

maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property.

F. As used in this section, "indemnify" or "hold harmless" includes any requirement to name the indemnified party as an additional insured in the indemnitor's insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in this section."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 1104

LAWS 2005, CHAPTER 149

AN ACT

RELATING TO GAME AND FISH; AUTHORIZING THE ISSUANCE OF GOULD'S TURKEY ENHANCEMENT PERMITS; MAKING AN APPROPRIATION.

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

Chapter 149 Section 1 Laws 2005

Section 1. A new section of Chapter 17, Article 3 NMSA 1978 is enacted to read:

"GOULD'S TURKEY ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The state game commission may direct the department of game and fish to authorize Gould's turkey enhancement permits for the taking of Gould's turkeys, *Meleagris gallopavo mexicana*, to raise funds for programs and projects to better manage the Gould's turkey population in New Mexico.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the Gould's turkey enhancement permits. The issuance of the permits shall be subject to a lottery or auction. Such allotment of the permits may be conducted by an incorporated nonprofit organization dedicated to conservation of wildlife, in cooperation with and overseen by the commission and the department of game and fish.

C. The state game commission shall direct the department of game and fish to authorize Gould's turkey enhancement permits only after the department has

documented that the issuance of each enhancement permit will not jeopardize the prospects for the survival and recruitment of the Gould's turkey within New Mexico.

D. Gould's turkey enhancement permits shall be authorized only when doing so does not conflict with the Wildlife Conservation Act or any rules implementing that act.

E. Money collected from the issuance and sale of the Gould's turkey enhancement permits shall be credited to the game protection fund to be used exclusively for the restoration and management of Gould's turkeys and Gould's turkey habitats, which support a variety of other unique and rare wildlife of southwestern New Mexico."

Chapter 149 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 39

LAWS 2005, CHAPTER 150

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR AN INDEPENDENT MEDICAL EXAM; PROVIDING FOR PERIODIC EXAMINATIONS.

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

Chapter 150 Section 1 Laws 2005

Section 1. Section 52-1-51 NMSA 1978 (being Laws 1929, Chapter 113, Section 19, as amended) is amended to read:

"52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

A. In the event of a dispute between the parties concerning the reasonableness or necessity of medical or surgical treatment, the date upon which maximum medical improvement was reached, the correct impairment rating for the worker, the cause of an injury or any other medical issue, if the parties cannot agree upon the use of a specific independent medical examiner, either party may petition a

workers' compensation judge for permission to have the worker undergo an independent medical examination. If a workers' compensation judge believes that an independent medical examination will assist the judge with the proper determination of any issue in the case, including the cause of the injury, the workers' compensation judge may order an independent medical examination upon the judge's own motion. The independent medical examination shall be performed immediately, pursuant to procedures adopted by the director, by a health care provider other than the designated health care provider, unless the employer and the worker otherwise agree.

B. In deciding who may conduct the independent medical examination, the workers' compensation judge shall not designate the health care provider initially chosen by the petitioner. The workers' compensation judge shall designate a health care provider on the approved list of persons authorized by the committee appointed by the advisory council on workers' compensation to create that list. The decision of the workers' compensation judge shall be final. The employer shall pay for any independent medical examination.

C. Only a health care provider who has treated the worker pursuant to Section 52-I-49 NMSA 1978 or the health care provider providing the independent medical examination pursuant to this section may offer testimony at any workers' compensation hearing concerning the particular injury in question.

D. If, pursuant to Subsection C of Section 52-I-49 NMSA 1978, either party selects a new health care provider, the other party shall be entitled to periodic examinations of the worker by the health care provider the worker previously selected. Examinations may not be required more frequently than at six-month intervals; except that upon application to the workers' compensation judge having jurisdiction of the claim and after reasonable cause therefor, examinations within six-month intervals may be ordered. In considering such applications, the workers' compensation judge shall exercise care to prevent harassment of the claimant.

E. If an independent medical examination or an examination pursuant to Subsection D of this section is requested, the worker shall travel to the place at which the examination shall be conducted. Within thirty days after the examination, the worker shall be compensated by the employer for all necessary and reasonable expenses incidental to submitting to the examination, including the cost of travel, meals, lodging, loss of pay or other like direct expense, but the amount to be compensated for meals and lodging shall not exceed that allowed for nonsalaried public officers under the Per Diem and Mileage Act.

F. No attorney shall be present at any examination authorized under this section.

G. Both the employer and the worker shall be given a copy of the report of the examination of the worker made by the independent health care provider pursuant to this section.

H. If a worker fails or refuses to submit to examination in accordance with this section, the worker shall forfeit all workers' compensation benefits that would accrue or become due to the worker except for that failure or refusal to submit to examination during the period that the worker persists in such failure and refusal unless the worker is by reason of disability unable to appear for examination.

I. If any worker persists in any unsanitary or injurious practice that tends to imperil, retard or impair the worker's recovery or increase the worker's disability or refuses to submit to such medical or surgical treatment as is reasonably essential to promote the worker's recovery, the workers' compensation judge may in the judge's discretion reduce or suspend the workers' compensation benefits."

Chapter 150 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 45, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 151

AN ACT

RELATING TO WORKERS' COMPENSATION; CHANGING ELIGIBILITY REQUIREMENTS FOR TEMPORARY BENEFITS.

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

Chapter 151 Section 1 Laws 2005

Section 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 10) is amended to read:

"52-1-25.1. TEMPORARY TOTAL DISABILITY--RETURN TO WORK.--

A. As used in the Workers' Compensation Act, "temporary total disability" means the inability of a worker, by reason of accidental injury arising out of and in the course of the worker's employment, to perform the duties of that employment prior to the date of the worker's maximum medical improvement.

B. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work, the worker is not entitled to temporary total disability benefits if:

(1) the employer offers work at the worker's preinjury wage; or

(2) the worker accepts employment with another employer at the worker's preinjury wage.

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the employer offers work at less than the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. If the worker returns to work pursuant to the provisions of Subsection B of this section, the employer shall continue to provide reasonable and necessary medical care pursuant to Section 52-1-49 NMSA 1978."

Chapter 151 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 114, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 152

AN ACT

RELATING TO HEALTH CARE; AMENDING THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT; EXPANDING BOARD POWERS UNDER THE PHARMACY ACT; CHANGING DEFINITIONS IN THE CONTROLLED SUBSTANCES ACT AND IN THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT; PROVIDING FOR PEDIGREES; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 152 Section 1 Laws 2005

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 an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a 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 a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) 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) other than food that affect the structure or any function of the body of man or other animals; and

(4) 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 the 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 that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "re-labels", which have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or other animals; or

(3) intended to affect the structure or 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 a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, 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;

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist 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 a 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;

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;

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient; and

AA. "pedigree" means the recorded history of a drug."

Chapter 152 Section 2 Laws 2005

Section 2. Section 26-1-7 NMSA 1978 (being Laws 1967, Chapter 23, Section 7) is amended to read:

"26-1-7. ATTORNEY GENERAL OR DISTRICT ATTORNEY TO INSTITUTE PROSECUTIONS.--It is the duty of the attorney general or the various district attorneys of this state to whom the board reports any violation of the New Mexico Drug, Device and Cosmetic Act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law."

Chapter 152 Section 3 Laws 2005

Section 3. Section 26-1-16 NMSA 1978 (being Laws 1967, Chapter 23, Section 16, as amended) is amended to read:

"26-1-16. DANGEROUS DRUGS--CONDITIONS FOR SALE--PRESCRIPTION REFILLING--LIMITATIONS.--

A. It is unlawful for any person to sell, dispose of or possess any dangerous drugs, except:

(1) manufacturers, wholesalers or distributors, their agents or employees licensed by the board to ship dangerous drugs into the state; or

(2) distributors, wholesalers, hospitals, nursing homes, clinics or pharmacies and other authorized retailers of dangerous drugs in this state licensed by the board, and appropriate records of dangerous drugs receipt and disposition are kept. These records shall be open to inspection by any enforcement officer of this state.

B. Practitioners licensed in this state may prescribe, provide samples of and dispense any dangerous drug to a patient where there is a valid practitioner-patient relationship. A record of all such dispensing shall be kept showing the date the drug

was dispensed and bearing the name and address of the patient to whom dispensed. It is the duty of every licensed physician, dentist, veterinarian, pharmacist or person holding a limited license issued under Subsection B of Section 61-11-14 NMSA 1978, when dispensing any dangerous drug, to mark on the dispensing container the name of the patient, the date dispensed, the name and address of the person dispensing the drug, the name and strength of the drug, expiration date where applicable, adequate directions for use and the prescription number when applicable. All official compendium requirements for the preservation, packaging, labeling and storage of dangerous drugs are applicable where drugs are held for dispensing to the public, whether by a pharmacy, clinic, hospital or practitioner.

C. Pharmacists are prohibited from selling or disposing of any dangerous drug except on prescription of a practitioner and except as such sale or possession is authorized under Subsection A of this section. It is the duty of all pharmacists to keep an accurate record of all disposals, which record shall be open to inspection by any enforcement officer of this state.

D. No enforcement officer having knowledge by virtue of his office of any prescription, order or record shall divulge such knowledge except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

E. It is unlawful, except as otherwise authorized under Subsection A of this section or the Controlled Substances Act and except for the college of pharmacy of the university of New Mexico or a public health laboratory, for any person to possess any dangerous drug unless such substance has been dispensed to him either directly by a practitioner or on a prescription.

F. All records required to be kept under the provisions of the New Mexico Drug, Device and Cosmetic Act shall be preserved for a period of three years, provided that records requirements do not apply to the administration of a drug to a patient upon whom the practitioner personally attends, and provided that records of controlled substances shall be kept in accordance with the provisions of the Controlled Substances Act.

G. No prescription may be lawfully refilled:

(1) if it is marked by the issuing practitioner as not to be refilled;

(2) when the practitioner indicates a specific number of refills or a specific period of time, on the original prescription calling for a dangerous drug, it may be refilled the number of times or for the period of time indicated; provided, the date of refill, the initials of the pharmacist refilling the prescription and the amount of drug dispensed, if it differs from the amount called for on the original prescription, is recorded

on the original prescription; provided, a prescription issued for drugs controlled by the Controlled Substances Act shall comply with that act;

(3) when the practitioner does not indicate refill instructions on the original prescription calling for a dangerous drug, unless:

(a) the practitioner is contacted orally, by telephone, telegraph or other means of communication for instruction; and

(b) if authorization to refill is given the pharmacist, the following information will be immediately transferred to the original prescription: 1) date; 2) name of person authorizing the refill; 3) pharmacist's initials; and 4) amount dispensed if different than the amount indicated on the original prescription;

(4) when the practitioner indicates on the original prescription calling for dangerous drugs that it may be refilled "prn" the pharmacist may refill it within the limits of the dosage directions for a period of twelve months, provided the date of refilling and the initials of the pharmacist are recorded on the original prescription. At the expiration of the twelve-month period, the practitioner must be contacted for a new prescription; provided that this is not to be construed to apply to those drugs regulated by the Controlled Substances Act; and

(5) the board may adopt and promulgate regulations to permit the use of computer systems for the storage and retrieval of prescriptions, records for the purpose of refilling prescriptions, receipt records, drug distribution records, drug withdrawals from stock, drug compounding records, drug disposition records and drug disposal records.

H. Nothing in this section shall prevent the owner of livestock or his consignee or their employees to be in possession of drugs for their use in performing routine, accepted livestock management practices in the care of livestock belonging to the owner, and the drugs are labeled as being restricted to animal use only; 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 drugs may be used or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978."

Chapter 152 Section 4 Laws 2005

Section 4. Section 26-3-3 NMSA 1978 (being Laws 1976, Chapter 60, Section 4, as amended) is amended to read:

"26-3-3. DRUG PRODUCT SELECTION PERMITTED--CONDITIONS--
EXCEPTION FOR PROHIBITION--LABELING.--

A. Upon receipt of a prescription written by a licensed practitioner who may prescribe drugs for a drug for which one or more multiple-source drugs are

recognized, listed as final determinations and published in the federal register by the federal department of health and human services, a pharmacist may dispense any one of the drugs that satisfies the final determinations so recognized and listed by the federal department of health and human services and is sold at a lower cost than the drug listed in the prescription.

B. Upon receipt of a prescription written by a licensed practitioner for a drug that appears on the federal food and drug administration's approved prescription drug products with therapeutic equivalence evaluation list as supplemented, a pharmacist may dispense any of the therapeutically equivalent drugs that appears on that list and which is lower in cost than the drug listed in the prescription.

C. Drug product selection shall be permitted only under circumstances and conditions set forth in Subsections A and B of this section unless the licensed practitioner prescribing prohibits drug product selection. A licensed practitioner shall prohibit drug product selection by writing with his hand the words "no substitution" or the diminution "no sub" on the face of a prescription.

D. If drug product selection occurs as permitted in Subsections A and B of this section, the pharmacist shall indicate on the label of the dispensed container the brand of drug prescribed and the name of the drug dispensed.

E. A pharmacist may not select a therapeutically equivalent drug unless he passes on to the patient all savings between the net cost of the product prescribed and the product dispensed.

F. For purposes of this section, "multiple-source drug" means a drug marketed or sold by two or more manufacturers, formulators or labelers.

G. For purposes of this section, "therapeutically equivalent" means drug products which have the same amount of the active drug in the same dosage form which when administered can be expected to provide the same therapeutic effect."

Chapter 152 Section 5 Laws 2005

Section 5. 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 the executive director's 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, emergency prescription dispensing, drug regimen review and patient counseling in each practice setting;

(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; and

(20) have the authority to authorize emergency prescription dispensing.

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;

(2) provide by regulation for the electronic transmission of prescriptions; and

(3) delegate its authority to the executive director to authorize emergency prescription dispensing procedures during civil or public health emergencies."

Chapter 152 Section 6 Laws 2005

Section 6. Section 26-1-18 NMSA 1978 (being Laws 1972, Chapter 84, Section 50) is amended to read:

"26-1-18. PROMULGATING REGULATIONS--PROCEDURE.--

A. The board may promulgate regulations for the efficient enforcement of the New Mexico Drug, Device and Cosmetic Act. The board shall conform the regulations promulgated under the New Mexico Drug, Device and Cosmetic Act, insofar as practical, with regulations promulgated under the federal act as defined in Section 26-1-2 NMSA 1978.

B. The board shall, by regulation, declare a substance a "dangerous drug" when necessary, and notification shall be sent to all registered pharmacies in the state within sixty days of the adoption of the regulation.

C. The board shall promulgate the requirements for a pedigree.

D. All regulations promulgated by the board shall be in accordance with the Uniform Licensing Act."

Chapter 152 Section 7 Laws 2005

Section 7. Section 61-11-11.1 NMSA 1978 (being Laws 1997, Chapter 131, Section 12) is amended to read:

"61-11-11.1. PHARMACY TECHNICIAN--QUALIFICATIONS--DUTIES.--

A. The classification of pharmacy technician is established. An applicant for registration as a pharmacy technician shall:

(1) be at least eighteen years of age and not addicted to drugs or alcohol;

(2) complete initial training as required by regulations of the board that includes on-the-job and related education commensurate with the tasks to be performed by the pharmacy technician; and

(3) if the potential duties of the pharmacy technician will include the preparation of sterile products, complete an additional one hundred hours of experiential training as required by regulations of the board.

B. Permissible activities for pharmacy technicians under the supervision of a pharmacist include:

(1) the preparation, mixing, assembling, packaging and labeling of medications;

(2) processing routine orders of stock supplies;

(3) preparation of sterile products;

(4) filling of a prescription or medication order that entails counting, pouring, labeling or reconstituting medications; and

(5) tasks assigned by the supervising pharmacist that do not require his professional judgment.

C. The supervising pharmacist shall observe and direct the pharmacy technician to a sufficient degree to assure the accurate completion of the activities of the pharmacy technician and shall provide a final check of all aspects of the prepared product and document the final check before dispensing.

D. The supervising pharmacist shall be responsible for the tasks performed by the pharmacist technician and subject to discipline for failure to appropriately supervise the performance of the pharmacist technician."

Chapter 152 Section 8 Laws 2005

Section 8. 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 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;

(16) drug warehouses;

(17) contact lens sellers;

(18) medicinal gas repackagers; and

(19) medicinal gas sellers.

C. Every application for the issuance or biennial renewal of:

(1) a license for a retail pharmacy, nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars (\$300) per year;

(2) a license for a wholesale drug distributor, drug manufacturer or drug warehouse shall be accompanied by a fee not to exceed five thousand dollars (\$5,000) per year; provided that the fee shall not exceed one thousand dollars (\$1,000) per year upon the implementation of a medicare prescription drug benefit program, pursuant to Sections 1860D-1 through 1860D-24, except Section 1860D-4, of Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003;

(3) 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) per year; and

(4) 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) per year.

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 the expiration date set by the board unless renewed. Any person failing to renew a license on or before the expiration date set by the board shall not have the

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 provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act."

Chapter 152 Section 9 Laws 2005

Section 9. 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, prescribing psychologist, 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 a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, 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 and 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;

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; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient."

Chapter 152 Section 10 Laws 2005

Section 10. Section 30-31-18 NMSA 1978 (being Laws 1972, Chapter 84, Section 18) is amended to read:

"30-31-18. PRESCRIPTIONS.--

A. No controlled substance listed in Schedule II, which is a prescription drug as determined by the federal food and drug administration, may be dispensed without a written prescription of a practitioner, unless administered directly to an ultimate user. No prescription for a Schedule II substance may be refilled. No person other than a practitioner shall prescribe or write a prescription.

B. Prescriptions for Schedules II through IV shall contain the following information:

(1) the name and address of the patient for whom the drug is prescribed;

(2) the name, address and registry number of the person prescribing the drug; and

(3) the identity of the pharmacist of record.

C. A controlled substance included in Schedules III or IV, which is a prescription drug as determined under the New Mexico Drug and Cosmetic Act, shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be filled or refilled more than six months after the date of issue or be refilled more than five

times, unless renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

D. The label affixed to the dispensing container of a drug listed in Schedules II, III or IV, when dispensed to or for a patient, shall contain the following information:

- (1) date of dispensing and prescription number;
- (2) name and address of the pharmacy;
- (3) name of the patient;
- (4) name of the practitioner; and
- (5) directions for use and cautionary statements, if any.

E. The label affixed to the dispensing container of a drug listed in Schedule II, III or IV, when dispensed to or for a patient, shall contain a clear concise warning that it is a crime to transfer the drug to any person other than the patient.

F. No controlled substance included in Schedule V, which is a proprietary nonprescription drug, shall be distributed, offered for sale or dispensed other than for a medical purpose and a record of the sale shall be made in accordance with the regulations of the board.

G. In emergency situations, as defined by regulation, Schedule II drugs may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing and filed by the pharmacy in accordance with regulations of the board."

Chapter 152 Section 11 Laws 2005

Section 11. REPEAL.--Section 26-1-3.1 NMSA 1978 (being Laws 1987, Chapter 270, Section 4) is repealed.

SENATE BILL 413, AS AMENDED,

WITH CERTIFICATE OF CORRECTION

Approved April 5, 2005

LAWS 2005, CHAPTER 153

AN ACT

RELATING TO PRIVATE ACTIVITY BONDS; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF APPLICATION, ALLOCATION AND EXTENSION FEES.

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

Chapter 153 Section 1 Laws 2005

Section 1. Section 6-20-5 NMSA 1978 (being Laws 1988, Chapter 46, Section 5) is amended to read:

"6-20-5. REQUEST FOR ALLOCATION.--A request for allocation may be submitted to the board at any time and shall consist of the following:

A. a letter from the issuing authority or, in the case of a project, a letter from bond counsel for the issuing authority or the user stating the amount of the state ceiling requested in dollars;

B. in the case of a project, a copy of the inducement resolution, certified by an official of the issuing authority, and a statement of bond counsel for the issuing authority or the user that the bonds to be issued are private activity bonds;

C. with respect to a request submitted on or after July 1 in any calendar year, in the case of a project, a project plan containing the following, if applicable:

(1) a description of the project and its specific location;

(2) the estimated number of jobs, both construction and permanent, that can be filled by persons who are residents of the state at the time of submission of the request for allocation;

(3) the current use or conditions of the project site;

(4) the maximum amount of the bonds to be issued;

(5) a proposed starting date and estimated completion date of the construction project;

(6) information relating to the feasibility of the proposed project, showing that the project will generate revenues and cash flow sufficient to make payments under the lease or installment sale agreement;

(7) the amount and source of private capital that will be used for the project in addition to bond financing;

(8) conceptual site plans for the project and a map locating the project area;

(9) in the case of qualified residential rental projects, so-called multifamily housing, an explanation of why the housing needs of individuals whose income will make them eligible under Section 142(d) of the code are not being met by existing multifamily housing;

(10) any other information that the user believes will aid the board in considering the request for allocation; and

(11) any other information specifically requested by the board;

D. in the case of a project, a commitment letter from the proposed purchaser or underwriter of the bonds;

E. in the case of a mortgage credit certificate election, a letter from the issuing authority stating that a qualified mortgage credit certificate program has been adopted by the issuing authority; and

F. such applicable application, allocation and extension fees as are required by rule of the board."

Chapter 153 Section 2 Laws 2005

Section 2. Section 6-20-11 NMSA 1978 (being Laws 1988, Chapter 46, Section 11) is amended to read:

"6-20-11. ADMINISTRATIVE DUTIES OF THE BOARD.--The board:

A. shall maintain the official state records pertaining to the state ceiling, requests for allocation submitted, requests for carryforward election allocations submitted, allocations issued, carryforward election allocations issued, confirmations submitted and any other records required for administration of the Private Activity Bond Act;

B. may issue, on behalf of the governor, any certification required by the code or the regulations setting forth information concerning the state ceiling and Section 146 of the code; and

C. may, by rule, require a reasonable application fee, allocation deposit and extension fee to be paid by the issuing authority. Application and extension fees collected by the board shall be deposited in the general fund. Allocation deposits shall be held by the board in a liability suspense account and after a determination has been made by the board that the allocation has been used for the intended purpose, may, at the discretion of the board, be refunded in whole or in part to the applicant. Otherwise, the allocation deposit shall be deposited in the general fund."

SENATE BILL 438, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 154

AN ACT

RELATING TO PARKS AND RECREATION; PROVIDING FOR THE ACQUISITION OF LANDS ADJACENT TO OR CONTIGUOUS TO STATE PARKS OR RECREATIONAL AREAS.

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

Chapter 154 Section 1 Laws 2005

Section 1. Section 16-2-11 NMSA 1978 (being Laws 1935, Chapter 57, Section 11, as amended) is amended to read:

"16-2-11. ACQUISITION OF LANDS FOR PARK AND RECREATIONAL PURPOSES--CRITERIA.--

A. The state is authorized to acquire lands or interests in lands for state park or state recreational purposes by gift, donation, devise or purchase. Acquired lands or interests in lands shall be held for the use of the state to develop, maintain and operate them as state parks or state recreational areas. In acquiring real property or any interest in real property, the power of eminent domain shall not be used. The criteria for acquisition and development shall be those specified in Subsections B through G of this section.

B. Sites that may be designated as state parks or state recreational areas shall be only those:

(1) having a diversity of resources, including areas of scientific, aesthetic, geologic, natural or historic value;

(2) providing recreational opportunities significant enough to assure patronage from a region or preferably from the state as a whole; and

(3) conforming to the state comprehensive outdoor recreation plan.

C. Lands designated for acquisition or development as state parks or state recreational areas shall be those that:

(1) are adjacent to existing parks or recreational areas and are necessary for successful park or recreational area protection and development;

(2) help meet recreation and open space demands of metropolitan area residents by emphasizing park or recreational areas within easy access of population centers;

(3) preserve the most significant examples of New Mexico natural scenic landscape; or

(4) meet the pressure on primary vacation regions not adequately supplied with public recreation opportunities.

D. Lands that are acquired or developed as state parks or state recreational areas shall be managed and developed according to the following objectives:

(1) outdoor recreation shall be recognized as the dominant or primary resources management objective;

(2) physical development shall promote the outdoor recreation objective through the use of proper design, materials and construction to enhance and promote the use and enjoyment of the recreational resources in the area;

(3) within economical limits, state parks or state recreational facilities shall be landscaped and developed to achieve an environment that is aesthetically pleasing, ecologically functional and complementary to the native environment;

(4) use periods for parks or recreational facilities shall be extended by providing a variety of facilities that will attract visitors during all seasons of the year; and

(5) all significant historic structures contained in state parks or state recreational areas shall be, within economical limits, reconstructed, restored or stabilized to provide for continued user benefit.

E. Factors to be taken into consideration when lands are considered for acquisition or development as state parks or state recreational areas are:

(1) the character of the land resources, such as soil, vegetation, topography and water, that affects the suitability of the lands for development as parks or recreational areas;

(2) facilities development to meet the average and slightly higher than average demands rather than the peak demands of summer and the holiday weekends;

(3) development priority based upon demonstrated use and demand, balance and distribution of existing facilities and the availability of lands suitable for development; and

(4) resources protection shall also be considered a priority if the resources need urgent attention, but the priority shall be determined by the relative value of the resources involved.

F. The cost of lands to be proposed for acquisition or development as state parks or state recreational areas should be reasonable, with consideration given to the recreational value of the land on which the state park or state recreational area is to be located. No property shall be purchased that involves commitments, privileges or conditions to any private interest, except that property may be purchased that has restrictions limiting its use to that of a state park or state recreational area.

G. All lands considered for acquisition or development as new state parks or state recreational areas shall undergo a feasibility study prior to acquisition or development. Feasibility studies shall include:

(1) a determination that the proposed area meets the criteria set forth in this section;

(2) an estimate of the total development cost, including land acquisition, planning and construction and recommendations for methods of financing the development costs;

(3) an estimate of the annual costs for operation and maintenance;

(4) an estimate of demand and a projection of visitor use for the proposed area; and

(5) an analysis of the proposed area as it relates to plans or development by other governmental agencies or the private sector in adjacent areas.

H. The state is authorized, upon the execution of a written agreement between the director of the state parks division of the energy, minerals and natural resources department and the department, service or agency of the United States having jurisdiction of lands of the United States, to develop, protect, maintain and operate in accordance with the agreement federally owned lands as state parks or state recreational areas, but the state may not acquire the fee title to or a permanent right in the lands pursuant to such an agreement.

I. The designation of sites as suitable for state parks or recreational areas, the designation of certain lands for acquisition or development, the consideration of lands for acquisition or studying the feasibility of acquisition or development of lands

shall not create a right of action on the part of any person to force action by the state parks division of the energy, minerals and natural resources department or the state.

J. Any acquisition of land or any interest in land for a new state park or recreational area shall be approved by the legislature prior to the execution of a written agreement binding the state to expenditure of funds for acquisition or development of state parks or recreational areas. Lands that are adjacent or contiguous to existing state parks or recreational areas or are necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired without legislative approval if the state parks division consults with local government entities on the acquisition and if the state board of finance approves the acquisition and funds for the acquisition are available to the state parks division of the energy, minerals and natural resources department or the land is donated to the division.

K. Only lands or interests in lands acquired or retained in accordance with the provisions of this section and operated pursuant to the authority of the state parks division of the energy, minerals and natural resources department may use the designation of "state park" or "state recreational area".

SENATE BILL 468, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 155

AN ACT

RELATING TO HIGHER EDUCATION; DEFINING "RESIDENT STUDENT" AT STATE POST-SECONDARY EDUCATIONAL INSTITUTIONS TO INCLUDE MEMBERS OF INDIAN NATIONS, TRIBES AND PUEBLOS LOCATED WHOLLY OR PARTIALLY IN NEW MEXICO.

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

Chapter 155 Section 1 Laws 2005

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 enumerated 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 enumerated 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.

F. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes a member of an Indian nation, tribe or pueblo located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico for either undergraduate or post-graduate enrollment."

SENATE BILL 482

Approved April 5, 2005

LAWS 2005, CHAPTER 156

AN ACT

RELATING TO RAILROADS; PROVIDING FOR EXPENSES OF THE CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION TO BE PAID FROM USER FEES; PERMITTING USER FEES TO BE DEPOSITED IN THE RAILROAD LOAN RETIREMENT FUND; MAKING AN APPROPRIATION.

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

Chapter 156 Section 1 Laws 2005

Section 1. Section 16-5-5 NMSA 1978 (being Laws 1977, Chapter 350, Section 4) is amended to read:

"16-5-5. PAYMENT OF THE EXPENSES OF COMMISSION.--The New Mexico share of the expenses of the commission and the reimbursement of the New Mexico members may be paid out of funds appropriated by the legislature and other revenue and user fees collected pursuant to Section 16-5-11 NMSA 1978 not needed for railroad loan retirement. Fees and revenues collected by the commission are appropriated to the commission."

Chapter 156 Section 2 Laws 2005

Section 2. Section 16-5-10 NMSA 1978 (being Laws 1989, Chapter 26, Section 4) is amended to read:

"16-5-10. RAILROAD LOAN RETIREMENT FUND.--

A. There is created the "railroad loan retirement fund". Railroad user fees authorized pursuant to the Cumbres and Toltec Scenic Railroad Act may be deposited in the fund by the commission. The commission shall by resolution authorize the placement of the fund in an appropriate financial institution and shall also authorize the investment of money in the fund. Income earned from investment of the fund shall become part of the fund.

B. The money in the railroad loan retirement fund is irrevocably pledged to the retirement of any indebtedness incurred by the commission under the authority of Section 16-5-9 NMSA 1978. During the time that any indebtedness is outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the indebtedness was incurred."

SENATE BILL 518

Approved April 5, 2005

LAWS 2005, CHAPTER 157

AN ACT

RELATING TO INSURANCE; REQUIRING INSURANCE COVERAGE FOR THE FAMILY, INFANT, TODDLER PROGRAM FOR ELIGIBLE CHILDREN.

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

Chapter 157 Section 1 Laws 2005

Section 1. Section 13-7-7 NMSA 1978 (being Laws 2001, Chapter 351, Section 3) is amended to read:

"13-7-7. CONSOLIDATED ADMINISTRATIVE FUNCTIONS--BENEFIT.--

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.

E. Notwithstanding Subsection D of this section, 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 provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the department of health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars (\$3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel as defined in 7.30.8 NMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract."

Chapter 157 Section 2 Laws 2005

Section 2. Section 59A-22-34.2 NMSA 1978 (being Laws 1994, Chapter 64, Section 2) is amended to read:

"59A-22-34.2. COVERAGE OF CHILDREN.--

A. An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that the child:

(1) was born out of wedlock;

(2) is not claimed as a dependent on the parent's federal tax return;

or

(3) does not reside with the parent or in the insurer's service area.

B. When a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) make payments on claims submitted in accordance with Paragraph (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency.

C. When a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage, the insurer shall be required:

(1) to permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) if the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program or the state agency administering 42 U.S.C. Sections 651 through 669, the child support enforcement program; and

(3) not to disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(a) the court or administrative order is no longer in effect; or

(b) the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of disenrollment.

D. An insurer shall not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under the medicaid program and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

E. An insurer shall provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the department of health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars (\$3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel as defined in 7.30.8 NMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract."

Chapter 157 Section 3 Laws 2005

Section 3. Section 59A-23-7.2 NMSA 1978 (being Laws 1994, Chapter 64, Section 5) is amended to read:

"59A-23-7.2. COVERAGE OF CHILDREN.--

A. An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that the child:

(1) was born out of wedlock;

(2) is not claimed as a dependent on the parent's federal tax return;

or

(3) does not reside with the parent or in the insurer's service area.

B. When a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) make payments on claims submitted in accordance with Paragraph (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency.

C. When a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage, the insurer shall be required:

(1) to permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) if the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program or the state agency administering 42 U.S.C. Sections 651 through 669, the child support enforcement program; and

(3) not to disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(a) the court or administrative order is no longer in effect; or

(b) the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of disenrollment.

D. An insurer shall not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under the medicaid program and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

E. An insurer shall provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the department of health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars (\$3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel as defined in 7.30.8 NMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract."

Chapter 157 Section 4 Laws 2005

Section 4. Section 59A-46-38.1 NMSA 1978 (being Laws 1994, Chapter 64, Section 9) is amended to read:

"59A-46-38.1. COVERAGE OF CHILDREN.--

A. An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that the child:

(1) was born out of wedlock;

(2) is not claimed as a dependent on the parent's federal tax return;

or

(3) does not reside with the parent or in the insurer's service area.

B. When a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) make payments on claims submitted in accordance with Paragraph (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency.

C. When a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage, the insurer shall be required:

(1) to permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) if the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program or the state agency administering 42 U.S.C. Sections 651 through 669, the child support enforcement program; and

(3) not to disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(a) the court or administrative order is no longer in effect; or

(b) the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of disenrollment.

D. An insurer shall not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under the medicaid program and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

E. An insurer shall provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the department of health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars (\$3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel as defined in 7.30.8 NMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract."

Chapter 157 Section 5 Laws 2005

Section 5. Section 59A-47-37 NMSA 1978 (being Laws 1994, Chapter 64, Section 12) is amended to read:

"59A-47-37. COVERAGE OF CHILDREN.--

A. An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that the child:

(1) was born out of wedlock;

(2) is not claimed as a dependent on the parent's federal tax return;

or

(3) does not reside with the parent or in the insurer's service area.

B. When a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) make payments on claims submitted in accordance with Paragraph (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency.

C. When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall be required:

(1) to permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) if the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program or the state agency administering 42 U.S.C. Sections 651 through 669, the child support enforcement program; and

(3) not to disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(a) the court or administrative order is no longer in effect; or

(b) the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of disenrollment.

D. An insurer shall not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under the medicaid program and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

E. An insurer shall provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the department of health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars (\$3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel as defined in 7.30.8 NMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract."

Chapter 157 Section 6 Laws 2005

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 589, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 158

AN ACT

RELATING TO PUBLIC FINANCE; PROVIDING FOR THE SALE OF GENERAL OBLIGATION BONDS TO THE STATE OF NEW MEXICO; PROVIDING FOR THE SALE OF SHORT-TERM AND VARIABLE RATE DEMAND GENERAL OBLIGATION BONDS BY NEGOTIATED SALE.

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

Chapter 158 Section 1 Laws 2005

Section 1. Section 6-15-5 NMSA 1978 (being Laws 1929, Chapter 201, Section 3, as amended) is amended to read:

"6-15-5. SALE OF BONDS.--

A. Before any bonds issued by a municipal corporation are offered for public sale, the corporate authorities issuing the bonds shall designate the maximum net effective interest rate the bonds shall bear, which shall not exceed the maximum permitted by the Public Securities Act. Except as provided in Subsection B of this section and in Sections 6-18-6, 6-18-7 and 6-21-9 NMSA 1978, all the bonds shall be offered and sold at public sale pursuant to this section.

B. Bonds maturing in less than thirty days may be sold at private sale to the state of New Mexico at the price and upon such terms and conditions as a municipal corporation and the state of New Mexico may determine.

C. A notice calling for bids for the purchase of the bonds shall be published once at least one week prior to the date of the sale in a newspaper having local circulation. The notice shall specify a place and designate a day and hour subsequent to the date of the publication when bids shall be received and publicly opened for the purchase of the bonds. The notice shall specify the maximum net effective interest rate permitted for the bonds and the maximum discount if a discount is allowed by the governing body and shall require bidders to submit a bid specifying the lowest rate of interest and any premium or discount if allowed by the governing body at, above or below par at which the bidder will purchase the bonds. The bonds shall be sold to the responsible bidder making the best bid determined by the municipal corporation as set forth in the notice, subject to the right of the governing body to reject any and all bids and readvertise. All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state of New Mexico or the United States, if one is received, all bids shall be accompanied by a deposit of not less than two percent of the principal amount of the bonds, either in the form of a financial security bond or in cash or by cashier's or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States, which deposit shall be returned if the bid is not accepted. 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 must be issued by an insurance company licensed to issue such a bond in New Mexico. If the successful bidder does not complete the purchase of the bonds within thirty days following the acceptance of his bid or within ten days after the bonds are made ready and are offered by the municipal corporation for delivery, whichever is later, the amount of his deposit shall be forfeited to the municipal corporation issuing the bonds, and, in that event, the governing body may accept the bid of the bidder making the next best bid. If all bids are rejected, the governing body may readvertise the bonds for sale in the same manner as for the original advertisement or sell the bonds at private sale to the state of New Mexico or the United States. If there are two or more equal bids and the bids are the best bids received, the governing body shall determine which bid shall be accepted.

D. Except as provided in this section, bonds to be issued by a municipal corporation for various purposes may be sold and issued as a single combined issue

even though they may have been authorized by separate votes at an election or elections. Bonds authorized by any city, town or village for the construction or purchase of a system for supplying water, a sanitary sewer system or a storm sewer system may be combined with each other and sold and issued as a single issue but may not be combined with bonds to be issued for any other purpose that may be subject to the debt limitation of Article 9, Section 13 of the constitution of New Mexico."

Chapter 158 Section 2 Laws 2005

Section 2. Section 6-18-6 NMSA 1978 (being Laws 1983, Chapter 161, Section 6, as amended) is amended to read:

"6-18-6. SHORT-TERM BONDS.--A public body may authorize short-term bonds, including short-term general obligation bonds, that provide for any or all of the following in or pursuant to the bond legislation:

A. principal maturities may be for any one or more periods of two years or less from the respective dates of issuance;

B. interest may be payable on any one or more dates, or at principal maturity;

C. interest may but need not be represented by coupons;

D. the bonds may be in coupon form, in form registered as to principal or registered as to both principal and interest, or in book entry form, and provision may be made for exchange of one form for another;

E. the bonds may be in form with stated interest or in discount form without stated interest, or a combination thereof;

F. the bond legislation may provide for the renewal or refunding of such bonds, at or before maturity, by the issuance or successive issuance of renewal or refunding bonds under that bond legislation without necessity for further act by the governing body, provided that the maturities of such renewal or refunding bonds shall not exceed two years from their respective dates of issuance. In the bond legislation approved by the governing body, the governing body may authorize or direct one or more officers of the public body to:

(1) fix the interest rate or rates for each issue of bonds and renewal or refunding issues, subject to a maximum rate or rates as a stated interest rate or net effective interest rate, which maximum shall be set forth in such bond legislation or determined from time to time in accordance with a formula, index, data or procedure as provided for in the bond legislation, provided that, whether or not such a formula, index, data or procedure is provided for, bond legislation with respect to indebtedness shall set forth stated maximums of net effective interest rates;

(2) determine the discount for bonds with stated interest and for bonds without stated interest, subject to any limitations thereon provided in the bond legislation;

(3) fix the date of such bonds, which may be stated in such bond legislation as the date or dates of issue and which may be a date on or before the respective date or dates of issuance;

(4) fix the maturity date or dates of such bonds, which shall be within minimum and maximum periods described in such bond legislation; and

(5) designate the denomination of such bonds, subject to minimums and integral multiples of stated amounts provided in such bond legislation;

G. the public body may contract with agents or trustees for services in connection with the issuance, transfer, exchange, registration, record keeping for and the payment of such bonds and matters incidental thereto, and the public body has authority to act under such contracts. Without limiting the generality of the preceding sentence, such contracts may provide:

(1) for the maintenance of a supply of bond forms with the agent or trustee, which forms bear the facsimile of all signatures of officers of the public body necessary for the purpose and, if applicable, the facsimile of the seal of the public body, contain blanks as to owner, date, maturity, denomination, interest rates and original issue discount as appropriate, and provide a form of authentication by the agent or trustee upon issuance;

(2) for the officer or officers of the public body, authorized by the governing body to do so, to direct the agent or trustee with respect to the completion of such blanks and the delivery of the bonds, by oral, electronic or written communication prior to the authentication and delivery of such bonds, and that any such oral or electronic communication thereafter shall be confirmed in writing; and

(3) for the establishment with the agent or trustee of funds, in trust, for payment of the principal of and interest on the bonds and for payments by and on behalf of the public body into such funds, including payments thereto from the proceeds of renewal or refunding bonds;

H. notwithstanding any other provision of law to the contrary, the public body may contract with banks or investment bankers, or others with appropriate capabilities, to provide services, which may be on an exclusive basis, in the placement of the bonds with purchasers, or to purchase the bonds, or both, which contract may provide for all matters incidental thereto and may be a negotiated contract. Contracts pursuant to this subsection may include services for the placement or purchase of short-term general obligation bonds and, for purposes of Section 6-18-7 NMSA 1978, variable rate demand general obligation bonds;

I. the public body may covenant, in the bond legislation, to the holders or owners of the bonds and to the trustee, if any, for the benefit of such holders and owners, that it will issue bonds to renew, or fund or refund, the bonds and any accrued interest thereon, at or before maturity to the extent not provided for from money otherwise available for the purpose. In addition to other reductions permitted in the levy of property taxes for principal or interest on indebtedness, reduction may be made to the extent that principal or interest thereon is to be covered by the proceeds of refunding or renewal bonds;

J. in addition to the authority to issue bonds for such purposes under the Public Securities Short-Term Interest Rate Act, the public body may, to the extent not prohibited by the bond legislation, retire or provide for the payment at any time of the bonds authorized under that act by the issuance of bonds under authority of any other law consistent with the maturities and other terms authorized by such laws and without impediment or other effect thereunder by reason of previously having issued the bonds under the Public Securities Short-Term Interest Rate Act, except as stated in Subsection B of Section 6-18-10 NMSA 1978; and

K. the provisions of Section 6-18-7 NMSA 1978 may be used with respect to any bonds issued pursuant to this section."

Chapter 158 Section 3 Laws 2005

Section 3. Section 6-18-7 NMSA 1978 (being Laws 1983, Chapter 161, Section 7) is amended to read:

"6-18-7. VARIABLE RATE DEMAND BONDS.--A public body may issue bonds, including variable rate demand general obligation bonds, with any of the following provisions:

A. the owners or holders of the bonds may be granted the right to demand payment of principal and accrued interest prior to the maturity of such bonds at a designated time or at designated times, or upon a specified period of notice by such owner or holder, at par or at such other amount as is provided for in or pursuant to the bond legislation;

B. the owners or holders of the bonds may be granted the right to deliver, or put, the bonds to the public body or to a designated party for purchase by the public body or such party at par and accrued interest or such other price as is provided for in or pursuant to the bond legislation;

C. the public body may contract with a bank, investment banker or other capable party for the remarketing of bonds as to which the owners or holders have exercised such demand or put rights;

D. the bond legislation may provide for variable interest rates to be paid on the bonds, changing from time to time in accordance with one or more formulas, indices, data or procedures as provided for in the bond legislation, provided that where variable interest rates are provided for with respect to indebtedness, the bond legislation shall also prescribe a stated maximum net effective interest rate or rates for different maturities and, if necessary, for credit facilities used pursuant to the authority granted by Section 6-18-8 NMSA 1978;

E. the public body may contract with a competent party to provide an index or indices in relation to which the interest rate of the bonds may be determined from time to time;

F. bonds with provisions under which the holders or owners may demand payment or put the bonds for purchase or repurchase at any time within one year from the date of such bonds, whether or not such rights may also be exercised after such period, may be sold by competitive or negotiated sale;

G. the public body may contract with others to provide to the public body or to the holders or owners of the bonds, or to a trustee or agent on their behalf, a standby or fixed commitment to purchase those bonds at prices provided in or pursuant to such contracts; and

H. the provisions of Subsections B, C, D, E, G, H, I and J of Section 6-18-6 NMSA 1978 are applicable to bonds issued under this section, notwithstanding such bonds may have maturities in excess of two years."

SENATE BILL 670, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 159

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; DECLARING AN EMERGENCY.

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

Chapter 159 Section 1 Laws 2005

Section 1. Section 61-6-11 NMSA 1978 (being Laws 1923, Chapter 44, Section 3, as amended) is amended to read:

"61-6-11. LICENSURE.--

A. The board may consider for licensure a person who is of good moral character, is a graduate of an accredited United States or Canadian medical school, has passed an examination approved by the board and has completed two years of an approved postgraduate training program.

B. An applicant who has not completed two years of an approved postgraduate training program, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of the approved postgraduate training program. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required approved postgraduate training program.

C. A graduate of a board-approved medical school located outside the United States or Canada may be granted a license to practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and is in compliance with the United States immigration laws and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in an approved postgraduate training program. A graduate of a medical school located outside the United States who successfully completes at least two years of an approved postgraduate training program at or affiliated with an institution located in New Mexico prior to December 30, 2007 and who meets the other requirements of this section may also be granted a license to practice medicine.

D. All applicants for licensure may be required to appear personally before the board or a designated agent for an interview.

E. An applicant for licensure by examination shall not be granted a license if the applicant has taken the examination in two or more steps and has failed to successfully pass the final step within seven years of the date that the first step was passed. An applicant for licensure who holds a medical doctor degree and a doctoral degree in a medically related field must successfully complete the entire examination series within ten years from the date the first step of the examination is passed. Provided, that the board may, by rule, establish exceptions to the time requirements of this subsection.

F. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

G. The board may require fingerprints and other information necessary for a state and national criminal background check."

Chapter 159 Section 2 Laws 2005

Section 2. 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 by endorsement to an applicant who:

(1) has graduated from an accredited United States or Canadian medical school;

(2) is board certified in a specialty recognized by the American board of medical specialties;

(3) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(4) holds an unrestricted license in another state or Canada; and

(5) was not the subject of a disciplinary action in a state or province.

B. The board may grant a license by endorsement to an applicant who:

(1) has graduated from a medical school located outside the United States or Canada;

(2) is of good moral character;

(3) is in compliance with the United States immigration laws;

(4) is board certified in a specialty recognized by the American board of medical specialties;

(5) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(6) holds an unrestricted license in another state or Canada; and

(7) was not the subject of disciplinary action in a state or province.

C. An endorsement provided pursuant to this section shall certify that the applicant has passed an examination that meets with board approval and that the applicant is in good standing in that jurisdiction. In cases when the applicant is board-

certified, has not been the subject of disciplinary action that would be reportable to the national practitioner data bank or the healthcare integrity and protection data bank and has unusual skills and experience not generally available in this state, and patients residing in this state have a significant need for such skills and experience, the board may waive a requirement imposing time limits for examination completion that are different from requirements of the state where the applicant is licensed.

D. An applicant for licensure under this section may be required to personally appear before the board or a designated agent for an interview.

E. An applicant for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978.

F. The board may require fingerprints and other information necessary for a state and national criminal background check."

Chapter 159 Section 3 Laws 2005

Section 3. Section 61-6-14 NMSA 1978 (being Laws 1953, Chapter 48, Section 2, as amended) is amended to read:

"61-6-14. ORGANIZED YOUTH CAMP OR SCHOOL TEMPORARY LICENSES AND TEMPORARY LICENSES FOR OUT-OF-STATE PHYSICIANS.--

A. The secretary-treasurer of the board or the board's designee may, either by examination or endorsement, approve a temporary license to practice medicine and surgery to an applicant qualified to practice medicine and surgery in this state who will be temporarily in attendance at an organized youth camp or school, provided that:

(1) the practice shall be confined to enrollees, leaders and employees of the camp or school;

(2) the temporary license shall be issued for a period not to exceed three months from date of issuance; and

(3) the temporary license may be issued upon written application of the applicant, accompanied by such proof of the qualifications of the applicant as specified by board rule.

B. The secretary-treasurer of the board or the board's designee may approve a temporary license to practice medicine and surgery under the supervision of a licensed physician to an applicant who is licensed to practice medicine in another state, territory of the United States or another country and who is qualified to practice medicine and surgery in this state. The following provisions shall apply:

(1) the temporary license may be issued upon written application of the applicant, accompanied by proof of qualifications as specified by rule of the board. A temporary license may be granted to allow the applicant to assist in teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology and for physician educational purposes. A licensee may engage in only the activities specified on the temporary license, and the temporary license shall identify the licensed physician who will supervise the applicant during the time the applicant practices medicine in New Mexico. The supervising licensed physician shall submit an affidavit attesting to the qualifications of the applicant and activities the applicant will perform; and

(2) the temporary license shall be issued for a period not to exceed three months from date of issuance and may be renewed upon application and payment of fees as provided in Section 61-6-19 NMSA 1978.

C. The application for a temporary license under this section shall be accompanied by a license fee as provided in Section 61-6-19 NMSA 1978."

Chapter 159 Section 4 Laws 2005

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.--

A. The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice medicine, or practice as a physician assistant or an anesthesiologist assistant, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act or the Impaired Health Care Provider Act.

B. The board may, in its discretion and for good cause shown, place the licensee on probation on the terms and conditions it deems proper for protection of the public, for the purpose of rehabilitation of the probationer or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the licensee is competent to practice, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that the licensee has not complied with the terms of probation, the board may revoke or suspend the license. If a license to practice in this state is suspended, the holder of the license may not practice during the term of suspension. A person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice in New Mexico, unless the period of suspension has expired or been modified by the board or the license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means, but is not limited to because of enumeration, conduct of a licensee that includes the following:

- (1) procuring, aiding or abetting a criminal abortion;
- (2) employing a person to solicit patients for the licensee;
- (3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (4) obtaining a fee by fraud or misrepresentation;
- (5) willfully or negligently divulging a professional confidence;
- (6) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- (7) habitual or excessive use of intoxicants or drugs;
- (8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;
- (9) making false or misleading statements regarding the skill of the licensee or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of a disease or other condition of the human body or mind;
- (10) impersonating another licensee, permitting or allowing a person to use the license of the licensee or practicing as a licensee under a false or assumed name;

board; (11) aiding or abetting the practice of a person not licensed by the

(12) gross negligence in the practice of a licensee;

(13) manifest incapacity or incompetence to practice as a licensee;

(14) discipline imposed on a licensee by another state, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;

(15) the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee;

(16) fee splitting;

(17) the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;

(18) conduct likely to deceive, defraud or harm the public;

(19) repeated similar negligent acts;

(20) employing abusive billing practices;

the licensee by: (21) failure to report to the board any adverse action taken against

(a) another licensing jurisdiction;

(b) a peer review body;

(c) a health care entity;

(d) a professional or medical society or association;

(e) a governmental agency;

(f) a law enforcement agency; or

(g) a court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to report to the board surrender of a license or other authorization to practice in another state or jurisdiction or surrender of membership on

any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing, administering or dispensing of a drug or medicine;

(27) failure to adequately supervise, as provided by board rule, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) sexual contact with a patient or person who has authority to make medical decisions for a patient, other than the spouse of the licensee;

(29) conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;

(30) the surrender of a license or withdrawal of an application for a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action pursuant to this section;

(31) sexual contact with a former mental health patient of the licensee, other than the spouse of the licensee, within one year from the end of treatment;

(32) sexual contact with a patient when the licensee uses or exploits treatment, knowledge, emotions or influence derived from the previous professional relationship;

(33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records;

(34) failure to provide pertinent and necessary medical records to a physician or patient of the physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient;

(35) undertreatment of pain as provided by board rule;

(36) interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

(37) soliciting or receiving compensation by a physician assistant or anesthesiologist assistant from a person who is not an employer of the assistant; or

(38) willfully or negligently divulging privileged information or a professional secret.

E. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to a person, irrespective of any membership, proprietary interest or co-ownership in or with a person to whom the patients, clients or customers are referred.

F. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids are included as a condition of probation."

Chapter 159 Section 5 Laws 2005

Section 5. Section 61-6-18 NMSA 1978 (being Laws 1989, Chapter 269, Section 14, as amended) is amended to read:

"61-6-18. MEDICAL STUDENTS--INTERNS--RESIDENTS.--

A. Nothing in the Medical Practice Act shall prevent a medical student properly registered or enrolled in a medical college or school in good standing from diagnosing or treating the sick or afflicted, provided that the medical student does not receive compensation for services and such services are rendered under the supervision of the school faculty as part of the student's course of study.

B. Any intern or resident who is appointed in a board-approved residency training program may pursue such training after obtaining a postgraduate training license from the board. The board may adopt by rule specific education or examination requirements for a postgraduate training license.

C. Any person serving in the assigned rotations and performing the assigned duties in a board-approved residency training program accredited in New Mexico may do so for an aggregate period not to exceed eight years or completion of the residency, whichever is shorter.

D. The board may require any applicant for a postgraduate training license required in Subsections B and C of this section to personally appear before the board or a designated member of the board for an interview.

E. Every applicant for a postgraduate training license under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

F. Postgraduate training licenses shall be renewed annually and shall be effective during each year or part of a year of postgraduate training."

Chapter 159 Section 6 Laws 2005

Section 6. Section 61-6-18.1 NMSA 1978 (being Laws 1994, Chapter 80, Section 10, as amended) is amended to read:

"61-6-18.1. PUBLIC SERVICE LICENSE.--

A. Applicants for a public service license shall meet all requirements for licensure and shall:

(1) be enrolled in a board-approved residency training program either in New Mexico or in another jurisdiction;

(2) obtain written approval from the training program director of the applicant to pursue a public service practice opportunity outside the residency training program; and

(3) satisfy other reasonable requirements imposed by the board.

B. A physician with one year postdoctoral training may apply for a public service license to practice under the direct supervision of a licensed physician or with immediate access to a licensed physician by electronic means when the public service physician is employed in a medically underserved area.

C. A public service license shall expire on September 1 of each year and may be renewed by the board.

D. An applicant for a public service license shall pay the required fees set forth in Section 61-6-19 NMSA 1978."

Chapter 159 Section 7 Laws 2005

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE JUDICIARY COMMITTEE SUBSTITUTE
FOR SENATE BILLS 297 AND 341, AS AMENDED,
WITH CERTIFICATE OF CORRECTION

Approved April 5, 2005

LAWS 2005, CHAPTER 160

AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING A PRESCRIPTION DRUG
DISCOUNT CARD PROGRAM.

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

Chapter 160 Section 1 Laws 2005

Section 1. CREATION OF A PRESCRIPTION DRUG DISCOUNT CARD
PROGRAM.--

A. The human services department shall create a prescription drug discount card program with the cooperation and assistance of the department of health and the aging and long-term services department. For the purposes of this section, "program" means the prescription drug discount card program.

B. To be eligible for the program, a person shall:

- (1) be a resident of the state;
- (2) be less than sixty-five years of age;
- (3) not have any other prescription drug benefit; and
- (4) voluntarily enroll.

C. Upon a determination that a person qualifies for the program, the human services department shall enroll and provide participants with an electronic or other form of membership identification for use by pharmacies for each transaction.

D. The amount a qualified person pays for a prescription drug shall not exceed the total cost of the dispensing fee plus the contracted discounted price made available to enrolled persons.

E. The human services department, in cooperation with the department of health and the aging and long-term services department, shall actively promote membership and benefit information on the program to the general public statewide.

Senate Bill 689

Approved April 5, 2005

LAWS 2005, CHAPTER 161

AN ACT

RELATING TO NEW MEXICO MILITARY INSTITUTE; PROVIDING FOR THE TRANSFER OF CERTAIN BUDGET BALANCES TO THE LEGISLATIVE SCHOLARSHIP FUND; MAKING AN APPROPRIATION.

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

Chapter 161 Section 1 Laws 2005

Section 1. NEW MEXICO MILITARY INSTITUTE--TRANSFER OF BUDGET BALANCES.--With the approval of the commission on higher education, the board of regents of New Mexico military institute may, each fiscal year, transfer up to five hundred thousand dollars (\$500,000) of the institute's budget balances to the legislative scholarship fund established to implement the General Richard T. Knowles legislative scholarship program.

SENATE BILL 746, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 162

AN ACT

RELATING TO THE DEVELOPMENT OF PUBLIC SAFETY OFFICERS; PROVIDING FOR A SCHOLARSHIP PROGRAM AT THE NEW MEXICO MILITARY INSTITUTE TO EDUCATE NEW MEXICO RESIDENTS FOR CAREERS AS PUBLIC SAFETY OFFICERS.

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

Chapter 162 Section 1 Laws 2005

Section 1. PUBLIC SAFETY EDUCATION--SCHOLARSHIPS.--

A. The board of regents of the New Mexico military institute may establish a public safety officer education program for students interested in careers in public safety.

B. Subject to available funding, the board of regents of the New Mexico military institute may offer public safety officer education scholarships to New Mexico residents who enroll in the public safety officer education program. With the advice of the department of public safety, the board of regents shall establish criteria for awarding the public safety officer education scholarships and, with the cooperation of the department of public safety, may establish internship programs with public safety agencies for scholarship recipients.

Chapter 162 Section 2 Laws 2005

Section 2. SECRETARY OF PUBLIC SAFETY--ADDITIONAL POWERS-- PUBLIC SAFETY OFFICER EDUCATION SCHOLARSHIP PROGRAM.--

A. The secretary of public safety may enter into an agreement with the board of regents of the New Mexico military institute under which the institute would offer public safety officer education scholarships to New Mexico residents interested in careers as public safety officers. The agreement may provide criteria for recruiting scholarship applicants and awarding scholarships and for internship programs at public safety agencies for scholarship recipients.

B. Subject to available appropriations, the secretary of public safety may transfer funds each fiscal year to the board of regents of the New Mexico military institute for the scholarship program for New Mexico residents interested in careers as public safety officers.

SENATE BILL 747

Approved April 5, 2005

LAWS 2005, CHAPTER 163

AN ACT

RELATING TO CORRECTIONS; PROVIDING FOR A SCHOLARSHIP PROGRAM AT THE NEW MEXICO MILITARY INSTITUTE TO EDUCATE NEW MEXICO RESIDENTS FOR CAREERS IN CORRECTIONS.

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

Chapter 163 Section 1 Laws 2005

Section 1. CORRECTIONS EDUCATION--SCHOLARSHIPS.--

A. The board of regents of the New Mexico military institute may establish a corrections education program for students interested in careers in corrections.

B. Subject to available funding, the board of regents may offer corrections education scholarships to New Mexico residents who enroll in the corrections education program. With the advice of the corrections department, the board of regents shall establish criteria for awarding the corrections education scholarships and, with the cooperation of the corrections department, may establish internship programs at corrections department facilities for scholarship recipients.

Chapter 163 Section 2 Laws 2005

Section 2. SECRETARY OF CORRECTIONS--ADDITIONAL POWERS--CORRECTIONS EDUCATION SCHOLARSHIP PROGRAM.--

A. The secretary of corrections may enter into an agreement with the board of regents of the New Mexico military institute under which the institute would offer corrections education scholarships to New Mexico residents interested in careers in corrections. The agreement may provide criteria for recruiting scholarship applicants and awarding scholarships and for internship programs at corrections department facilities for scholarship recipients.

B. Subject to available appropriations, the secretary of corrections may transfer funds each fiscal year to the board of regents of the New Mexico military institute for the scholarship program for New Mexico residents interested in careers in corrections.

SENATE BILL 748

Approved April 5, 2005

LAWS 2005, CHAPTER 164

AN ACT

RELATING TO HIGHER EDUCATION; CREATING EL CENTRO DE LA RAZA AT THE UNIVERSITY OF NEW MEXICO.

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

Chapter 164 Section 1 Laws 2005

Section 1. A new section of Chapter 21, Article 7 NMSA 1978 is enacted to read:

"EL CENTRO DE LA RAZA CREATED--PURPOSE.--The "el centro de la raza" is created as a service center within the division of student affairs of the university of New Mexico. The center shall provide training, technical assistance, research assistance, student academic support in the form of instruction and tutoring and information dissemination for Hispanic student recruitment and retention. The training, technical assistance, research assistance and information dissemination shall be made available to persons who participate in el centro de la raza. El centro de la raza shall prepare an annual report for the legislature showing the progress of the center in providing services to Hispanic students."

SENATE BILL 799, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 165

AN ACT

RELATING TO WATER; REPEALING SESSION LAWS THAT REPEAL THE LOWER PECOS RIVER BASIN BELOW SUMNER LAKE WATER BANK.

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

Chapter 165 Section 1 Laws 2005

Section 1. REPEAL.--Laws 2003, Chapter 54, Section 3 and Laws 2003, Chapter 132, Section 3 are repealed.

SENATE BILL 800

Approved April 5, 2005

LAWS 2005, CHAPTER 166

AN ACT

RELATING TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; CLARIFYING JURISDICTION PROCEEDINGS; MODIFYING SUPPORT ORDERS; EXPANDING CIVIL PROVISIONS; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

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

Chapter 166 Section 1 Laws 2005

Section 1. Section 40-6A-101 NMSA 1978 (being Laws 1994, Chapter 107, Section 101, as amended) is recompiled as Section 40-6A-102 NMSA 1978 and is amended to read:

"40-6A-102. DEFINITIONS.--As used in the Uniform Interstate Family Support Act:

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

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

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

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

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

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

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

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

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

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

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

(12) "obligee" means:

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

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

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

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

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

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

(iii) is liable under a support order;

(14) "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;

(15) "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;

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

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

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

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

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

(21) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe, pueblo, nation or band and a foreign country or subdivision that has:

(i) been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) established a reciprocal arrangement for child support with this state as provided in Section

40-6A-308 NMSA 1978; or

(iii) enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under the Uniform Interstate Family Support Act;

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

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

(ii) seek establishment or modification of child support;

(iii) seek determination of parentage;

(iv) locate obligors or their assets; or

(v) determine the controlling child-support order;

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

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

Chapter 166 Section 2 Laws 2005

Section 2. Section 40-6A-103 NMSA 1978 (being Laws 1994, Chapter 107, Section 103) is recompiled as Section

40-6A-104 NMSA 1978 and is amended to read:

"40-6A-104. REMEDIES CUMULATIVE.--

(a) Remedies provided by the Uniform Interstate Family Support Act are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) The Uniform Interstate Family Support Act does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under the Uniform Interstate Family Support Act."

Chapter 166 Section 3 Laws 2005

Section 3. Section 40-6A-201 NMSA 1978 (being Laws 1994, Chapter 107, Section 201) is amended to read:

"40-6A-201. BASES FOR JURISDICTION OVER NONRESIDENT.--

(a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage in the putative father registry maintained in this state by the department of health; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in Subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of Section 40-6A-611 or 40-6A-615 NMSA 1978 are met."

Chapter 166 Section 4 Laws 2005

Section 4. Section 40-6A-202 NMSA 1978 (being Laws 1994, Chapter 107, Section 202) is repealed and a new Section 40-6A-202 NMSA 1978 is enacted to read:

"40-6A-202. DURATION OF PERSONAL JURISDICTION.--Personal jurisdiction acquired by a tribunal of this state in a proceeding under the Uniform Interstate Family Support Act or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections

40-6A-205, 40-6A-206 and 40-6A-211 NMSA 1978."

Chapter 166 Section 5 Laws 2005

Section 5. Section 40-6A-204 NMSA 1978 (being Laws 1994, Chapter 107, Section 204) is amended to read:

"40-6A-204. SIMULTANEOUS PROCEEDINGS.--

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state is the home state of the child."

Chapter 166 Section 6 Laws 2005

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

"40-6A-205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.--

(a) A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child-support order consistent with the law of this state may not exercise continuing exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of all the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

(c) If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that act that modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

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

Chapter 166 Section 7 Laws 2005

Section 7. Section 40-6A-206 NMSA 1978 (being Laws 1994, Chapter 107, Section 206) is amended to read:

"40-6A-206. CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT ORDER.--

(a) A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order."

Chapter 166 Section 8 Laws 2005

Section 8. Section 40-6A-207 NMSA 1978 (being Laws 1994, Chapter 107, Section 207, as amended) is amended to read:

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

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

(b) If a proceeding is brought under the Uniform Interstate Family Support Act and two or more child-support orders have been issued by tribunals of this state or another state with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

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

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

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

(c) If two or more child-support orders have been issued for the same obligor and same child upon request of a party who is an individual or support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under Subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Sections 40-6A-601 through 40-6A-615 NMSA 1978, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order shall be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under Subsection (a), (b) or (c) of this section has continuing jurisdiction to the extent provided in Section

40-6A-205 or 40-6A-206 NMSA 1978.

(f) A tribunal of this state that determines by order which is the controlling order under Paragraph (1) or (2) of Subsection (b) or Subsection (c) of this section or that issues a new controlling order under Paragraph (3) of Subsection (b) of this section shall state in that order:

(1) the basis on which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section

40-6A-209 NMSA 1978.

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

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under the Uniform Interstate Family Support Act."

Chapter 166 Section 9 Laws 2005

Section 9. Section 40-6A-208 NMSA 1978 (being Laws 1994, Chapter 107, Section 208) is amended to read:

"40-6A-208. CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES.--In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state."

Chapter 166 Section 10 Laws 2005

Section 10. Section 40-6A-209 NMSA 1978 (being Laws 1994, Chapter 107, Section 209) is amended to read:

"40-6A-209. CREDIT FOR PAYMENTS.--A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another state."

Chapter 166 Section 11 Laws 2005

Section 11. A new section of the Uniform Interstate Family Support Act, Section 40-6A-210 NMSA 1978, is enacted to read:

"40-6A-210. APPLICATION OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO A NONRESIDENT SUBJECT TO PERSONAL JURISDICTION.--A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Interstate Family Support Act, under other law of this state relating to a support order or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another state pursuant to Section 40-6A-316 NMSA 1978, communicate with a tribunal or another state pursuant to Section 40-6A-317 NMSA 1978 and obtain discovery through a tribunal of another state pursuant to Section 40-6A-318 NMSA 1978. In all other respects, Sections 40-6A-301 through 40-6A-701 NMSA 1978 do not apply and the tribunal shall apply the procedural and substantive law of this state."

Chapter 166 Section 12 Laws 2005

Section 12. A new section of the Uniform Interstate Family Support Act, Section 40-6A-211 NMSA 1978, is enacted to read:

"40-6A-211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.--

(a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order through the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal-support order."

Chapter 166 Section 13 Laws 2005

Section 13. Section 40-6A-301 NMSA 1978 (being Laws 1994, Chapter 107, Section 301) is amended to read:

"40-6A-301. PROCEEDINGS UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.--

(a) Except as otherwise provided in the Uniform Interstate Family Support Act, Sections 40-6A-301 through

40-6A-319 NMSA 1978 apply to all proceedings under that act.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under the Uniform Interstate Family Support Act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent."

Chapter 166 Section 14 Laws 2005

Section 14. Section 40-6A-302 NMSA 1978 (being Laws 1994, Chapter 107, Section 302) is amended to read:

"40-6A-302. PROCEEDING BY MINOR PARENT.--A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child."

Chapter 166 Section 15 Laws 2005

Section 15. Section 40-6A-303 NMSA 1978 (being Laws 1994, Chapter 107, Section 303, as amended) is amended to read:

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

(1) apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

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

Chapter 166 Section 16 Laws 2005

Section 16. Section 40-6A-304 NMSA 1978 (being Laws 1994, Chapter 107, Section 304, as amended) is amended to read:

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

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

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

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

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request, the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported and provide any other documents necessary to satisfy the requirements of the responding state."

Chapter 166 Section 17 Laws 2005

Section 17. Section 40-6A-305 NMSA 1978 (being Laws 1994, Chapter 107, Section 305, as amended) is amended to read:

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

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

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) issue or enforce a support order, modify a child-support order, determine the controlling child-support order or determine parentage;

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

(3) order income withholding;

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

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

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

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

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

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

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

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

and

(12) grant any other available remedy.

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

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

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

(f) If requested to enforce a support order, arrears or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under applicable official or market exchange rate as publicly reported."

Chapter 166 Section 18 Laws 2005

Section 18. Section 40-6A-306 NMSA 1978 (being Laws 1994, Chapter 107, Section 306, as amended) is amended to read:

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

Chapter 166 Section 19 Laws 2005

Section 19. Section 40-6A-307 NMSA 1978 (being Laws 1994, Chapter 107, Section 307, as amended) is amended to read:

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

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

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

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

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

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

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

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

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

(c) A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order;
or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of the state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears and interest if requested to do so by a support enforcement agency of another state pursuant to Section 40-6A-319 NMSA 1978.

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

Chapter 166 Section 20 Laws 2005

Section 20. Section 40-6A-308 NMSA 1978 (being Laws 1994, Chapter 107, Section 308) is amended to read:

"40-6A-308. DUTY OF ATTORNEY GENERAL.--

(a) If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under the Uniform Interstate Family Support Act or may provide those services directly to the individual.

(b) The attorney general may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination."

Chapter 166 Section 21 Laws 2005

Section 21. Section 40-6A-310 NMSA 1978 (being Laws 1994, Chapter 107, Section 310) is amended to read:

"40-6A-310. DUTIES OF STATE INFORMATION AGENCY.--

(a) The human services department is the state information agency under the Uniform Interstate Family Support Act.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under the Uniform Interstate Family Support Act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under the Uniform Interstate Family Support Act received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security."

Chapter 166 Section 22 Laws 2005

Section 22. Section 40-6A-311 NMSA 1978 (being Laws 1994, Chapter 107, Section 311) is amended to read:

"40-6A-311. PLEADINGS AND ACCOMPANYING DOCUMENTS.--

(a) In a proceeding under the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage or to register and modify a support order of another state shall file a petition. Unless otherwise ordered under Section 40-6A-312 NMSA 1978, the petition or accompanying documents shall provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number and date of birth of each child for whose

benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency."

Chapter 166 Section 23 Laws 2005

Section 23. Section 40-6A-312 NMSA 1978 (being Laws 1994, Chapter 107, Section 312) is amended to read:

"40-6A-312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.--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 or specific identifying information, that information shall be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be the interest of justice."

Chapter 166 Section 24 Laws 2005

Section 24. Section 40-6A-313 NMSA 1978 (being Laws 1994, Chapter 107, Section 313) is amended to read:

"40-6A-313. COSTS AND FEES.--

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Sections 40-6A-601 through 40-6A-615 NMSA 1978, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change."

Chapter 166 Section 25 Laws 2005

Section 25. Section 40-6A-314 NMSA 1978 (being Laws 1994, Chapter 107, Section 314) is amended to read:

"40-6A-314. LIMITED IMMUNITY OF PETITIONER.--

(a) Participation by a petitioner in a proceeding under the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under the Uniform Interstate Family Support Act.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under the Uniform Interstate Family Support Act committed by a party while present in this state to participate in the proceeding."

Chapter 166 Section 26 Laws 2005

Section 26. Section 40-6A-316 NMSA 1978 (being Laws 1994, Chapter 107, Section 316) is amended to read:

"40-6A-316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.--

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under the Uniform Interstate Family Support Act, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under the Uniform Interstate Family Support Act.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under the Uniform Interstate Family Support Act.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child."

Chapter 166 Section 27 Laws 2005

Section 27. Section 40-6A-317 NMSA 1978 (being Laws 1994, Chapter 107, Section 317) is amended to read:

"40-6A-317. COMMUNICATIONS BETWEEN TRIBUNALS.--A tribunal of this state may communicate with a tribunal of another state or foreign country or political subdivision in a record or by telephone or other means to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding in the other state or foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision."

Chapter 166 Section 28 Laws 2005

Section 28. Section 40-6A-319 NMSA 1978 (being Laws 1994, Chapter 107, Section 319) is amended to read:

"40-6A-319. RECEIPT AND DISBURSEMENT OF PAYMENTS.--

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to Subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received."

Chapter 166 Section 29 Laws 2005

Section 29. Section 40-6A-401 NMSA 1978 (being Laws 1994, Chapter 107, Section 401) is amended to read:

"40-6A-401. PETITION TO ESTABLISH SUPPORT ORDER.--

(a) If a support order entitled to recognition under the Uniform Interstate Family Support Act has not been issued, a responding tribunal of this state may issue a support order if:

(1) the individual seeking the order resides in another state; or

(2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by applicable state law;
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 40-6A-305 NMSA 1978."

Chapter 166 Section 30 Laws 2005

Section 30. Section 40-6A-501 NMSA 1978 (being Laws 1994, Chapter 107, Section 501, as amended) is amended to read:

"40-6A-501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE.--An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this state."

Chapter 166 Section 31 Laws 2005

Section 31. Section 40-6A-502 NMSA 1978 (being Laws 1997, Chapter 9, Section 12) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(3) the times within which the employer shall implement the withholding order and forward the

child-support payment."

Chapter 166 Section 32 Laws 2005

Section 32. Section 40-6A-503 NMSA 1978 (being Laws 1997, Chapter 9, Section 13) is amended to read:

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

Chapter 166 Section 33 Laws 2005

Section 33. Section 40-6A-506 NMSA 1978 (being Laws 1997, Chapter 9, Section 16) is amended to read:

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

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Sections 40-6A-601 through 40-6A-615 NMSA 1978, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

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

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

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

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

Chapter 166 Section 34 Laws 2005

Section 34. Section 40-6A-507 NMSA 1978 (being Laws 1997, Chapter 9, Section 17) is amended to read:

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

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

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

Chapter 166 Section 35 Laws 2005

Section 35. Section 40-6A-601 NMSA 1978 (being Laws 1994, Chapter 107, Section 601) is amended to read:

"40-6A-601. REGISTRATION OF ORDER FOR ENFORCEMENT.--

A support order or income-withholding order issued by a tribunal of another state may be registered in this state for enforcement."

Chapter 166 Section 36 Laws 2005

Section 36. Section 40-6A-602 NMSA 1978 (being Laws 1994, Chapter 107, Section 602) is amended to read:

"40-6A-602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.--

(a) A support order or income-withholding order of another state may be registered in this state by sending the following records and information to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in Section 40-6A-312 NMSA 1978, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination."

Chapter 166 Section 37 Laws 2005

Section 37. Section 40-6A-604 NMSA 1978 (being Laws 1994, Chapter 107, Section 604) is amended to read:

"40-6A-604. CHOICE OF LAW.--

(a) Except as otherwise provided in Subsection (d) of this section, the law of the issuing state governs:

(1) the nature, extent, amount and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

(d) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears."

Chapter 166 Section 38 Laws 2005

Section 38. Section 40-6A-605 NMSA 1978 (being Laws 1994, Chapter 107, Section 605, as amended) is amended to read:

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

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

(b) A notice shall inform the nonregistering party:

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

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

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

(4) of the amount of any alleged arrearage.

(c) If the registering party asserts that two or more orders are in effect, a notice shall also:

(1) identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in Subsection (b) of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

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

Chapter 166 Section 39 Laws 2005

Section 39. Section 40-6A-607 NMSA 1978 (being Laws 1994, Chapter 107, Section 607) is amended to read:

"40-6A-607. CONTEST OF REGISTRATION OR ENFORCEMENT.--

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under Section 40-6A-604 NMSA 1978 precludes enforcement of some or all of the alleged arrearage; or
- (8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under Subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under Subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order."

Chapter 166 Section 40 Laws 2005

Section 40. Section 40-6A-610 NMSA 1978 (being Laws 1994, Chapter 107, Section 610) is amended to read:

"40-6A-610. EFFECT OF REGISTRATION FOR MODIFICATION.--

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of Sections 40-6A-611, 40-6A-613 and

40-6A-615 NMSA 1978 have been met."

Chapter 166 Section 41 Laws 2005

Section 41. Section 40-6A-611 NMSA 1978 (being Laws 1994, Chapter 107, Section 611, as amended) is amended to read:

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

(a) If Section 40-6A-613 NMSA 1978 does not apply, except as otherwise provided in Section 40-6A-615 NMSA 1978, upon petition a tribunal of this state may modify a

child-support order issued in another state that is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(i) neither the child, nor the obligee who is an individual nor the obligor resides in the issuing state;

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

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

(2) this state is the state of residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

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

(c) Except as otherwise provided in Section 40-6A-615 NMSA 1978, a tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and shall be so recognized under Section 40-6A-207 NMSA 1978 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of further obligation of support by a tribunal of this state.

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

Chapter 166 Section 42 Laws 2005

Section 42. Section 40-6A-612 NMSA 1978 (being Laws 1994, Chapter 107, Section 612) is amended to read:

"40-6A-612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.--If a child-support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

(1) may enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) may provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement."

Chapter 166 Section 43 Laws 2005

Section 43. A new section of the Uniform Interstate Family Support Act, Section 40-6A-615 NMSA 1978, is enacted to read:

"40-6A-615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION.--

(a) If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal

jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 40-6A-611 NMSA 1978 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order."

Chapter 166 Section 44 Laws 2005

Section 44. Section 40-6A-701 NMSA 1978 (being Laws 1994, Chapter 107, Section 701) is amended to read:

"40-6A-701. PROCEEDING TO DETERMINE PARENTAGE.--A court of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under the Uniform Interstate Family Support Act or a law substantially similar to that act."

Chapter 166 Section 45 Laws 2005

Section 45. Section 40-6A-801 NMSA 1978 (being Laws 1994, Chapter 107, Section 801) is amended to read:

"40-6A-801. GROUNDS FOR RENDITION.--

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by the Uniform Interstate Family Support Act.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with the Uniform Interstate Family Support Act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom."

Chapter 166 Section 46 Laws 2005

Section 46. Section 40-6A-802 NMSA 1978 (being Laws 1994, Chapter 107, Section 802) is amended to read:

"40-6A-802. CONDITIONS OF RENDITION.--

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to the Uniform Interstate Family Support Act or that the proceeding would be of no avail.

(b) If, under the Uniform Interstate Family Support Act or a law substantially similar to that act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order."

Chapter 166 Section 47 Laws 2005

Section 47. RECOMPILATION.--

A. Section 40-6A-102 NMSA 1978 (being Laws 1994, Chapter 107, Section 102, as amended) is recompiled as Section 40-6A-103 NMSA 1978.

B. Section 40-6A-902 NMSA 1978 (being Laws 1994, Chapter 107, Section 902, as amended) is recompiled as Section 40-6A-101 NMSA 1978.

SENATE BILL 838

Approved April 5, 2005

LAWS 2005, CHAPTER 167

AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; PROVIDING ADDITIONAL PURPOSES FOR DISTRICTS; CHANGING THE QUALIFICATIONS OF DISTRICT ELECTORS; PROVIDING STANDARDS FOR REVIEW OF DISTRICT RATES BY THE PUBLIC REGULATION COMMISSION.

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

Chapter 167 Section 1 Laws 2005

Section 1. Section 73-21-2 NMSA 1978 (being Laws 1977, Chapter 345, Section 1) is amended to read:

"73-21-2. SHORT TITLE.--Chapter 73, Article 21 NMSA 1978 may be cited as the "Water and Sanitation District Act"."

Chapter 167 Section 2 Laws 2005

Section 2. Section 73-21-3 NMSA 1978 (being Laws 1943, Chapter 80, Section 2, as amended) is amended to read:

"73-21-3. PURPOSE OF WATER AND SANITATION DISTRICTS.--Water and sanitation districts may be created for the purpose of:

A. purchasing, acquiring, establishing or constructing waterworks to supply water for domestic, commercial and industrial purposes by any available means to persons within and without the boundaries of the district. For this purpose, any district has the power to extend its water lines outside the boundaries of the district for the purpose of securing a source of water supply or for the purpose of supplying the water to any lands of the United States, New Mexico or Indian reservations for use by any person, firm or corporation;

B. purchasing, acquiring, establishing or constructing sanitary sewers or a system of sewage disposal, garbage or refuse disposal;

C. purchasing, acquiring, establishing or constructing streets and street improvements, including without limitation grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic-control equipment and all appurtenances and incidentals or any combination of them, including real and other property for them;

D. establishing or constructing park and recreational improvements;

E. purchasing, acquiring, establishing, constructing or operating other public facilities or economic development projects; or

F. all of the improvements in Subsections A through E of this section or any combination of them within or without the district."

Chapter 167 Section 3 Laws 2005

Section 3. Section 73-21-4 NMSA 1978 (being Laws 1943, Chapter 80, Section 3, as amended) is amended to read:

"73-21-4. DEFINITIONS.--As used in the Water and Sanitation District Act:

A. "sewage disposal" includes all constructions for collection, transportation, pumping, treatment and final disposition of sewage;

B. "district" means a water and sanitation district that is established pursuant to that act and that is either entirely within or partly within and partly without one or more counties, provided those parts or parcels of the district lying in two or more counties are contiguous with one another, and further provided, a district created pursuant to a petition signed by the board of county commissioners of a county shall be entirely within that county;

C. "board" means the board of directors of a district;

D. "taxpaying elector of a district", "qualified elector" or "elector" means a person, registered to vote in any precinct in the state, who:

(1) is a resident of the district;

(2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board; or

(3) is a nonresident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event; and

E. "publication" means once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which all or the major portion of the district is located. It is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication."

Chapter 167 Section 4 Laws 2005

Section 4. Section 73-21-9 NMSA 1978 (being Laws 1943, Chapter 80, Section 8, as amended) is amended to read:

"73-21-9. HEARING ON PETITIONS--ELECTION FOR ORGANIZATION AND OFFICERS.--

A. On the day fixed for the hearing or at an adjournment of it, the court shall ascertain from the tax rolls of the county in which the district is located or into which it extends, from the last official registry list and from any other evidence that may be adduced, the total number of taxpaying electors of the proposed district.

B. If the court finds that no petition has been signed and presented in conformity with the Water and Sanitation District Act, or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition or, if applicable, the board of county commissioners of a county, in the proportion as it deems just and equitable. No appeal or suit of error shall lie from an order dismissing the proceedings; but nothing in that act shall prevent the filing of a subsequent petition for similar improvements or for a similar district, and the right to renew the proceeding is expressly granted and authorized.

C. At any time after the filing of the petition for the organization of a district and before the day fixed for the hearing on it, the owner of any taxable property within the proposed district may file a petition with the court stating reasons why the property should not be included in the district and requesting that the property be excluded from it. The petition shall be verified and shall describe the property sought to be excluded. The court shall hear the petition and all objections to it at the time of the hearing on the petition for organization and shall determine whether the property should be excluded or included in the district.

D. In determining whether or not the petition for the creation of a water and sanitation district shall be granted, the district court shall consult and request an opinion from:

(1) the state engineer to determine whether the proposed district has adequate water rights to implement the proposed improvements; and

(2) the environmental improvement division of the department of environment to determine, as to the technological feasibility of the proposed improvements, whether the water proposed to be supplied is of an acceptable quality to conform with the state regulations and whether the liquid and solid waste disposal proposals can conform with state regulations.

E. The court may deny the petition or may order the petition to be modified, if the court, after hearing on the petition, finds that:

(1) the proposed water and sewage improvements cannot conform with the state regulations;

(2) the water and sewage improvements cannot be implemented within a reasonable time taking into consideration applications for state and federal grants;

(3) there is lacking an actual or impending need for the water and sewage improvements proposed; or

(4) the boundaries of the proposed district contain land that has no actual or impending need for the water and sewage improvements or cannot be reasonably expected to utilize the water and sewage improvements, unless the land is otherwise required to be included in the proposed district by rule or regulation of a federal agency.

F. Upon the hearing, if it appears that a petition for the organization of a district has been properly signed and presented and that the allegations of the petition are true, the court shall order that the question of the organization of the district be submitted to the taxpaying electors of the district as set forth in the petition, as the boundaries were modified by the court in determining that only property to be benefited by the proposed improvements should be included within the boundaries of the district, at an election to be held for that purpose, and the order shall designate one or more polling places within the district, and for each polling place so designated, shall appoint three taxpaying electors of the district as judges of the election and two taxpaying electors of the district as clerks of the election. The clerk of the court having jurisdiction shall give published notice of the time and place of an election to be held in the district not less than twenty days after the first publication of the notice.

G. The election shall be held and conducted as nearly as possible in the same manner as general elections in this state. No special registration for the election is required, but for the purpose of determining qualifications of electors, the judges may use official records, and, in addition, they may require the execution of an affidavit concerning the qualifications of any elector.

H. At the election, the taxpaying electors of the district shall vote for or against the organization of the district, and if in favor thereof, shall vote for three taxpaying electors of the district who shall constitute the board of directors of the district, one to act until the first biennial election, one until two years and one until four years after the election, except that at the election in a county where the petition for the district was signed by the chairman of the board of county commissioners, the taxpaying electors of the district shall vote only for or against the organization of the district.

I. The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at the election are in favor of the organization, the district court shall declare the district organized and give it a

corporate name by which, in all proceedings, it shall thereafter be known, and designate the first board of directors elected, except that a district created pursuant to a petition signed by the chairman of the board of county commissioners of a county shall appoint the first board of directors as provided in Section 73-21-15.1 NMSA 1978. Thereupon the district shall be a governmental subdivision of the state, except a district created pursuant to a petition signed by the chairman of the board of county commissioners of a county, which district shall be a subdivision of the county. Every district shall be a body corporate with all the powers of a public or quasi-municipal corporation.

J. If an order is entered establishing the district, the order is final and no appeal or writ of error shall lie therefrom, and the entry of the order shall finally and conclusively establish the regular organization of the district against all persons except the state, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty days after the decree declaring the district organized. The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in the Water and Sanitation District Act."

Chapter 167 Section 5 Laws 2005

Section 5. Section 73-21-15.1 NMSA 1978 (being Laws 1985, Chapter 155, Section 8) is amended to read:

"73-21-15.1. BOARD--DISTRICT CREATED BY A BOARD OF COUNTY COMMISSIONERS.--Notwithstanding any other provision of the Water and Sanitation District Act relating to election of the board, all members of the first board of any district created pursuant to a petition signed by the chairman of the board of county commissioners of a county shall be appointed by the board of county commissioners. The board shall consist of five directors who are taxpaying electors of the district appointed for staggered terms so that the terms of two directors expire in one year and the terms of three directors expire in two years. Thereafter, all directors shall be elected to two-year terms pursuant to the provisions of the Water and Sanitation District Act. Any director appointed by any board of county commissioners shall be eligible for election, provided that no member of a board shall serve more than two consecutive terms."

Chapter 167 Section 6 Laws 2005

Section 6. Section 73-21-55 NMSA 1978 (being Laws 1985, Chapter 166, Section 3, as amended) is amended to read:

"73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--OPTION TO SUBMIT TO REGULATION.--

A. No district organized under the provisions of the Water and Sanitation District Act is subject to the jurisdiction of the public regulation commission or the terms

and provisions of the Public Utility Act, except as provided in Subsections B and C of this section.

B. Any district organized under the provisions of the Water and Sanitation District Act may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any district making such an election.

C. If the board of directors has not elected to become subject to the jurisdiction of the public regulation commission as provided for in Subsection B of this section, it shall nevertheless file with the commission any rates, tolls and charges proposed by the board, which shall be subject to approval by the commission if twenty-five of the taxpaying electors of the district or five percent of the taxpaying electors of the district, whichever is less, file a petition protesting the rates, tolls or charges with the commission within thirty days after the board proposes the rates. Upon the filing of such a petition, the commission shall hold a hearing pursuant to rules that it shall promulgate to implement this subsection."

SENATE BILL 863, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 168

AN ACT

RELATING TO THE MILITARY; PROVIDING IN-STATE TUITION AND FEES TO FAMILIES OF NATIONAL GUARD MEMBERS AND FAMILIES OF CERTAIN MEMBERS OF THE ARMED FORCES.

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

Chapter 168 Section 1 Laws 2005

Section 1. RESIDENT TUITION FOR FAMILIES OF MEMBERS OF THE ARMED FORCES.--

A. A spouse or child of an active member of the armed forces who is assigned to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning.

B. A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately following assignment to duty in New Mexico

shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning as long as the spouse or child resides continuously in New Mexico.

C. A spouse or child of an active member of the armed forces who dies or is killed shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning if the spouse or child becomes a resident of New Mexico within sixty days of the date of death.

D. If an active member of the armed forces is stationed outside New Mexico and the member's spouse or child establishes residence in New Mexico and files with a state institution of higher learning at which the spouse or child plans to register a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be deemed an in-state resident for purposes of determining tuition and fees at that state institution of higher learning without regard to length of time that the spouse or child has resided in the state.

E. A spouse or child of an active member of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the person is continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer term to remain continuously enrolled in a degree or certificate program. A person's eligibility to pay tuition and fees at the rate provided for New Mexico residents under this subsection does not terminate because the person is no longer a child or spouse of a member of the armed forces.

F. As used in this section, "armed forces" means the United States army, navy, air force, marine corps or coast guard.

Chapter 168 Section 2 Laws 2005

Section 2. Section 20-4-14 NMSA 1978 (being Laws 1987, Chapter 318, Section 31) is amended to read:

"20-4-14. RESIDENT TUITION.--An active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning."

SENATE BILL 921, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 169

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM THE SALE OF PROPERTY OR SERVICES PURCHASED BY OR ON BEHALF OF THE STATE FROM CERTAIN FUNDS.

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

Chapter 169 Section 1 Laws 2005

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--RECEIPTS FROM CERTAIN PURCHASES BY OR ON BEHALF OF THE STATE.--Receipts from the sale of property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act or the forfeiture of financial responsibility pursuant to the Water Quality Act may be deducted from gross receipts."

SENATE BILL 986

Approved April 5, 2005

LAWS 2005, CHAPTER 170

AN ACT

RELATING TO CHILDREN; ENACTING THE PRE-KINDERGARTEN ACT; PROVIDING FOR VOLUNTARY PARTICIPATION IN PRE-KINDERGARTEN PROGRAMS; PROVIDING FOR REQUESTS FOR PROPOSALS; CREATING FUNDS.

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

Chapter 170 Section 1 Laws 2005

Section 1. A new section of the Children's Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Pre-Kindergarten Act"."

Chapter 170 Section 2 Laws 2005

Section 2. A new section of the Children's Code is enacted to read:

"FINDINGS AND PURPOSE.--The legislature finds that:

A. special needs are present among the state's population of four-year-old children and those needs warrant the provision of pre-kindergarten programs;

B. participation in quality pre-kindergarten has a positive effect on children's intellectual, emotional, social and physical development; and

C. pre-kindergarten will advance governmental interests and childhood development and readiness."

Chapter 170 Section 3 Laws 2005

Section 3. A new section of the Children's Code is enacted to read:

"DEFINITIONS.--As used in the Pre-Kindergarten Act:

A. "community" means an area defined by school district boundaries, tribal boundaries or joint boundaries of a school district and tribe or any combination of school districts and tribes;

B. "departments" means the children, youth and families department and the public education department acting jointly;

C. "early childhood development specialist" means the adult responsible for working directly with four-year-old children in implementing pre-kindergarten services;

D. "eligible provider" means a person licensed by the children, youth and families department that provides early childhood developmental readiness services or preschool special education, or is a public school, tribal program or head start program;

E. "pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1; and

F. "tribe" means an Indian nation, tribe or pueblo located in New Mexico."

Chapter 170 Section 4 Laws 2005

Section 4. A new section of the Children's Code is enacted to read:

"VOLUNTARY PRE-KINDERGARTEN--INTERAGENCY COOPERATION--
CONTRACTS--CONTRACT MONITORING--RESEARCH.--

A. The children, youth and families department and the public education department shall cooperate in the development and implementation of a voluntary

program for the provision of pre-kindergarten services throughout the state. The pre-kindergarten program shall address the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity.

B. The departments shall collaborate on promulgating rules on pre-kindergarten services, including state policies and standards and shall review the process for contract awards and for the expenditure and use of contract funds.

C. The departments shall monitor pre-kindergarten contracts to ensure the effectiveness of child-centered, developmentally appropriate practices and outcomes. The departments shall assign staff to work on the development and implementation of the program and on the monitoring of contract awards. The early childhood training and technical assistance programs of the children, youth and families department and assigned staff from the public education department staff shall provide technical assistance to eligible providers.

D. The departments shall provide an annual report to the governor and the legislature on the progress of the state's voluntary pre-kindergarten program."

Chapter 170 Section 5 Laws 2005

Section 5. A new section of the Children's Code is enacted to read:

"PRE-KINDERGARTEN--ELIGIBILITY.--Pre-kindergarten services may be provided by public schools or eligible providers on a per-child reimbursement rate in communities with the highest percentage of public elementary schools that are designated as Title 1 schools and that serve the highest percentage of public elementary students who are not meeting the proficiency component required for calculating adequate yearly progress."

Chapter 170 Section 6 Laws 2005

Section 6. A new section of the Children's Code is enacted to read:

"REQUESTS FOR PROPOSALS--CONTRACTS FOR SERVICES.--

A. Each department shall publish a request for proposals for pre-kindergarten services.

B. Eligible providers shall submit proposals for pre-kindergarten services to each department. An eligible provider proposal shall include a description of the services that will be provided, including:

(1) how those services meet children, youth and families department standards;

- serve;
- (2) the number of four-year-old children the eligible provider can serve;
 - (3) site and floor plans and a description of the facilities;
 - (4) revenue sources and amounts other than state funding available for the pre-kindergarten program;
 - (5) a description of the qualifications and experience of the early childhood development staff for each site;
 - (6) the plan for communicating with and involving parents in the pre-kindergarten program;
 - (7) how those services meet the continuum of services to children;
- and
- (8) other relevant information requested by the departments.

C. The public education department shall accept and evaluate proposals from school districts for funding for pre-kindergarten. The children, youth and families department shall accept and evaluate proposals from other eligible providers.

D. For funding purposes, proposals shall be evaluated on the percentage and number of public elementary schools in the community that are not meeting the proficiency component required for calculating adequate yearly progress and that are serving children, at least sixty-six percent of whom live within the attendance zone of a Title 1 elementary school. Additional funding criteria include:

- (1) the number of four-year-olds residing in the community and the number of four-year-olds proposed to be served;
- (2) the adequacy and capacity of pre-kindergarten facilities in the community;
- (3) language and literacy services in the community;
- (4) the cultural, historic and linguistic responsiveness to the community;
- (5) parent education services available for parents of four-year-olds in the community;
- (6) the qualifications of eligible providers in the community;
- (7) staff professional development plans;

(8) the capacity of local organizations and persons interested in and involved in programs and services for four-year-olds and their commitment to work together;

(9) the extent of local support for pre-kindergarten services in the community; and

(10) other relevant criteria specified by joint rule of the departments.

E. A contract with an eligible provider shall specify and ensure that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material."

Chapter 170 Section 7 Laws 2005

Section 7. A new section of the Children's Code is enacted to read:

"PROGRAM FUNDING.--The children, youth and families department shall reimburse eligible providers that are not offered in a public school. The public education department shall reimburse eligible providers that are public school programs."

Chapter 170 Section 8 Laws 2005

Section 8. A new section of the Children's Code is enacted to read:

"FUNDS CREATED--ADMINISTRATION.--

A. The "public pre-kindergarten fund" is created as a nonreverting fund in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants and donations. The fund shall be administered by the public education department, and money in the fund is appropriated to the department to carry out the provisions of the Pre-Kindergarten Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary of public education or the secretary's authorized representative. The department may use up to ten percent of the money in the fund each year for administrative expenses.

B. The "children, youth and families pre-kindergarten fund" is created as a nonreverting fund in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants and donations. The fund shall be administered by the children, youth and families department, and money in the fund is appropriated to the department to carry out the provisions of the Pre-Kindergarten Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary of children, youth and families or the secretary's authorized representative. The department may use up to ten percent of the money in the fund each year for administrative expenses."

Chapter 170 Section 9 Laws 2005

Section 9. TEMPORARY PROVISION--APPROPRIATIONS.--Any money appropriated for pre-kindergarten programs in fiscal years 2005 through 2007 shall be divided equally between the public education department and the children, youth and families department.

HOUSE BILL 337, WITH

CERTIFICATE OF CORRECTION

Approved April 5, 2005

LAWS 2005, CHAPTER 171

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE RECYCLING AND ILLEGAL DUMPING ACT; EXPANDING THE TIRE RECYCLING PROGRAM; PROVIDING PROHIBITIONS; PROVIDING FOR INSPECTIONS OF PREMISES; PROVIDING FOR COMPLIANCE ORDERS AND FIELD CITATIONS; CREATING THE RECYCLING AND ILLEGAL DUMPING ALLIANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Chapter 171 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 20 of this act may be cited as the "Recycling and Illegal Dumping Act".

Chapter 171 Section 2 Laws 2005

Section 2. LEGISLATIVE PURPOSES.--The purposes of the Recycling and Illegal Dumping Act are to:

- A. protect the health and welfare of current and future residents of New Mexico by providing for the prevention and abatement of illegal dumpsites;
- B. promote environmentally sound methods for reuse and recycling;

C. create a statewide recycling alliance involving the cooperation of cities, counties, state agencies, tribal governments, land grant communities and private business to encourage economic development, community development and collaboration that foster sustainable use of resources, increased recycling and a cleaner and healthier environment; and

D. enhance and coordinate existing highway litter control and removal and recycling efforts that include the recycling of tires, glass, plastic, metal, paper products, electronic waste and construction and demolition materials.

Chapter 171 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Recycling and Illegal Dumping Act:

A. "abatement" means to reduce in amount, degree or intensity or to eliminate;

B. "agricultural use" means the beneficial use of scrap tires in conjunction with the operations of a farm or ranch that includes construction projects and aids in the storage of feed;

C. "alliance" means the recycling and illegal dumping alliance;

D. "board" means the environmental improvement board;

E. "civil engineering application" means the use of scrap tires or other recycled material in conjunction with other aggregate materials in engineering applications;

F. "composting" means the process by which biological decomposition of organic material is carried out under controlled conditions and the process stabilizes the organic fraction into a material that can be easily and safely stored, handled and used in an environmentally acceptable manner;

G. "cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, a sanitation district created pursuant to the Water and Sanitation District Act, a special district created pursuant to the Special District Procedures Act or other associations created pursuant to the Joint Powers Agreements Act or the Solid Waste Authority Act;

H. "department" means the department of environment;

I. "dispose" means to deposit scrap tires or solid waste into or on any land or water;

J. "household" means any single and multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day-use recreation area;

K. "illegal dumping" means disposal of trash, scrap tires or any solid waste in a manner that violates the Solid Waste Act or the Recycling and Illegal Dumping Act;

L. "illegal dumpsite" means a place where illegal dumping has occurred except as stated in Subsection A of Section 4 of the Recycling and Illegal Dumping Act;

M. "market development" means activities to expand or create markets for recyclable and reusable materials;

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

O. "processing" means techniques to change physical, chemical or biological character or composition of solid waste but does not include composting, transformation or open burning;

P. "recycling" means any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products;

Q. "reuse" means the return of a commodity into the economic stream without a change to its original form;

R. "scrap tire" means a tire that is no longer suitable for its originally intended purpose because of wear, damage or defect;

S. "scrap tire baling" means the process by which scrap tires are mechanically compressed and bound into block form;

T. "scrap tire generator" means a person who generates scrap tires, including retail tire dealers, retreaders, scrap tire processors, automobile dealers, automobile salvage yards, private company vehicle maintenance shops, garages, service stations and city, county and state government, but does not include persons who generate scrap tires in a household or in agricultural operations;

U. "scrap tire hauler" means a person who transports scrap tires for hire for the purpose of recycling, disposal, transformation or use in a civil engineering application;

V. "secretary" means the secretary of environment;

W. "tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a motor vehicle;

X. "tire-derived fuel" means whole or chipped tires that produce a low sulfur, high-heating-value fuel;

Y. "tire-derived product" means a usable product produced from the processing of a scrap tire but does not include baled tires;

Z. "tire recycling" means a process in which scrap tires are collected, stored, separated or reprocessed for reuse as a different product or shredded into a form suitable for use in rubberized asphalt or as raw material for the manufacture of other products; and

AA. "tire recycling facility" means a place operated or maintained for tire recycling but does not include:

(1) retail business premises where tires are sold, if no more than five hundred loose scrap tires or two thousand scrap tires, if left in a closed conveyance or enclosure, are kept on the premises at one time;

(2) the premises of a tire retreading business, if no more than three thousand scrap tires are kept on the premises at one time;

(3) premises where tires are removed from motor vehicles in the ordinary course of business, if no more than five hundred scrap tires are kept on the premises at one time;

(4) a solid waste facility having a valid permit or registration issued pursuant to the provisions of the Solid Waste Act or regulations adopted pursuant to that act or registration issued pursuant to the Environmental Improvement Act; or

(5) a site where tires are stored or used for agricultural uses.

Chapter 171 Section 4 Laws 2005

Section 4. PROHIBITED ACTS.--

A. A person shall not store or use in a civil engineering application, except for agricultural use, more than one hundred scrap tires anywhere in this state, unless the person has a valid permit or registration from the department.

B. A person shall not operate or maintain a tire recycling facility unless the facility has a valid permit issued pursuant to the provisions of the Recycling and Illegal Dumping Act or is a facility where tires are stored and used for agricultural uses and complies with rules enacted pursuant to the Recycling and Illegal Dumping Act.

C. A person shall not transport scrap tires for hire to a place other than a tire recycling facility unless the place is specifically excluded from the definition of a "tire recycling facility".

D. A person shall not transport scrap tires for hire either for disposal or recycling purposes without being registered as a scrap tire hauler by the department pursuant to rules adopted in accordance with the Recycling and Illegal Dumping Act.

E. A scrap tire generator shall not release scrap tires to a person other than a registered scrap tire hauler pursuant to the Recycling and Illegal Dumping Act or a registered commercial waste hauler pursuant to the Solid Waste Act.

F. A person shall not engage in the open burning of scrap tires.

G. A person shall not store or dispose of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes the breeding or harboring of disease vectors or creates a potential for fire or other health or environmental hazards.

H. Except for agricultural uses, a person shall not store scrap tires or tire-derived products for a period exceeding twelve months unless specifically authorized by the secretary.

I. A scrap tire hauler shall not transport scrap tires without possessing a New Mexico scrap tire manifest approved by the department.

J. A person shall not engage in, maintain or allow illegal dumping.

Chapter 171 Section 5 Laws 2005

Section 5. FACILITIES--ENTRY BY DEPARTMENT--AVAILABILITY OF RECORDS TO DEPARTMENT AND OTHERS.--

A. The secretary or any authorized representative, employee or agent of the department may:

(1) enter a facility of a scrap tire generator, scrap tire hauler or tire recycling facility at any reasonable time for the purpose of making a routine inspection or investigation of scrap tire management practices based on reasonable evidence of a violation of the Recycling and Illegal Dumping Act;

(2) take and analyze samples of the facility's waste, soil, air or water in order to detect the nature and concentration of contaminants, including those produced by leaching, natural decomposition, gas production or hazardous products in the facility, and the owner or operator shall have the right to split the sample and conduct the owner or operator's own analysis;

(3) for the purposes of developing or assisting in the development of rules, conducting a study, taking corrective action or enforcing the provisions of the Recycling and Illegal Dumping Act, conduct monitoring or testing of the equipment, contents or surrounding soil, air, surface water or ground water at the facility of a scrap tire generator, scrap tire hauler or tire recycling facility; and

(4) in coordination with the secretary of transportation, conduct at weigh stations or any other adequate site or facility inspections of scrap tire haulers.

B. Records, reports or information obtained by the department pursuant to this section shall be available to the public, except that information shall be treated confidentially upon a showing, satisfactory to the department, that records, reports or information or a particular part of the records, reports or information, if made public, would divulge information entitled to protection under the provisions of 18 USCA Section 1905. That record, report or information may be disclosed to officers, employees or authorized representatives of the United States concerned with carrying out the federal Resource Conservation and Recovery Act of 1976 or to officers, employees or authorized representatives of the state when relevant in any proceedings pursuant to the Solid Waste Act.

C. A person not subject to the provisions of 18 USCA Section 1905 who knowingly and willfully divulges or discloses information entitled to protection pursuant to this section 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.

D. In submitting data pursuant to the Recycling and Illegal Dumping Act, a person required to provide such data may:

(1) designate, in writing and in such manner as the secretary may prescribe, the data the person believes is entitled to protection pursuant to this section; and

(2) submit the designated data separately from other data submitted pursuant to the Recycling and Illegal Dumping Act.

Chapter 171 Section 6 Laws 2005

Section 6. ADMINISTRATION OF ACT.--The department is responsible for the administration and enforcement of the provisions of the Recycling and Illegal Dumping Act and of all rules adopted by the board pursuant to the provisions of that act. The department is delegated all authority necessary and appropriate to carry out its responsibilities.

Chapter 171 Section 7 Laws 2005

Section 7. RECYCLING AND ILLEGAL DUMPING ALLIANCE.--

A. The "recycling and illegal dumping alliance" is created and is comprised of one member from each of the following:

- (1) state government;
- (2) local government;
- (3) a solid waste authority;
- (4) an industry waste generator;
- (5) a tribal government;
- (6) a nonprofit organization;
- (7) a recycling company;
- (8) a retailer;
- (9) an agricultural producer;
- (10) a soil and water conservation district;
- (11) a waste management company; and
- (12) the public at large.

B. The secretary shall appoint members of the alliance to serve two-year terms as volunteers with no compensation from the state.

C. The alliance shall:

- (1) develop strategies to increase recycling and decrease illegal dumping in New Mexico;
- (2) create a state recycling plan, as a component of the New Mexico solid waste management plan, to establish programs and goals and update the plan every three years to measure progress and modify strategies; and
- (3) review and make recommendations for funding grant applications from the recycling and illegal dumping fund.

Chapter 171 Section 8 Laws 2005

Section 8. RULES--AUTHORITY AND CONTENT.--The board shall adopt rules to implement the provisions of the Recycling and Illegal Dumping Act. The rules shall be

adopted pursuant to the provisions of the Environmental Improvement Act and shall include:

- A. requirements and procedures for the issuance of permits and registrations to tire recycling facilities, civil engineering applications, scrap tire generators and scrap tire haulers;
- B. standards and requirements for tire recycling and scrap tire storage and processing;
- C. record-keeping requirements for tire recycling facilities, scrap tire haulers and scrap tire generators;
- D. financial assurance criteria for tire recycling facilities;
- E. fire rules for storage of scrap tires and tire-derived products that are consistent with the rules or recommendations adopted by the state fire marshal;
- F. criteria and procedures for making disbursements pursuant to grant and loan programs authorized from the recycling and illegal dumping fund;
- G. requirements and procedures for contracting with counties, municipalities, Indian nations, pueblos and tribes, land grant communities and cooperative associations for the abatement of illegal dumpsites and recycling;
- H. requirements and procedures for a scrap tire manifest system;
- I. a fee schedule applicable to scrap tire haulers and tire recycling facilities not exceeding the estimated cost of investigating and issuing permits and registrations and conducting regulatory oversight of permitted and registered activities; and
- J. a fee schedule applicable to scrap tire generators not exceeding the estimated cost of conducting regulatory oversight of scrap tire generators.

Chapter 171 Section 9 Laws 2005

Section 9. SCRAP TIRE MANIFEST SYSTEM.--A scrap tire generator who transports or offers for transportation, scrap tires for offsite handling, altering, storage, disposal or for any combination thereof shall complete a scrap tire manifest pursuant to rules adopted by the board. Upon demand, the manifest for every generator whose scrap tire load is transported shall be shown to an officer of the motor transportation division of the department of public safety, the New Mexico state police, a local law enforcement officer or the secretary or the secretary's designee.

Chapter 171 Section 10 Laws 2005

Section 10. SOLID WASTE PERMIT EXEMPTION.--A person operating a tire recycling facility under a permit issued pursuant to the Recycling and Illegal Dumping Act shall not be required to obtain a permit for that facility pursuant to the Solid Waste Act.

Chapter 171 Section 11 Laws 2005

Section 11. ABATEMENT OF ILLEGAL DUMPSITE.--

A. The department may bring an abatement action pursuant to the provisions of Section 30-8-8 NMSA 1978 to eliminate an illegal dumpsite.

B. The secretary may act administratively to eliminate illegal dumpsites pursuant to the provisions of the Recycling and Illegal Dumping Act.

C. Nothing in this section shall prohibit a municipality, county, Indian nation, pueblo or tribe, land grant community or cooperative association from contracting for services to complete an abatement action.

Chapter 171 Section 12 Laws 2005

Section 12. AUTHORIZATION FOR ABATEMENT CONTRACTS.--The secretary may contract with the governing body of a county, municipality, Indian nation, pueblo or tribe, land grant community or cooperative association for the abatement of illegal dumpsites located within the boundaries of the county, municipality, Indian nation, pueblo or tribe, land grant community, cooperative association or solid waste authority. The contract shall provide for the reimbursement of the county, municipality, Indian nation, pueblo or tribe, land grant community or cooperative association for expenses incurred in bringing an abatement action, including court costs, reasonable attorney fees and the actual expense of elimination of the illegal dumpsite if that expense is not recovered from and paid by the owner or operator of the illegal dumpsite as a result of the abatement action.

Chapter 171 Section 13 Laws 2005

Section 13. ENFORCEMENT--COMPLIANCE ORDERS.--

A. Whenever the secretary determines that a person has violated or is violating any requirement or prohibition of the Recycling and Illegal Dumping Act, a rule adopted pursuant to that act or a 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 and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation or both; and

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. A compliance order issued pursuant to this section may include a suspension or revocation of a permit or portion of the permit issued by the secretary. A penalty assessed in the compliance order shall not exceed five thousand dollars (\$5,000) per day of noncompliance for each violation.

C. A compliance order issued pursuant to this section shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance.

D. A compliance 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 a request, the secretary promptly shall 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 a recommendation to the secretary, who shall make the final decision.

E. The secretary may seek enforcement of the order by filing an action for enforcement in the district court.

F. Upon request of a party, the secretary may issue subpoenas for the attendance and testimony of witnesses at the hearing and for the production of relevant documents. The secretary shall adopt procedural rules for the conduct of the hearing, including provisions for discovery.

G. In determining the amount of a penalty authorized to be assessed pursuant to this section, the secretary shall take into account the seriousness of the violation, good-faith efforts of the violator to comply with applicable requirements of the Recycling and Illegal Dumping Act or rules issued pursuant to its provisions and other relevant factors.

Chapter 171 Section 14 Laws 2005

Section 14. ENFORCEMENT--FIELD CITATIONS.--

A. The board shall implement a field citation program by adopting rules 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 local government authorities or employees of the department as designated by the secretary.

B. A field citation issued pursuant to this section shall be final unless the person named in the citation files a written request for a public hearing with the

secretary no later than fifteen days after the date on which the field citation is served on the person, in which case the enforcement of the field citation shall be suspended pending the issuance of a final order of the secretary after a public hearing. The procedures for scheduling and conducting a hearing on and for final disposition of a field citation shall be the same as those provided for a compliance order pursuant to the Recycling and Illegal Dumping Act.

C. Payment of a civil penalty required by a field citation issued pursuant to this section shall not be a defense to further enforcement by the department to correct a continuing violation or to assess the maximum statutory penalty pursuant to the provisions of the Recycling and Illegal Dumping Act if the violation continues.

D. In determining the amount of a penalty to be assessed pursuant to this section, the secretary or the person issuing a field citation shall take into account the seriousness of the violation, good-faith efforts of the violator to comply with the applicable requirements of the Recycling and Illegal Dumping Act or rules issued pursuant to its provisions and other relevant factors.

E. In connection with a proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery.

Chapter 171 Section 15 Laws 2005

Section 15. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS.

--A person adversely affected by an administrative action taken by the secretary pursuant to the provisions of the Recycling and Illegal Dumping Act may appeal the action pursuant to Section 39-3-1.1 NMSA 1978.

Chapter 171 Section 16 Laws 2005

Section 16. PENALTY--CRIMINAL.--

A. A person who knowingly violates Section 4 of the Recycling and Illegal Dumping Act:

(1) is guilty of a misdemeanor if the violation involves a quantity of scrap tires or tire-derived products that is less than five thousand pounds and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(2) is guilty of a fourth degree felony if the violation involves a quantity of scrap tires or tire-derived products that is five thousand pounds or greater and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who knowingly omits any substantive information or knowingly makes a false substantive statement or representation required pursuant to the Recycling and Illegal Dumping Act or rule adopted pursuant to the provisions of that act is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

Chapter 171 Section 17 Laws 2005

Section 17. GRANTS--ELIGIBILITY--APPLICATIONS.--

A. A municipality, county, Indian nation, pueblo or tribe, land grant community, cooperative association or solid waste authority that meets eligibility requirements established by the board may apply for a grant for providing funds to public landfills to offset the cost of collecting or recycling of tires or submit a competitive bid for a loan or contract for development costs or operating costs to establish a recycling facility, purchase equipment, perform marketing, purchase products produced by a recycling facility, provide educational outreach, develop recycling infrastructure, abate illegal dumpsites or contract with vendors to promote recycling and to abate illegal dumpsites consistent with provisions of the Recycling and Illegal Dumping Act. The first priority for funding shall be abatement of illegal scrap tire dumpsites and the recycling of scrap tires.

B. A grant, loan or contract for processing shall not be awarded pursuant to the Recycling and Illegal Dumping Act to a person who receives less than ninety-five percent of recyclable materials from sources in New Mexico.

C. Nothing in this section prohibits a municipality, county, Indian nation, pueblo or tribe, land grant community or cooperative association from contracting for services to complete an abatement action.

D. At least two-thirds of budgeted grant money in each fiscal year shall be allocated to tire abatement and recycling programs, and one-third of budgeted grant money in each fiscal year shall be allocated to abatement of illegal dumping and recycling of other solid wastes.

Chapter 171 Section 18 Laws 2005

Section 18. RUBBERIZED ASPHALT PROGRAM.--The department of transportation may use rubberized asphalt in paving mixtures for state and local highway projects and to pay added expenses that may result from using rubberized asphalt. The department of transportation shall adopt rules for the administration of the rubberized asphalt program, including the development of procedures for disbursement of money to municipalities and counties for the use of rubberized asphalt in paving mixtures and shall develop paving specifications for the use of rubberized asphalt.

Chapter 171 Section 19 Laws 2005

Section 19. RECYCLING AND ILLEGAL DUMPING FUND CREATED.--The "recycling and illegal dumping fund" is created in the state treasury. Fees and penalties collected pursuant to the Recycling and Illegal Dumping Act shall be deposited into the fund. Money in the fund is appropriated to the department for abatement of illegal dumpsites, for processing, transportation or recycling of all recyclable materials and scrap tires, for providing funds to public landfills in New Mexico to offset the cost of collecting or recycling of tires and for carrying out the provisions of the Recycling and Illegal Dumping Act. Any unexpended or unencumbered balance or income earned from the money in the recycling and illegal dumping fund remaining at the end of a fiscal year shall not revert to the general fund. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary's designee.

Chapter 171 Section 20 Laws 2005

Section 20. RUBBERIZED ASPHALT FUND CREATED.--The "rubberized asphalt fund" is created in the state treasury. Money in the fund is appropriated to the department of transportation to pay additional expenses that might result from using rubberized asphalt paving mixes, to allocate at least fifty percent of the fund to local governments for that purpose and to carry out the provisions of the rubberized asphalt program, including hiring a term employee to administer the program. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of transportation or the secretary's designee. Any unexpended or unencumbered balance remaining in the rubberized asphalt fund at the end of a fiscal year shall not revert to the general fund.

Chapter 171 Section 21 Laws 2005

Section 21. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

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

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

(1) to each municipality, county or fee agent operating a motor vehicle field office:

(a) an amount equal to six dollars (\$6.00) per driver's license and three dollars (\$3.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal to fifty cents (\$.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Section 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

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

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

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

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department for the manufacture and issuance of a special registration plate collected pursuant to the section of law authorizing the issuance of the specialty plate; 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 department of transportation, 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 recycling and illegal dumping fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) fifty cents (\$.50) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(13) to the highway infrastructure fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) one dollar (\$1.00) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section

66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state;

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978; and

(16) to the local government division of the department of finance and administration, an amount equal to the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for distribution to each county to support animal control spaying and neutering programs in an amount proportionate to the number of residents of that county who have purchased pet care special registration plates pursuant to Section 66-3-424.3 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Chapter 171 Section 22 Laws 2005

Section 22. SAVING CLAUSE--CONTINUING EFFECT OF PRIOR ACTIONS.--
Repeal of the Tire Recycling Act does not affect the validity of regulations enacted pursuant to the Tire Recycling Act, which shall continue in force and effect until amended or repealed. Repeal of the Tire Recycling Act does not affect prior violations

of the Tire Recycling Act or regulations enacted pursuant to the Tire Recycling Act. All permits and registrations issued pursuant to the Tire Recycling Act shall remain in effect until they expire or they are suspended, revoked or otherwise modified.

Chapter 171 Section 23 Laws 2005

Section 23. REPEAL.--Sections 74-11-1 through 74-11-17 NMSA 1978 (being Laws 1994, Chapter 117, Sections 1 through 17 and Laws 1994, Chapter 126, Sections 1 through 17, as amended) are repealed.

SENATE FLOOR SUBSTITUTE FOR

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 142

Approved April 5, 2005

LAWS 2005, CHAPTER 172

AN ACT

RELATING TO WATER; CREATING THE INDIAN WATER RIGHTS SETTLEMENT FUND; PROVIDING FOR LEGISLATIVE APPROVAL OF CERTAIN INDIAN WATER RIGHTS SETTLEMENTS; MAKING AN APPROPRIATION.

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

Chapter 172 Section 1 Laws 2005

Section 1. INDIAN WATER RIGHTS SETTLEMENTS--APPROVAL OF SETTLEMENTS--REPORTS.--

A. Upon congressional authorization of funding of the federal government's portion of the costs of an Indian water rights settlement, the state engineer shall notify the legislature of the amount of the state's portion of the costs necessary to implement the settlement. Upon joint resolution of the legislature, the interstate stream commission may expend money in the Indian water rights settlement fund to implement the terms of the approved settlement.

B. On or before November 15 of each year, the state engineer and the interstate stream commission shall report to the appropriate legislative interim committee dealing with Indian affairs and to the legislative finance committee on:

(1) the status of proposed Indian water rights settlements requiring state financing;

(2) the distribution of funds from the Indian water rights settlement fund to implement approved settlements; and

(3) recommendations on the level of funding for the Indian water rights settlement fund necessary to timely implement Indian water rights settlements.

C. As used in Sections 1 and 2 of this act:

(1) "Indian water rights settlement" means an agreement between the state and a tribe, but not exclusive of any other party as appropriate, that resolves all of the tribe's water rights claims and that has been approved by the United States congress; and

(2) "tribe" means a federally recognized Indian nation, tribe or pueblo.

Chapter 172 Section 2 Laws 2005

Section 2. INDIAN WATER RIGHTS SETTLEMENT FUND.--The "Indian water rights settlement fund" is created in the state treasury to facilitate the implementation of the state's portion of Indian water rights settlements. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the Indian water rights settlement fund shall be used to pay the state's portion of the costs necessary to implement Indian water rights settlements approved by the legislature and the United States congress. The interstate stream commission shall administer the fund and money in the fund is appropriated to the commission to carry out the purposes of the fund. Money in the fund shall be disbursed on warrants of the secretary of finance and administration pursuant to vouchers signed by an authorized representative of the interstate stream commission.

Chapter 172 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 172, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 173

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR A GAINING ACCESS INTO NATURE PROGRAM ADMINISTERED BY THE STATE GAME COMMISSION; MAKING AN APPROPRIATION.

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

Chapter 173 Section 1 Laws 2005

Section 1. A new section of Chapter 17, Article 4 NMSA 1978 is enacted to read:

"GAINING ACCESS INTO NATURE PROGRAM--POLICY--ADDITIONAL POWERS OF STATE GAME COMMISSION.--

A. It is the policy of the state of New Mexico to encourage and promote wildlife-associated recreation in New Mexico and to provide for public participation in the use of available natural resources in a manner that will benefit the general public in its enjoyment of public assets and the state and its political subdivisions in increased economic development.

B. To implement the state policy, the state game commission shall develop and administer a "gaining access into nature program" pursuant to the provisions of this section.

C. In addition to its other powers, in order to develop and administer the gaining access into nature program, the state game commission may:

(1) designate areas and properties under its control where activities other than hunting, fishing and trapping are available to the public;

(2) designate activities that may take place on properties under its control and designate conditions and qualifications for the activities;

(3) enter into partnership and joint powers agreements, leases and other contractual arrangements with other state agencies, private landowners and other private entities to jointly administer, promote and expand the gaining access into nature program;

(4) issue permits, special use licenses and other authorizations for access to individuals and organizations to access state game commission properties for purposes of participating in gaining access into nature programs and charge fees for the access privileges; provided that the fees do not exceed the reasonable costs associated with developing and administering the gaining access into nature program;

(5) engage in public outreach programs to identify through public meetings, surveys and educational programs the interests of the public that may be best served by the gaining access into nature program;

(6) adopt such rules as it deems necessary for programs, events or other activities to properly implement the goals and the administration of the gaining access into nature program; and

(7) subject to appropriation by the legislature, expend money from the game protection fund necessary to develop and administer the gaining access into nature program, including:

(a) the reasonable costs of improving habitat and properties in order to make them suitable for the public uses intended;

(b) costs of personnel necessary to service the properties being used for the program and to provide informational and interpretive services on the properties;

(c) the reasonable costs of maintenance and repair of habitat and properties being used for public access under the provisions of this section; and

(d) costs associated with issuing permits, licenses and other authorizations for access.

D. All money collected from issuing and selling gaining access into nature permits, licenses and other authorizations for access shall be deposited in the game protection fund."

SENATE BILL 145

Approved April 5, 2005

LAWS 2005, CHAPTER 174

AN ACT

RELATING TO STATE PARKS; PROVIDING FOR THE SALE OF STATE PARK PASSES BY PRIVATE VENDORS.

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

Chapter 174 Section 1 Laws 2005

Section 1. A new section of Chapter 16, Article 2 NMSA 1978 is enacted to read:

"STATE PARK PASSES--VENDORS.--The director of the state parks division of the energy, minerals and natural resources department may authorize vendors to sell state park passes, permits and other state park products in compliance with rules adopted by the secretary. A vendor authorized to sell park passes, permits or other state park products may retain a portion of the sale price."

SENATE BILL 192

Approved April 5, 2005

LAWS 2005, CHAPTER 175

AN ACT

RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE
STREAM COMMISSION.

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

Chapter 175 Section 1 Laws 2005

Section 1. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"INTERSTATE STREAM COMMISSION--ADDITIONAL POWERS--STRATEGIC
WATER RESERVE.--

A. The interstate stream commission shall establish a strategic water reserve and may purchase or lease from willing sellers or lessors or receive through donation surface water or water rights or storage rights to compose the reserve. The commission may also purchase or lease from willing sellers or lessors or receive by donation underground water or water rights for the strategic water reserve for cessation of pumping or limited short-term stream augmentation. At no time shall the use of water or water rights held by the strategic water reserve result in an increase in net depletions in any basin. The commission shall pay no more than the appraised market value to purchase or lease water or water rights and storage rights for the strategic water reserve. The commission may accept money or grants from federal or other governmental entities or other persons to purchase or lease water or water rights for the strategic water reserve and to pay administrative costs. The commission shall not acquire water or water rights that are served by or owned by an acequia or community ditch established pursuant to Chapter 73, Articles 2 and 3 NMSA 1978 for inclusion in

the strategic water reserve. The commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Chapter 73, Article 10 NMSA 1978, except through contractual arrangement with the district board of directors or as a special water users association established pursuant to Chapter 73, Article 10 NMSA 1978, but nothing in this section shall be construed to authorize the interstate stream commission to acquire water rights contrary to Section

72-1-2.4 NMSA 1978. The commission shall acquire only water rights that have sufficient seniority and consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve. The commission shall not acquire water or water rights for the strategic water reserve by condemnation. Water in the strategic water reserve shall not be subject to forfeiture pursuant to Chapter 72 NMSA 1978. Water or water rights shall only be acquired with the explicit approval of the commission.

B. Water and water rights in the strategic water reserve shall be used to:

(1) assist the state in complying with interstate stream compacts and court decrees; or

(2) assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species. Management of water pursuant to this subsection shall be done in conjunction with collaborative programs or processes where they exist. Use of the strategic water reserve pursuant to this paragraph shall be limited to aquatic or obligate riparian species.

C. The interstate stream commission shall develop river reach or ground water basin priorities for the acquisition of water or water rights and storage rights for the strategic water reserve in consultation with the New Mexico interstate stream compact commissioners, the office of the state engineer and the attorney general's office. For each river reach or ground water basin, additional prioritization shall be developed in coordination with the governing bodies of the following organizations within the affected river reach or ground water basin:

(1) Indian nations, tribes and pueblos;

(2) boards of county commissioners;

(3) municipalities;

(4) special districts established pursuant to Chapter 73 NMSA 1978;

(5) soil and water conservation districts;

(6) water authorities; and

(7) water planning regions.

Nothing in this section shall modify or repeal any authority currently vested in any organization described in this subsection.

D. The interstate stream commission may sell or lease water or water rights from the strategic water reserve at no less than the appraised market value. The commission may sell water rights only if the rights are no longer necessary for the purposes for which they were acquired for the reserve; provided that water rights in the reserve shall not be sold to the United States. Pursuant to a sale of water rights from the strategic water reserve by the interstate stream commission, the commission shall first make the offer of sale for the original purpose of use. Proceeds of any sale are appropriated to the office of the state engineer to adjudicate water rights. Proceeds of any leases are appropriated to the interstate stream commission for carrying out the purposes of the strategic water reserve.

E. Water or water rights acquired for the strategic water reserve or water or water rights sold or leased from the reserve shall remain in their river reach or ground water basin of origin.

F. Transactions with members of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978 shall provide for the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

G. Cumulative impacts of the strategic water reserve acquisitions and uses shall not adversely affect existing water users or delivery systems.

H. The interstate stream commission shall adopt rules consistent with the terms of this section, including rules to ensure:

(1) that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve;

(2) adequate public notice in each affected area for the acquisition or disposal of water rights; and

(3) that the office of the state engineer transfer procedures shall be followed.

I. The interstate stream commission shall annually report to the appropriate committee of the legislature on the status of the strategic water reserve."

FOR SENATE BILL 123

Approved April 5, 2005

LAWS 2005, CHAPTER 176

AN ACT

RELATING TO ENERGY CONSERVATION; ENACTING THE ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING ACT; PROVIDING PROCEDURES FOR INSTALLING ENERGY EFFICIENCY MEASURES IN STATE AND SCHOOL DISTRICT BUILDINGS; AUTHORIZING THE ISSUANCE OF ENERGY EFFICIENCY BONDS.

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

Chapter 176 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Energy Efficiency and Renewable Energy Bonding Act".

Chapter 176 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Energy Efficiency and Renewable Energy Bonding Act:

- A. "authority" means the New Mexico finance authority;
- B. "bonds" means energy efficiency bonds;
- C. "department" means the energy, minerals and natural resources department;
- D. "energy efficiency measure" means a modification or improvement to a building or complex of buildings that is designed to reduce energy consumption or operating costs or that provides a renewable energy source 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;

(6) energy recovery systems;

(7) on-site photovoltaics, solar heating and cooling systems or other renewable energy systems; or

(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;

E. "fund" means the energy efficiency and renewable energy bonding fund;

F. "school district" means a political subdivision of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code;

G. "school district building" means a building, the title to which is held by a school district; and

H. "state building" means a building, the title to which is held by the state or an agency of the state.

Chapter 176 Section 3 Laws 2005

Section 3. STATE PLAN FOR ENERGY EFFICIENCY MEASURES.--

A. The department shall develop a state plan for the installation, no later than the end of fiscal year 2010, of energy efficiency measures in state buildings and school district buildings. The plan shall include the maximum amount of on-site renewable energy measures possible while retaining the overall revenue-neutral status of the plan, such that the total cost of the plan is covered entirely by the combined energy cost savings of both the renewable energy and other energy efficiency measures undertaken. In addition, the plan shall include a schedule for funding and installing the energy efficiency measures that gives priority to those projects that will realize significant energy cost savings in the shortest time frame. The department shall develop the plan:

(1) for energy efficiency measures in state buildings in conjunction with the property control division of the general services department, the staff architect of the division, the capitol buildings planning commission and other state agencies with control and management over buildings; and

(2) for energy efficiency measures in school district buildings, in conjunction with the public education department, the public school capital outlay council and the public school facilities authority.

B. State agencies and school districts shall cooperate with the department in the development and the implementation of the plan.

Chapter 176 Section 4 Laws 2005

Section 4. CONTRACTS FOR THE INSTALLATION OF ENERGY EFFICIENCY MEASURES.--Pursuant to the Procurement Code, the department shall install or enter into contracts for the installation of energy efficiency measures at one or more of the state buildings and school district buildings identified in the state plan. The installation or contracts shall address provisions concerning payment schedules, monitoring, inspecting, measuring and warranties as are necessary to ensure that the energy efficiency measures will be installed and the energy cost savings realized in the manner most beneficial to the state; provided that bonds shall not be issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act without a finding by the department that the energy cost savings realized from the energy efficiency measures will be greater than the debt service due on the bonds issued to finance the energy efficiency measures.

Chapter 176 Section 5 Laws 2005

Section 5. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND--PLEDGE OF MONEY IN THE FUND.--

A. The "energy efficiency and renewable energy bonding fund" is created as a special fund within the authority. The fund shall be administered by the authority as a special account. The fund shall consist of gross receipts tax revenues distributed to the fund by law, money transferred to the fund pursuant to the provisions of the Energy Efficiency and Renewable Energy Bonding Act and other transfers and appropriations made to the fund. Earnings of the fund shall be credited to the fund. Any unexpended or unencumbered balance in the energy efficiency and renewable energy bonding fund shall revert to the general fund at the end of a fiscal year.

B. Money in the fund shall be pledged irrevocably by the authority for the payment of principal and interest on all bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Money in the fund is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the 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 authority shall estimate the amount needed to make debt service payments on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act plus the amount that may be needed for any required reserves, administrative expenses or the obligations coming due during the next twelve months from the fund. Amounts that revert to the general fund from the energy efficiency and renewable energy bonding fund may be appropriated by the legislature to the department for the purposes of carrying out the provisions of the Energy Efficiency and Renewable Energy Bonding Act.

D. Upon payment or defeasance of all principal, interest and other expenses or obligations related to the bonds, the authority shall certify to the public education department, the department of finance and administration and the secretary of taxation and revenue that all obligations for the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act have been discharged and shall direct that distributions cease to the fund pursuant to that act and the Tax Administration Act.

E. The bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act shall be payable solely from the fund or 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. A breach of any contractual obligation incurred pursuant to that act shall not 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 fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the 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 fund is dedicated as provided in this section.

Chapter 176 Section 6 Laws 2005

Section 6. CALCULATION OF COST SAVINGS--TRANSFERS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND.--

A. Upon the installation of energy efficiency measures in a state building or school district building, the department shall calculate the estimated energy cost savings, in the form of lower utility payments by the school district or the state, that will be annually realized as a result of the installation of the energy efficiency measures. The department shall certify the estimate to the department of finance and administration and the general services department or other state agency with jurisdiction, in the case of state buildings, and to the department of finance and

administration, the public education department and the school district, in the case of school district buildings.

B. In the case of a school district building, when calculating the state equalization guarantee distribution pursuant to Section 22-8-25 NMSA 1978, the public education department shall deduct ninety percent of the amount certified for the school district by the department.

C. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

D. Prior to June 30 of each year, the total amount deducted for all school districts pursuant to Subsection B of this section shall be transferred to the fund.

E. In the case of a state building, the department of finance and administration shall deduct from the operating budget of the agency responsible for paying the utilities of the state building ninety percent of the amount certified for the agency by the department.

F. Deduction from the operating budget of the agency responsible for paying the utilities of the state building shall cease when the agency's cumulative deductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

G. Prior to June 30 of each year, the total amount deducted for all agencies and all state buildings pursuant to Subsection D of this section shall be transferred from the appropriate funds to the energy efficiency and renewable energy bonding fund.

Chapter 176 Section 7 Laws 2005

Section 7. ENERGY EFFICIENCY BONDS AUTHORIZED--CONDITIONS--PROCEDURE.--

A. The authority is authorized to issue and sell from time to time revenue bonds, known as "energy efficiency bonds", in an amount outstanding at any one time not to exceed twenty million dollars (\$20,000,000), payable solely from the fund, in compliance with the Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act for the purpose of installing energy efficiency measures when the department has certified the need for the bonds and the conditions of Subsection C of this section have been satisfied.

B. The net proceeds from the bonds are appropriated to the department for the purpose of making payments for the installation of energy efficiency measures pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

C. Bonds shall not be issued pursuant to this section unless:

(1) the department has committed to install or has entered into one or more contracts pursuant to Section 4 of the Energy Efficiency and Renewable Energy Bonding Act for the installation of energy efficiency measures and the resulting energy cost savings will be realized within a reasonable time;

(2) considering the timeliness and amount of energy cost savings estimated to be realized from the energy efficiency measures, the department has certified the approximate date when the energy cost savings are most likely to equal or exceed the debt service due on the bonds to be issued to fund the energy efficiency measures;

(3) the life of energy efficiency measures meets or exceeds the life of the bonds allocable to those energy efficiency measures as determined by the department and the authority; and

(4) based on the department's certification, the debt service on the bonds has been structured by the authority to preclude the annual debt service payments due until the date that the cost savings equal or exceed the debt service.

D. Each series of bonds shall be issued pursuant to the provisions of the New Mexico Finance Authority Act, except as otherwise provided in the Energy Efficiency and Renewable Energy Bonding Act.

Chapter 176 Section 8 Laws 2005

Section 8. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

A. The Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of energy efficiency 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. Energy efficiency 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.

Chapter 176 Section 9 Laws 2005

Section 9. BONDS TAX EXEMPT.--All energy efficiency bonds shall be exempt from taxation by the state or any of its political subdivisions.

Chapter 176 Section 10 Laws 2005

Section 10. ANNUAL REPORT REQUIRED.--No later than December 1 of each year, the department shall report to the legislature and to the governor on its activities during the previous fiscal year in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act. The report shall include:

- A. details concerning all payments made for the installation of energy efficiency measures;
 - B. details concerning all expenditures made in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act;
 - C. a list of all buildings in which energy efficiency measures were installed;
 - D. details showing how the energy cost savings were calculated;
 - E. an analysis of whether the program has been cost-effective;
 - F. a report showing progress made in complying with the state plan developed pursuant to Section 3 of the Energy Efficiency and Renewable Energy Bonding Act and, if in noncompliance, a plan for achieving compliance in the future;
 - G. a summary of activities being conducted during the present fiscal year;
- and
- H. any additional information that will assist the legislature and the governor in evaluating the program.

Chapter 176 Section 11 Laws 2005

Section 11. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy efficiency and renewable energy bonding fund from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act as determined by the New Mexico finance authority. 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."

Chapter 176 Section 12 Laws 2005

Section 12. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act. The school district shall budget and expend twenty percent of the total revenue receipts for capital outlay.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978. The school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; and

(2) seventy-five percent of grants from the federal government as assistance to those 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". The

school district shall budget and expend twenty percent of the grant receipts for capital outlay.

D. To determine the amount of the state equalization guarantee distribution, the secretary of public education shall:

(1) calculate the number of program units to which each school district is entitled using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the state board; or

(3) calculate the number of program units to which a school district with a MEM of two hundred or less is entitled by using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the secretary of public education determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6), (7) and (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district to the state general fund."

Chapter 176 Section 13 Laws 2005

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 32, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 177

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR THE MANAGEMENT OF LAND AND WATER BY THE STATE GAME COMMISSION FOR HABITAT; PROVIDING FOR A HABITAT MANAGEMENT STAMP; CREATING A FUND; MAKING AN APPROPRIATION.

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

Chapter 177 Section 1 Laws 2005

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, unless otherwise provided by law, and the fund, including all earned income therefrom, shall not be transferred to another fund. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.

B. The state game commission shall have authority to:

(1) establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves or to close large areas to hunting;

(4) purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges of a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races;

(15) adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the department of game and fish of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or his designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal;

(16) as necessary, designate areas of the state in which bear-proof garbage containers are required on public and private lands to reduce potential human-bear interactions; and

(17) pursuant to appropriation by the legislature, expend money from the game protection fund and the habitat management fund for the improvement, maintenance, development and operation of property for fish and wildlife habitat management.

C. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

D. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

E. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978."

Chapter 177 Section 2 Laws 2005

Section 2. A new section of Chapter 17, Article 4 NMSA 1978 is enacted to read:

"HABITAT MANAGEMENT STAMP--FUND--EXPENDITURE FOR HABITAT MANAGEMENT--EXCEPTION.--

A. On and after April 1, 2006, each of the following licenses or permits shall include a habitat management stamp. The fee for a habitat management stamp shall be three dollars (\$3.00). Each of the following licenses or permits shall not be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check off or other official mark, that the fee for the habitat management stamp has been paid, provided that an individual purchaser shall be required to purchase only one stamp each license year, regardless of the number of licenses or permits purchased by that purchaser:

(1) a resident or nonresident license specified in Section 17-3-13 NMSA 1978; or

(2) a wildlife-associated recreation permit issued by the state game commission pursuant to Section 17-1-4 NMSA 1978.

B. Revenue from the sale of habitat management stamps shall be deposited in the "habitat management fund", hereby created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and revenue from the sale of habitat management stamps deposited in the fund. Earnings from investment

of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the department of game and fish.

C. Upon appropriation by the legislature, money in the habitat management fund may be expended by the state game commission only for the improvement, maintenance, development and operation of property for fish and wildlife habitat management.

D. A habitat management stamp shall not be required for persons under the age of eighteen."

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 78, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 178

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; AMENDING THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT TO ALLOW FOR ADDITIONAL SURETIES TO GUARANTEE PERFORMANCE; AMENDING THE PROCUREMENT CODE TO CLARIFY THAT CERTAIN CONTRACTS MAY PROVIDE FOR BOTH DESIGN AND INSTALLATION.

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

Chapter 178 Section 1 Laws 2005

Section 1. Section 6-23-4 NMSA 1978 (being Laws 1993, Chapter 231, Section 4, as amended) is amended to read:

"6-23-4. GUARANTEED UTILITY SAVINGS CONTRACT--PERFORMANCE GUARANTEE REQUIRED.--A governmental unit shall not enter into a guaranteed utility savings contract unless a performance guarantee that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that guarantee becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance guarantee in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including

insurance, satisfactory to the governmental unit and its approving agency. The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the qualified provider in the guaranteed utility savings contract."

Chapter 178 Section 2 Laws 2005

Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984, Chapter 65, Section 84, as amended) is amended to read:

"13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR USE.--

A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.

B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.

C. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

D. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

E. The governor shall appoint an advisory committee to provide assistance in development of rules for the implementation of this section. The advisory committee shall include one representative from the New Mexico building and construction trades council, American federation of labor - congress for industrial organizations, and a representative of:

(1) the associated general contractors - New Mexico building
branch;

(2) the New Mexico chapter of the national electrical contractors
association;

(3) the New Mexico sheet metal contractors association;

- (4) the mechanical contractors association of New Mexico;
- (5) the New Mexico association of counties;
- (6) the New Mexico municipal league;
- (7) the public education department;
- (8) the construction industries commission;
- (9) the Rio Grande underground contractors association;
- (10) the American subcontractors association

of New Mexico;

(11) the higher education community; and

(12) the general public, who is not associated with the construction industry and who will serve as chair of the committee."

Chapter 178 Section 3 Laws 2005

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

"CONTRACTS FOR THE DESIGN AND INSTALLATION OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES.--A state agency or a local public body may solicit competitive sealed proposals for a contract that provides for both the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act."

HOUSE BILL 720, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 179

AN ACT

RELATING TO TAXATION; PROVIDING FOR COMPENSATING TAX DEDUCTIONS FOR CERTAIN BIOMASS-RELATED MATERIALS AND EQUIPMENT.

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

Chapter 179 Section 1 Laws 2005

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--COMPENSATING TAX--BIOMASS-RELATED EQUIPMENT--BIOMASS MATERIALS.--

A. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due.

B. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due.

C. As used in this section:

(1) "biobased products" means products created from plant- or crop-based resources such as agricultural crops and crop residues, forestry, pastures and rangelands that are normally made from petroleum;

(2) "biofuels" means biomass converted to liquid or gaseous fuels such as ethanol, methanol, methane and hydrogen;

(3) "biomass material" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and

manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste; and

(4) "biopower" means biomass converted to produce electrical and thermal energy."

HOUSE BILL 995

Approved April 5, 2005

LAWS 2005, CHAPTER 180

AN ACT

RELATING TO FINANCE; EXPANDING THE TYPE OF PROJECTS ELIGIBLE FOR PLANNING GRANTS; REQUIRING GRANTS TO BE REPAID IN CERTAIN INSTANCES; RENAMING THE WATER AND WASTEWATER PLANNING FUND.

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

Chapter 180 Section 1 Laws 2005

Section 1. Section 6-21-6.4 NMSA 1978 (being Laws 2002, Chapter 26, Section 2) is amended to read:

"6-21-6.4. LOCAL GOVERNMENT PLANNING FUND--CREATION--ADMINISTRATION--PURPOSES.--

A. The "local government planning fund" is created within the authority, which shall be administered by the authority. The authority shall adopt rules necessary to administer the fund.

B. The following shall be deposited directly into the local government planning fund:

(1) the net proceeds from the sale of bonds issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978 for the purposes of the local government planning fund and payable from the public project revolving fund;

(2) money appropriated by the legislature to implement the provisions of this section; and

(3) any other public or private money dedicated to the fund.

C. Money in the local government planning fund is appropriated to the authority to make grants to qualified entities to evaluate and to estimate the costs of implementing the most feasible alternatives for meeting water and wastewater public project needs or to develop water conservation plans, long-term master plans or economic development plans and to pay administrative costs of the local government planning program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the local government planning fund. Grants may be made from the fund only with the agreement of the qualified entity to reimburse the fund for the amount of the grant when financing from any source other than the authority is subsequently received by the qualified entity for the public project.

E. The authority may make grants from the local government planning fund to qualified entities without specific authorization by law for each grant."

Chapter 180 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 304, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 181

AN ACT

RELATING TO TAXATION; EXPANDING CRITERIA FOR ELIGIBILITY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT.

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

Chapter 181 Section 1 Laws 2005

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--LIMITATIONS--
-
DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit".

B. A person is eligible for the renewable energy production tax credit if the person:

(1) holds title to a qualified energy generator; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.

D. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

E. As used in this section:

(1) "biomass" means agricultural or animal waste; thinnings from trees less than fifteen inches in diameter, slash and brush; lumbermill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

(2) "qualified energy generator" means a facility with at least ten megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions

technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

- (a) solar light;
- (b) solar heat;
- (c) wind; or
- (d) biomass.

F. A person that holds title to a facility generating electricity from a qualified energy resource or one that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of Paragraph (2) of this subsection;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

H. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

I. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection F or G of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

J. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

K. The renewable energy production tax credit may be deducted from the taxpayer's New Mexico corporate income tax liability for a taxable year. If the amount of the tax credit claimed exceeds the taxpayer's corporate income tax liability, the excess may be carried forward for up to five consecutive taxable years."

Chapter 181 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

HOUSE TAXATION AND REVENUE COMMITTEE
SUBSTITUTE FOR HOUSE ENERGY AND NATURAL
RESOURCES COMMITTEE SUBSTITUTE
FOR HOUSE BILL 950

Approved April 5, 2005

LAWS 2005, CHAPTER 182

AN ACT

RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE
STREAM COMMISSION.

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

Chapter 182 Section 1 Laws 2005

Section 1. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"INTERSTATE STREAM COMMISSION--ADDITIONAL POWERS--STRATEGIC WATER RESERVE.--

A. The interstate stream commission shall establish a strategic water reserve and may purchase or lease from willing sellers or lessors or receive through donation surface water or water rights or storage rights to compose the reserve. The commission may also purchase or lease from willing sellers or lessors or receive by donation underground water or water rights for the strategic water reserve for cessation of pumping or limited short-term stream augmentation. At no time shall the use of water or water rights held by the strategic water reserve result in an increase in net depletions in any basin. The commission shall pay no more than the appraised market value to purchase or lease water or water rights and storage rights for the strategic water reserve. The commission may accept money or grants from federal or other governmental entities or other persons to purchase or lease water or water rights for the strategic water reserve and to pay administrative costs. The commission shall not acquire water or water rights that are served by or owned by an acequia or community ditch established pursuant to Chapter 73, Articles 2 and 3 NMSA 1978 for inclusion in the strategic water reserve. The commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Chapter 73, Article 10 NMSA 1978, except through contractual arrangement with the district board of directors or as a special water users association established pursuant to Chapter 73, Article 10 NMSA

1978, but nothing in this section shall be construed to authorize the interstate stream commission to acquire water rights contrary to Section 72-1-2.4 NMSA 1978. The commission shall acquire only water rights that have sufficient seniority and consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve. The commission shall not acquire water or water rights for the strategic water reserve by condemnation. Water in the strategic water reserve shall not be subject to forfeiture pursuant to Chapter 72 NMSA 1978. Water or water rights shall only be acquired with the explicit approval of the commission.

B. Water and water rights in the strategic water reserve shall be used to:

(1) assist the state in complying with interstate stream compacts and court decrees; or

(2) assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species. Management of water pursuant to this subsection shall be done in conjunction with collaborative programs or processes where they exist. Use of the strategic water reserve pursuant to this paragraph shall be limited to aquatic or obligate riparian species.

C. The interstate stream commission shall develop river reach or ground water basin priorities for the acquisition of water or water rights and storage rights for the strategic water reserve in consultation with the New Mexico interstate stream compact commissioners, the office of the state engineer and the attorney general's office. For each river reach or ground water basin, additional prioritization shall be developed in coordination with the governing bodies of the following organizations within the affected river reach or ground water basin:

(1) Indian nations, tribes and pueblos;

(2) boards of county commissioners;

(3) municipalities;

(4) special districts established pursuant to Chapter 73 NMSA 1978;

(5) soil and water conservation districts;

(6) water authorities; and

(7) water planning regions.

Nothing in this section shall modify or repeal any authority currently vested in any organization described in this subsection.

D. The interstate stream commission may sell or lease water or water rights from the strategic water reserve at no less than the appraised market value. The commission may sell water rights only if the rights are no longer necessary for the purposes for which they were acquired for the reserve; provided that water rights in the reserve shall not be sold to the United States. Pursuant to a sale of water rights from the strategic water reserve by the interstate stream commission, the commission shall first make the offer of sale for the original purpose of use. Proceeds of any sale are appropriated to the office of the state engineer to adjudicate water rights. Proceeds of any leases are appropriated to the interstate stream commission for carrying out the purposes of the strategic water reserve.

E. Water or water rights acquired for the strategic water reserve or water or water rights sold or leased from the reserve shall remain in their river reach or ground water basin of origin.

F. Transactions with members of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978 shall provide for the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

G. Cumulative impacts of the strategic water reserve acquisitions and uses shall not adversely affect existing water users or delivery systems.

H. The interstate stream commission shall adopt rules consistent with the terms of this section, including rules to ensure:

(1) that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve;

(2) adequate public notice in each affected area for the acquisition or disposal of water rights; and

(3) that the office of the state engineer transfer procedures shall be followed.

I. The interstate stream commission shall annually report to the appropriate committee of the legislature on the status of the strategic water reserve."

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILL 195

Approved April 5, 2005

LAWS 2005, CHAPTER 183

AN ACT

RELATING TO COUNTIES; EXPANDING THE SCOPE OF COUNTIES THAT QUALIFY FOR DISTRIBUTIONS PURSUANT TO THE SMALL COUNTIES ASSISTANCE ACT; INCREASING DISTRIBUTIONS TO COUNTIES PURSUANT TO THAT ACT WHEN THE SMALL COUNTIES ASSISTANCE FUND BALANCE EXCEEDS CERTAIN PLANNED DISTRIBUTIONS; CREATING A NEW DISTRIBUTION CATEGORY.

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

Chapter 183 Section 1 Laws 2005

Section 1. Section 4-61-2 NMSA 1978 (being Laws 1982, Chapter 44, Section 2, as amended) is amended to read:

"4-61-2. DEFINITIONS.--As used in the Small Counties Assistance Act:

A. "adjustment factor" means a fraction, the numerator of which is the net taxable value of the state for the property tax year prior to the year in which the amount of small counties assistance is being determined and the denominator of which is the net taxable value for property tax year 2002; the adjustment factor shall be calculated without reference to assessed value determined pursuant to the Oil and Gas Ad Valorem Production Tax Act, assessed value determined pursuant to the Oil and Gas Production Equipment Ad Valorem Tax Act or taxable value determined pursuant to the Copper Production Ad Valorem Tax Act;

B. "ceiling valuation" means:

(1) for the 2002 property tax year, one billion four hundred million dollars (\$1,400,000,000); and

(2) for each subsequent property tax year, an amount equal to the product obtained by multiplying one billion four hundred million dollars (\$1,400,000,000) by the adjustment factor for the year;

C. "demographer" means the bureau of business and economic research at the university of New Mexico;

D. "inflation factor" means a fraction whose numerator is the annual implicit price deflator index for state and local government purchases of goods and services, as published in the United States department of commerce monthly publication entitled "Survey of Current Business" or any successor publication prepared by an agency of the United States and adopted by the department of finance and

administration, for the calendar year one year prior to the year in which the distribution is to be made and whose denominator is the annual index for the year two years prior to the year in which the distribution is to be made; provided that, if the inflation factor is calculated to have a value less than one, it shall be deemed to have a value of one;

E. "population" means the official population shown by the most recent federal decennial census or, if there is a change in boundaries after the date of the census, "population" for each affected unit shall be the most current estimated population for that unit provided in writing by the demographer; provided that after five years from the first day of the calendar year of the most recent federal decennial census, that census shall not be used, and "population" for the period from that date until the date when the next following official final decennial census population data are available shall be the most current estimated population provided in writing by the demographer;

F. "qualifying county" means a county that has:

(1) for the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, imposed a property tax rate for general county purposes pursuant to Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at least eight dollars eighty-five cents (\$8.85) per one thousand dollars (\$1,000) of net taxable value;

(2) by July 1 of the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, received a written certification from the director of the property tax division of the taxation and revenue department that the county assessor of that county has implemented an acceptable program of maintaining current and correct property values for property taxation purposes as required by Section 7-36-16 NMSA 1978 or has submitted to the director an acceptable plan for the implementation of such a program;

(3) on July 1 of the year in which any distribution under the Small Counties Assistance Act is made to the county, a population of not more than forty-eight thousand;

(4) imposed county gross receipts tax increments authorized pursuant to Section 7-20E-9 NMSA 1978 totaling at least three-eighths percent and has those increments in effect on July 1 of the year in which a distribution is made, provided that this paragraph does not apply to a county if the county's valuation for property taxation purposes does not exceed the product of two hundred thirty million dollars (\$230,000,000) multiplied by the adjustment factor for the year; and

(5) a total valuation for the property tax year preceding the year in which a distribution pursuant to the Small Counties Assistance Act for that county is to be made that is no greater than the ceiling valuation for that property tax year; and

G. "total valuation" means the sum for a jurisdiction for a property tax year of the net taxable value determined pursuant to the Property Tax Code, the assessed value determined pursuant to the Oil and Gas Ad Valorem Production Tax Act, the assessed value determined pursuant to the Oil and Gas Production Equipment Ad Valorem Tax Act and the taxable value determined pursuant to the Copper Production Ad Valorem Tax Act."

Chapter 183 Section 2 Laws 2005

Section 2. Section 4-61-3 NMSA 1978 (being Laws 1982, Chapter 44, Section 3, as amended) is amended to read:

"4-61-3. SMALL COUNTIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small counties assistance fund" is created within the state treasury.

B. On or before September 1, 2003 and on or before September 1 of each subsequent year, the demographer shall certify in writing to the department of finance and administration the population of the state and of each county as of June 30 of the year.

C. On or before September 15, 2003 and on or before September 15 of each subsequent year, the secretary of finance and administration shall certify to the state treasurer with respect to each qualifying county:

- (1) its population as certified by the demographer;
- (2) its total valuation for the preceding property tax year; and
- (3) the distribution amount calculated for it.

D. The distribution amount for each qualifying county shall be determined for 2003 and each subsequent year in accordance with the following table; provided that the bracket amounts in the first two columns of the table shall be adjusted annually after 2003 by the adjustment factor. The bracket amounts in the last column shall be adjusted annually after 2005 by the inflation factor. The department of finance and administration may round the results of the adjustments made pursuant to this subsection to the nearest one thousand dollars (\$1,000).

If the county's total valuation for the preceding property tax year is:

at least:	but less than:	and the county	then the distribution
		population is:	amount is:

\$0	\$100,000,000	under 1,000	\$450,000
\$0	\$100,000,000	at least 1,000	
		but under 4,000	
		\$325,000	
\$0	\$100,000,000	at least 4,000	\$250,000
\$100,000,000	\$230,000,000	under 12,000	\$175,000
\$100,000,000	\$230,000,000	at least 12,000	\$125,000
\$230,000,000	\$1,400,000,000	under 48,000	\$ 75,000.

E. If the balance in the small counties assistance fund as of the preceding August 31 exceeds the sum of the distributions to be made to qualifying counties pursuant to the provisions of Subsection D of this section, the department of finance and administration shall increase the distribution amount for each county receiving a distribution amount pursuant to the provisions of Subsection D of this section by:

(1) thirty-five thousand dollars (\$35,000) if the county has imposed and has in effect on July 1 of the year in which the distribution is to be made a county correctional facility gross receipts tax at a rate of at least one-eighth percent;

(2) fifteen thousand dollars (\$15,000) if the county has imposed and has in effect on July 1 of the year in which the distribution is to be made a county gross receipts tax increment of one-sixteenth percent; or

(3) fifty thousand dollars (\$50,000) if the county has met the requirements of Paragraphs (1) and (2) of this subsection.

F. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions determined pursuant to Subsection D of this section plus the distribution increases authorized pursuant to Subsection E of this section, the distribution increases pursuant to Subsection E of this section shall be proportionately reduced.

G. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions to be made to qualifying counties, the department of finance and administration shall reduce each qualifying county's calculated distribution by a percentage computed by dividing the amount by which the fund is insufficient by the sum of all the calculated distributions and shall certify the reduced amounts as the qualifying counties' distributions.

H. Any interest accruing from the temporary investment of the small counties assistance fund shall be credited to the general fund.

I. On or before September 30, 2003 and on or before September 30 of each subsequent year, the state treasurer shall distribute to each county for whom a distribution has been certified for that year the amount certified for that county for that year. If the balance in the fund as of the preceding August 31 exceeds the sum of certified amounts distributed, the difference shall revert to the general fund.

J. If any date specified in Subsection B, C or I of this section falls on a Saturday, Sunday or legal holiday, any action required to be performed as provided in those subsections is timely if performed on the next day that is not a Saturday, Sunday or legal holiday."

HOUSE BILL 432, AS AMENDED

Approved April 5, 2005

LAWS 2005, CHAPTER 184

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; REPEALING THE BUSINESS DEVELOPMENT CORPORATION ACT; MAKING AN APPROPRIATION.

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

Chapter 184 Section 1 Laws 2005

Section 1. APPROPRIATION--ECONOMIC DEVELOPMENT INITIATIVES--
FUND TRANSFER.--

A. The following amounts are appropriated from the business development corporation fund to the economic development department for expenditure in fiscal year 2006:

(1) one hundred thousand dollars (\$100,000) for hydrogen and fuel cell technologies development;

(2) two hundred thousand dollars (\$200,000) for the New Mexico main street program; and

(3) two hundred thousand dollars (\$200,000) for the development of business and job opportunities with respect to land grants, tribes and rural communities.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

C. The balance of the business development corporation fund, after the appropriations made in Subsection A of this section, shall be transferred to the general fund.

Chapter 184 Section 2 Laws 2005

Section 2. REPEAL.--Sections 53-7-18 through 53-7-46 NMSA 1978 (being Laws 1983, Chapter 312, Sections 1 through 10, Laws 1988, Chapter 30, Section 1 and Laws 1983, Chapter 312, Sections 12 through 29, as amended) are repealed.

Chapter 184 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is July 1, 2005.

HOUSE BILL 1053, AS AMENDED,

WITH CERTIFICATE OF CORRECTION

Approved April 5, 2005

LAWS 2005, CHAPTER 185

AN ACT

RELATING TO TAXATION; EXEMPTING PUBLICLY TRADED PARTNERSHIPS FROM INFORMATION RETURN FILING REQUIREMENTS PURSUANT TO THE WITHHOLDING TAX ACT.

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

Chapter 185 Section 1 Laws 2005

Section 1. Section 7-3-12 NMSA 1978 (being Laws 1999, Chapter 14, Section 3, as amended) is amended to read:

"7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH ENTITY--WITHHOLDING.--

A. A pass-through entity doing business in this state shall file an annual information return with the department on or before the due date of the entity's federal return for the taxable year. The information return shall be signed by the business manager or one of the owners of the pass-through entity.

B. The information return required by this section shall contain all information required by the department, including:

- (1) the pass-through entity's gross income;
- (2) the pass-through entity's net income;
- (3) the amount of each owner's share of the pass-through entity's net income; and
- (4) the name, address and tax identification number of each owner entitled to a share of net income.

C. A pass-through entity shall provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

D. The pass-through entity shall deduct and withhold from each nonresident owner's share of net income an amount equal to the owner's share of net income multiplied by a rate set by department regulation. In the case of an owner that is an individual or entity not taxed as a corporation for federal income tax purposes for the taxable year, the rate shall not exceed the rate for composite returns. In the case of an owner that is a corporation or other entity taxed as a corporation for the taxable year, the rate shall not exceed the maximum rate for corporate income tax.

E. The provisions of Subsection D of this section shall not apply with regard to:

- (1) the share of net income of a nonresident owner that has executed an agreement in accordance with regulations or instructions of the department that the owner will report and pay tax, if required, on its own return pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act;
- (2) oil and gas proceeds subject to the Oil and Gas Proceeds Withholding Tax Act; or
- (3) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code, as may be amended or renumbered, and that is not treated as a corporation pursuant to that section.

F. Amounts deducted from the owner's share of net income under the provisions of this section shall be a collected tax. No owner shall have a right of action against the pass-through entity for any amount deducted and withheld from the owner's share of net income."

Chapter 185 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of this act are applicable to taxable years beginning on or after January 1, 2005.

SENATE BILL 30

Approved April 6, 2005

LAWS 2005, CHAPTER 186

AN ACT

RELATING TO WATER; PROVIDING PROCEDURES FOR PROSECUTING VIOLATIONS OF LAWS CONCERNING THE MISUSE OF WATER AND INTERFERENCE WITH EASEMENTS FOR OR ACCESS TO CERTAIN IRRIGATION DITCHES; CREATING AND INCREASING PENALTIES; PROVIDING FOR CIVIL REMEDIES.

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

Chapter 186 Section 1 Laws 2005

Section 1. Section 73-2-5 NMSA 1978 (being Laws 1933, Chapter 65, Section 1, as amended) is amended to read:

"73-2-5. DITCH OVER LAND OF ANOTHER--EASEMENT--RIGHT OF SERVIENT OWNER--PENALTY.--

A. Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation for five years, it shall be conclusively presumed as between the parties that a grant has been made by the owners of the land, upon which such ditch is located, for the use of the same and it is unlawful to interfere with that easement or prevent access to the ditch by the owner of the dominant estate as provided by law; provided that nothing herein contained shall be construed to prevent the owner of a servient estate from making any alterations or changes in the location of any ditch upon his land, so long as such alteration or change of location shall not interfere with the use of or access to such ditch by the owner of the dominant estate.

For the purposes of this section, the easement created pursuant to this section shall be adequate to allow for reasonable maintenance, use and improvements to the ditch.

B. In the case of a community ditch or acequia, a criminal complaint for a violation of the provisions of Subsection A of this section may be made by the district attorney or the mayordomo or commission of the ditch or acequia to the magistrate court in the county where the violation occurred. A person convicted of violating the provisions of Subsection A of this section is guilty of a misdemeanor and on conviction, the defendant shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) or sentenced up to ninety days imprisonment in the county jail, or both.

C. In the case of a community ditch or acequia, in addition to criminal prosecution, the district attorney or the mayordomo or commission of the ditch or acequia may file a civil complaint seeking a civil penalty not to exceed five thousand dollars (\$5,000) for knowingly, intentionally or willfully violating the provisions of Subsection A of this section.

D. The remedies provided for in this section shall not be construed as limiting the right of the party bringing the civil or criminal complaint from seeking damages. In addition to the remedies provided in this section, the district attorney, mayordomo or commission of the ditch or acequia or owner of the dominant estate may apply to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section."

Chapter 186 Section 2 Laws 2005

Section 2. Section 73-2-64 NMSA 1978 (being Laws 1923, Chapter 81, Section 1) is amended to read:

"73-2-64. INTERFERENCE WITH DITCH--ILLEGAL WATER USE--PENALTY--FAILURE TO PROSECUTE--INJUNCTIVE RELIEF.--

A. A person shall not, contrary to the order of the mayordomo or commission, cut, break, stop up or otherwise interfere with any community ditch or dam in this state, or any contra or lateral acequia thereof, or take or use water from the same contrary to such orders. A person who violates a provision of this section is guilty of a misdemeanor, and, on complaint made before the nearest magistrate court, a warrant may issue for his arrest, as in case of any other offense against the state.

B. A criminal complaint for violations of the provisions of Subsection A of this section may be made by the district attorney or the mayordomo or commission of the ditch or acequia to the magistrate court in the county where the violation occurred. Upon conviction of a violation, the defendant shall be fined not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000) and in default of the payment

of said fine, shall be confined in the county jail for a period of not less than five nor more than thirty days.

C. In addition to criminal prosecution, the district attorney or the mayordomo or commission of the ditch or acequia may file a civil complaint seeking a civil penalty not to exceed five thousand dollars (\$5,000) for knowingly, intentionally or willfully violating the provisions of Subsection A of this section.

D. The remedies provided for in this section shall not be construed as limiting the right of the party bringing the civil or criminal complaint from seeking damages. In addition to the remedies provided in this section, the district attorney or the mayordomo or commission of the ditch or acequia may apply to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section.

E. It is the duty of the mayordomo in charge of any such ditch or acequia to prosecute in the name of the state any violation of this section whenever the mayordomo acquires knowledge thereof, and the mayordomo's failure so to do shall be deemed a misdemeanor; provided, however, that if the district attorney chooses to prosecute, the mayordomo shall not be required to do so. On conviction of violating the provisions of this subsection, the mayordomo shall be fined in a sum not less than twenty-five dollars (\$25.00) or more than fifty dollars (\$50.00) or by imprisonment in the county jail for not less than ten or more than thirty days."

SENATE CONSERVATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 102, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 187

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; REQUIRING OPPORTUNITY FOR MEDIATION WITHIN SIXTY DAYS AFTER FILING AN ACTION FOR A PRIVATE REMEDY.

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

Chapter 187 Section 1 Laws 2005

Section 1. Section 57-12-10 NMSA 1978 (being Laws 1967, Chapter 268, Section 8, as amended) is amended to read:

"57-12-10. PRIVATE REMEDIES.--

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required. Relief granted for the copying of an article shall be limited as to the prevention of confusion or

misunderstanding as to source.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Practices Act may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

C. The court shall award attorney fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action that was groundless.

D. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

E. In any class action filed under this section, the court may award damages to the named plaintiffs as provided in Subsection B of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. A party to a court action for a private remedy pursuant to this section may request in writing during the thirty-day period following service of the summons and complaint on all parties named in the action that the parties attempt to settle the claim in early mediation. If a request for mediation is made, the parties shall choose a mutually acceptable mediator and enter into mediation within sixty days of the appointment of an acceptable mediator unless otherwise agreed by the parties. A request for mediation may be rescinded at any time if agreed to by all parties.

G. If the parties do not agree on a mutually acceptable mediator, the court shall appoint the mediator. If the early mediation pursuant to this section is entered into within sixty days following the appointment of the mediator, the parties suing on the

basis of unfair, deceptive or unconscionable trade practices or acts under the Unfair Practices Act shall be required to pay no more than fifty dollars (\$50.00) toward the cost of the mediation and the other party shall pay the remainder of such cost, unless otherwise agreed by the parties. If a person is seeking injunctive relief in accordance with Subsection A of this section, the person may pursue the claim for injunctive relief without following the mediation requirements of this subsection and Subsection F of this section."_____

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 118

Approved April 6, 2005

LAWS 2005, CHAPTER 188

AN ACT

RELATING TO INDIAN CHILDREN; REQUIRING CONSIDERATION OF CULTURAL NEEDS IN INDIAN CHILD PLACEMENT; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Chapter 188 Section 1 Laws 2005

Section 1. Section 32A-18-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 227) is amended to read:

"32A-18-4. CULTURAL AWARENESS--CULTURALLY APPROPRIATE PLACEMENTS.--

A. An Indian child placed in foster care, preadoptive placement, adoptive placement or a secure facility shall be allowed to maintain the child's cultural ties and shall be permitted to participate in activities that strengthen cultural awareness.

B. An Indian child placed in a secure facility shall be permitted to participate in activities that strengthen cultural awareness. A representative of the child's culture shall be allowed access to the secure facility to provide activities that strengthen cultural awareness; provided that the activities are restricted to the premises of the secure facility.

C. Upon determining that a placement out of the home is medically necessary for an Indian child, the interagency behavioral health purchasing collaborative and its contractors shall make reasonable efforts to place the child with a licensed residential treatment center, group home or treatment foster care home that

provides culturally competent care and access to appropriate cultural practices, including traditional treatment, as determined in consultation with the child's tribe."

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 214

Approved April 6, 2005

LAWS 2005, CHAPTER 189

AN ACT

RELATING TO CHILDREN; MAKING REVISIONS TO THE CHILDREN'S CODE; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 32A NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE NMSA 1978 BY REPEALING LAWS 2003, CHAPTER 225, SECTION 10.

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

Chapter 189 Section 1 Laws 2005

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

- A. "adult" means a person who is eighteen years of age or older;
- B. "child" means a person who is less than eighteen years old;
- C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;
- D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;
- E. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means a person appointed as a guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law;

I. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

J. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

K. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

L. "Indian tribe" means a federally recognized Indian tribe, community or group pursuant to

25 U.S.C. § 1903(1);

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food,

shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

O. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child;

P. "permanency plan" means a determination by the court that the child's interest will be served best by:

(1) reunification

(2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement;

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

S. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

T. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

U. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

V. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

W. "tribunal" means any judicial forum other than the court."

Chapter 189 Section 2 Laws 2005

Section 2. Section 32A-1-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 15, as amended) is amended to read:

"32A-1-6. CHILDREN'S COURT ATTORNEY.--

A. The "office of children's court attorney" is established in each judicial district. Except as provided by Subsection C, D or E of this section, each district attorney is the ex-officio children's court attorney for the judicial district of the district attorney.

B. Except as provided by Subsection C, D or E of this section, the children's court attorney may represent the state in any matter arising under the Children's Code when the state is the petitioner or complainant. The children's court attorney shall represent the petitioner in matters arising under the Children's Code when, in the discretion of the judge, the matter presents legal complexities requiring representation by the children's court attorney, whether or not the state is petitioner or complainant, but not in those matters when there is a conflict of interest between the petitioner or complainant and the state. A petitioner or complainant may be represented by counsel in any matter arising under the Children's Code.

C. In cases involving civil abuse or civil neglect and the periodic review of their dispositions, the attorney selected by and representing the department is the children's court attorney. The attorney selected by and representing the department shall provide the district attorney of the appropriate judicial district with a copy of any abuse or neglect petition filed in that judicial district. Upon the request of the district attorney, the attorney selected by and representing the department shall provide the district attorney with reports, investigations and pleadings relating to any abuse or neglect petition.

D. In cases involving families in need of court-ordered services, the periodic review of their dispositions and voluntary placements, the attorney selected by and representing the department is the children's court attorney. The attorney selected by and representing the department shall provide the district attorney of the appropriate judicial district with a copy of any family in need of court-ordered services petition filed in that judicial district. Upon the request of the district attorney, the attorney selected by

and representing the department shall provide the district attorney with reports, investigations and pleadings relating to any family in need of court-ordered services petition.

E. In cases involving a child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act that also involves civil abuse, civil neglect or a family in need of court-ordered services, the attorney selected by and representing the department is the children's court attorney. In cases involving a child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act that does not also involve civil abuse, civil neglect or a family in need of court-ordered services, the district attorney is the ex-officio children's court attorney.

F. In those counties where the children's court attorney has sufficient staff and the workload requires it, the children's court attorney may delegate children's court functions to a staff attorney."

Chapter 189 Section 3 Laws 2005

Section 3. Section 32A-1-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 16, as amended) is amended to read:

"32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

A. A guardian ad litem shall zealously represent the child's best interests in the proceeding for which the guardian ad litem has been appointed and in any subsequent appeals.

B. Unless excused by a court, a guardian ad litem appointed to represent a child's best interests shall continue the representation in any subsequent appeals.

C. Any party may petition the court for an order to remove a guardian ad litem on the grounds that the guardian ad litem has a conflict of interest or is unwilling or unable to zealously represent the child's best interests.

D. After consultation with the child, a guardian ad litem shall convey the child's declared position to the court at every hearing.

E. Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall:

(1) meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Children's Code;

(2) communicate with health care, mental health care and other professionals involved with the child's case;

(3) review medical and psychological reports relating to the child and the respondents;

(4) contact the child prior to any proposed change in the child's placement;

(5) contact the child after changes in the child's placement;

(6) attend local substitute care review board hearings concerning the child and if unable to attend the hearings, forward to the board a letter setting forth the child's status during the period since the last local substitute care review board review and include an assessment of the department's permanency and treatment plans;

(7) report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans and the child's degree of participation during visitations; and

(8) represent and protect the cultural needs of the child.

F. A guardian ad litem may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the children's court. When a guardian ad litem retains separate counsel to represent the child, the guardian ad litem shall provide the court with written notice within ten days of retaining the separate counsel. A guardian ad litem shall not retain or subsequently obtain any pecuniary interest in an action filed on behalf of the child outside of the jurisdiction of the children's court.

G. In the event of a change of venue, the originating guardian ad litem shall remain on the case until a new guardian ad litem is appointed by the court in the new venue and the new guardian ad litem has communicated with and received all pertinent information from the former guardian ad litem.

H. A guardian ad litem shall receive notices, pleadings or other documents required to be provided to or served upon a party. A guardian ad litem may file motions and other pleadings and take other actions consistent with the guardian ad litem's powers and duties.

I. A guardian ad litem shall not serve concurrently as both the child's delinquency attorney and guardian ad litem."

Chapter 189 Section 4 Laws 2005

Section 4. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended by Laws 1999, Chapter 46, Section 1 and also by Laws 1999, Chapter 78, Section 1) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Services Act;

(3) a neglected child;

(4) an abused child;

(5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in

accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child."

Chapter 189 Section 5 Laws 2005

Section 5. Section 32A-1-9 NMSA 1978 (being Laws 1993, Chapter 77, Section 18, as amended) is amended to read:

"32A-1-9. VENUE AND TRANSFER.--

A. Proceedings in the court under the provisions of the Children's Code shall begin in the county where the child resides. If delinquency is alleged, the proceeding may also be begun in the county where the act constituting the alleged delinquent act occurred or in the county in which the child is detained. Neglect, abuse, family in need of court-ordered services or mental health proceedings may also begin in the county where the child is present when the proceeding is commenced.

B. The venue for proceedings under other laws will be determined by the venue provisions of the other laws. If the other laws contain no venue provisions, then the venue and transfer provisions of Subsections A and C of this section apply.

C. If a proceeding is begun in a court for a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition of the proceeding, may transfer the proceeding to the court for the county of the child's residence for such further proceedings as the receiving court deems proper. A like transfer may be made if the residence of the child changes during or after the proceeding. Certified copies of all legal and social records pertaining to the proceeding shall accompany the case on transfer.

D. In neglect, abuse, family in need of court-ordered services or adoption proceedings for the placement of an Indian child, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, the Indian child's guardian or the Indian child's tribe. The transfer shall be barred if there is an objection to the transfer by a parent of the Indian child or the Indian child's tribe."

Chapter 189 Section 6 Laws 2005

Section 6. Section 32A-1-11 NMSA 1978 (being Laws 1993, Chapter 77, Section 20) is amended to read:

"32A-1-11. PETITION--FORM AND CONTENT.--A petition initiating proceedings pursuant to the provisions of Chapter 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the Matter of _____ a child", and shall set forth with specificity:

A. the facts necessary to invoke the jurisdiction of the court;

B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;

C. the name, birth date and residence address of the child;

D. the name and residence address of the parents, guardian, custodian or spouse, if any, of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the state or if a residence address is unknown, the name of any known adult relative residing within the state or, if there be none, the known adult relative residing nearest to the court;

E. whether the child is in custody or detention pursuant to the Delinquency Act and, if so, the place of custody or detention and the time the child was taken into custody;

F. whether the child is an Indian child; and

G. if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known."

Chapter 189 Section 7 Laws 2005

Section 7. Section 32A-1-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 22, as amended) is amended to read:

"32A-1-13. SUMMONS--SERVICE.--

A. If a party to be served with a summons can be found within the state, the summons shall be served upon the party as provided by the Rules of Civil Procedure for the District Courts at least forty-eight hours before the hearing, except that for a child party to an action pursuant to the Abuse and Neglect Act, service shall be on the child's guardian ad litem or attorney and not personally pursuant to children's court rule.

B. If a party to be served is within the state and cannot be found but the party's address is known, service of the summons may be made by mailing a copy of the summons to the party by certified mail at least fifteen days before the hearing.

C. If after reasonable effort a party to be served cannot be found, or address ascertained, within or without the state, the court may order service of the summons by publication in accordance with the provisions of Rule 1-004 of the Rules of Civil Procedure for the District Courts, in which event the hearing shall not be less than five days after the date of last publication.

D. The court may authorize the payment from court funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing."

Chapter 189 Section 8 Laws 2005

Section 8. Section 32A-1-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 23) is amended to read:

"32A-1-14. NOTICE TO INDIAN TRIBES.--

A. In a case involving a family in need of court-ordered services, if the child is an Indian child, the Indian child's tribe shall be notified when the petition is filed. The form of the notice shall comply with the provisions of the federal Indian Child Welfare Act of 1978.

B. In abuse, neglect or adoption proceedings, if the child is an Indian child, the Indian child's tribe shall be notified. The form of the notice shall comply with the provisions of the federal Indian Child Welfare Act of 1978."

Chapter 189 Section 9 Laws 2005

Section 9. Section 32A-1-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 28) is amended to read:

"32A-1-19. COURT COSTS AND EXPENSES.--

A. The following expenses shall be a charge upon the funds of the court upon their certification by the court:

(1) reasonable compensation for services and related expenses for counsel appointed by the court;

(2) reasonable compensation for services and related expenses of a guardian ad litem or a child's attorney appointed by the court; and

(3) the expenses of service of summonses, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Children's Code.

B. The court may order the parent or other person legally obligated to care for and support a child to pay all or part of the costs and expenses pursuant to Subsection A of this section when:

(1) the child has been found to be a delinquent child, a child of a family in need of court-ordered services, an abused or neglected child or a child with a mental illness or a developmental disability;

(2) the parent or other person legally obligated to care for and support a child is given notice and a hearing to determine the parent or person's financial ability to pay the costs and expenses; and

(3) the court finds that the parent or person is able to pay all or part of the costs and expenses.

Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due or, if costs and expenses have been paid by the court, to the court for remittance to the state. The court may prescribe the manner of payment.

C. Whenever legal custody of an adjudicated child is vested in someone other than the child's parents, including an agency, institution or department of this state, if the court, after notice to the parents or other persons legally obligated to support the child and after a hearing, finds that the parents or other legally obligated persons are financially able to pay all or part of the costs and expenses of the support and treatment, the court may order the parents or other legally obligated persons to pay to the custodian in the manner the court directs a reasonable sum that will cover all or part of the expenses of the support and treatment of the child subsequent to the entry of the custody order. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment. If the parents or other legally obligated persons willfully fail or refuse to pay the sum ordered, the court may proceed with contempt charges and the order for payment may be filed and if filed shall have the effect of a civil judgment."

Chapter 189 Section 10 Laws 2005

Section 10. A new section of the Children's Code General Provisions Act is enacted to read:

"CHILD'S ATTORNEY--POWERS AND DUTIES.--

A. An attorney shall represent a child in a proceeding for which the attorney has been retained or appointed. The attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct.

B. Unless excused by a court, an attorney appointed to represent a child shall represent the child in any subsequent appeals.

C. An attorney representing a child in a proceeding pursuant to the Abuse and Neglect Act may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the children's court. When a child's attorney retains separate counsel to represent the child, the attorney shall provide the court with written notice within ten days of retaining the separate counsel. The child's attorney shall not retain or subsequently obtain any pecuniary interest in an action filed on behalf of the child outside of the jurisdiction of the children's court."

Chapter 189 Section 11 Laws 2005

Section 11. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

(1) an offense pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) driving while under the influence of intoxicating liquor or drugs;

(b) failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) unlawful taking of a vehicle or motor vehicle;

(d) receiving or transferring of a stolen vehicle or motor vehicle;

(e) homicide by vehicle;

(f) injuring or tampering with a vehicle;

(g) altering or changing of an engine number or other vehicle identification numbers;

(h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) an offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include an establishment, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

(3) a violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(4) a violation of the Controlled Substances Act;

(5) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

(6) a violation of Section 30-15-1.1 NMSA 1978 regarding unauthorized graffiti on personal or real property; or

(7) a violation of an order of protection issued pursuant to the provisions of the Family Violence Protection Act;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages

for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

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

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery against a household member, as provided in Subsection C of Section 30-3-16 NMSA 1978;

(f) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(g) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

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

11 NMSA 1978; (i) criminal sexual penetration, as provided in Section 30-9-
NMSA 1978; (j) robbery, as provided in Section 30-16-2 NMSA 1978;
NMSA 1978; (k) aggravated burglary, as provided in Section 30-16-4
1978; or (l) aggravated arson, as provided in Section 30-17-6 NMSA
1978; or (m) abuse of a child that results in great bodily harm or death
to the child, as provided in Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Chapter 189 Section 12 Laws 2005

Section 12. Section 32A-2-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 36) is amended to read:

"32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--NOTICE--TIME WAIVER.--

A. Complaints alleging delinquency shall be referred to probation services, which shall conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken.

B. During the preliminary inquiry on a delinquency complaint, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to Section 32A-2-14 NMSA 1978, and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The child shall be informed of the child's right to remain silent. The preliminary inquiry shall be completed within the time limits set forth in the Children's Court Rules.

C. Prior to a preliminary inquiry being conducted with a child who is detained, the child's parent, guardian or custodian or the child's attorney shall be given reasonable notice by the juvenile probation and parole officer and an opportunity to be present at the preliminary inquiry. If a child is not detained, the preliminary inquiry shall be conducted within thirty days of receipt of the referral from law enforcement. The thirty-day time period may be extended upon a determination by the department that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the child.

D. When a child is in detention or custody and the children's court attorney does not file a petition within the time limits authorized by the Children's Court Rules, the child shall be released immediately. If a child is not detained and a determination is made to file a petition, the petition shall be filed within sixty days of completion of the preliminary inquiry, unless a motion is granted to extend the time limit for good cause shown. If a child is not in custody or detention, a petition shall not be dismissed for failure to comply with the time limit set forth in this subsection unless there is a showing of prejudice to the child.

E. After completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

F. Probation services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law. Probation services shall also recommend a disposition to the children's court attorney.

G. The child, through counsel, and the children's court attorney may agree, without judicial approval, to a waiver of time limitations imposed after a petition is filed. A time waiver defers adjudication of the charges. The children's court attorney may place restrictions on a child's behavior as a condition of a time waiver. If the child completes the agreed upon conditions and no new charges are filed against the child, the pending petition shall be dismissed. If the children's court attorney files a new petition against the child, the children's court attorney may proceed on both the original petition and the new charges. The department shall become a party if probation services are requested as a condition of the time waiver."

Chapter 189 Section 13 Laws 2005

Section 13. Section 32A-2-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 39, as amended) is amended to read:

"32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to the child's parent, guardian or custodian upon their written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court;

(3) deliver the child to a place of detention as provided in Section 32A-2-12 NMSA 1978;

(4) deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or prompt diagnosis; or

(5) deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to himself or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis.

B. When an alleged delinquent child is delivered to a place of detention as provided in Section 32A-2-12 NMSA 1978, only a department employee or a trained county detention professional designated by the department may place the child in detention, in accordance with the criteria for detention set forth in Section 32A-2-11 NMSA 1978. If the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody.

C. A child under the age of eleven shall not be held in detention. If a child under the age of eleven poses a substantial risk of harm to himself or others, a peace officer may detain and transport that child for emergency mental health evaluation and care in accordance with Section 32A-6-11 NMSA 1978.

D. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

E. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules."

Chapter 189 Section 14 Laws 2005

Section 14. Section 32A-2-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 41, as amended) is amended to read:

"32A-2-12. PLACEMENT OR DETENTION.--

A. A child alleged to be a delinquent child may be placed or detained, pending a court hearing, in any of the following places:

(1) a licensed foster home or a home otherwise authorized under the law to provide foster or group care;

(2) a facility operated by a licensed child welfare services agency;

(3) a shelter-care facility provided for in the Children's Shelter Care Act or a detention facility certified by the department for children alleged to be delinquent children;

(4) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and which meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(5) the child's home or place of residence, under conditions and restrictions approved by the court.

B. A child alleged to be a youthful offender may be detained, pending a court hearing, in any of the following places:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children; or

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and that meets the standards for detention facilities pursuant to the Children's Code and federal law.

C. A child adjudicated as a youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a court hearing, in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

D. A child who has previously been incarcerated as an adult or a person eighteen years of age or older shall not be detained in a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

E. A child alleged to be a serious youthful offender may be detained pending a court hearing in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children;

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court which meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

F. When a person who is eighteen years of age or older is taken into custody and transported to an adult facility on a juvenile warrant or an adult warrant or other adult charges and an outstanding juvenile warrant exists, notice shall be given to the children's court attorney and the juvenile probation and parole office in the jurisdiction where the juvenile warrant was issued within one day of the person being taken into custody. The juvenile probation and parole office shall give notice that the person has been taken into custody to the children's court judge and the attorney who represented the person in the juvenile proceeding."

Chapter 189 Section 15 Laws 2005

Section 15. Section 32A-2-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 46, as amended) is amended to read:

"32A-2-17. PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by the department or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the court five days before actual disposition or sentencing:

(1) the adult probation and parole division of the corrections department shall prepare a predisposition report for a serious youthful offender;

(2) the department shall prepare a predisposition report for a serious youthful offender who is convicted of an offense other than first degree murder;

(3) the department shall prepare a predisposition report for a youthful offender concerning the youthful offender's amenability to treatment and if:

(a) the court determines that a juvenile disposition is appropriate, the department shall prepare a subsequent predisposition report; or

(b) the court makes the findings necessary to impose an adult sentence pursuant to Section 32A-2-20 NMSA 1978, the adult probation and parole division of the corrections department shall prepare a subsequent predisposition report; and

(4) the department shall prepare a predisposition report for a delinquent offender, upon the court's request.

B. Where there are indications that the child may have a mental disorder or developmental disability, the court, on motion by the children's court attorney or that of counsel for the child, may order the child to be examined at a suitable place by a physician, a licensed psychologist or a licensed independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court, after a hearing, may order examination by a physician, a licensed psychologist or a licensed independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a delinquent child be transferred to the facility designated by the secretary of the department for a period of not more than fifteen days within a three hundred sixty-five day time period for purposes

of diagnosis, with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered.

E. Once the child is committed, the department shall determine when the child is released. The release shall be any time after commitment, but not more than fifteen days after commitment. Upon petition by the department to the court, the judge may extend the commitment for an additional fifteen days upon good cause shown."

Chapter 189 Section 16 Laws 2005

Section 16. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended by Laws 2003, Chapter 225, Section 10 and by Laws 2003, Chapter 239, Section 5) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parents, siblings and any other person who may significantly affect the child's best interests;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year in a facility for the care and rehabilitation of adjudicated delinquent children. No more than nine months shall be served at the facility and no less than ninety days shall be served on parole, unless: 1) a petition to extend the commitment has been filed prior to the commencement of parole; 2) the commitment has been extended pursuant to Section 32A-2-23 NMSA 1978; or 3) parole is revoked pursuant to Section 32A-2-25 NMSA 1978;

(b) a long-term commitment for no more than two years in a facility for the care and rehabilitation of adjudicated delinquent children. No more than twenty-one months shall be served at the facility and no less than ninety days shall be served on parole, unless: 1) parole is revoked pursuant to Section 32A-2-25 NMSA 1978; or 2) the commitment is extended pursuant to Section 32A-2-23 NMSA 1978;

(c) if the child is a delinquent offender who committed one of the criminal offenses set forth in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless sooner discharged; or

(d) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(2) place the child on probation under those conditions and limitations as the court may prescribe;

(3) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period; or if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the

department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. A child found to be delinquent shall not be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to Subsection B of this section, the court may make an abuse or neglect report for investigation and proceedings as provided for in the Abuse and Neglect Act. The report may be made to a local law enforcement agency, the department or a tribal law enforcement or social service agency for an Indian child residing in Indian country.

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

I. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of Paragraph (6) of Subsection A of Section 32A-2-3 NMSA 1978, the child shall perform

the mandatory community service set forth in Section 30-15-1.1 NMSA 1978. When a child fails to completely perform the mandatory community service, the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation, accompanied by a notice that he is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Chapter 189 Section 17 Laws 2005

Section 17. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether a firearm was used to commit the alleged offense;

(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(5) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;

(6) the record and previous history of the child;

(7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(8) any other relevant factor, provided that factor is stated on the record.

D. If a child has previously been sentenced as an adult pursuant to the provisions of this section, there shall be a rebuttable presumption that the child is not amenable to treatment or rehabilitation as a child in available facilities.

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

G. A child fourteen years of age or older, charged with first degree murder, but not convicted of first degree murder and found to have committed a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is subject to the dispositions set forth in this section.

H. A child fourteen years of age or older charged with first degree murder, but found to have committed a delinquent act that is neither first degree murder nor a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent subject to the dispositions set forth in Section 32A-2-19 NMSA 1978."

Chapter 189 Section 18 Laws 2005

Section 18. Section 32A-2-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 50, as amended) is amended to read:

"32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL DISORDER OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING.--

A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child has or may have a mental disorder or developmental disability, the court may:

(1) order the child detained if appropriate under the criteria established pursuant to the provisions of the Delinquency Act; and

(2) initiate proceedings for the involuntary placement of the child as a minor with a mental disorder or developmental disability pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

B. If the child is placed for residential treatment or habilitation pursuant to the Children's Mental Health and Developmental Disabilities Act, the department shall retain legal custody during the period of involuntary placement or until further order of the court.

C. If a child is committed to a psychiatric hospital for treatment or habilitation and in the event that the department should be required to pay more than four hundred dollars (\$400) per day because of the individualized treatment plan, the annual costs over four hundred dollars (\$400) per child per day will be reported annually by the department to the legislative finance committee.

D. The child may remain in the residential treatment or habilitation facility pending the disposition of the delinquency petition.

E. When a child in departmental custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall request the children's court attorney to petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

F. A child subject to the provisions of the Delinquency Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act.

G. A child's competency to stand trial or participate in his own defense may be raised by a party at any time during a proceeding. If the child has been accused of an act that would be considered a misdemeanor if the child were an adult and the child is found to be incompetent to stand trial, the court shall dismiss the petition with prejudice and may recommend that the children's court attorney initiate proceedings pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. In all other cases, the court shall stay the proceedings until the child is

competent to stand trial; provided that a petition shall not be stayed for more than one year. The court may order treatment to enable the child to attain competency to stand trial and may amend the conditions of release pursuant to Sections 32A-2-11 and 32A-2-13 NMSA 1978. The child's competency to stand trial shall be reviewed every ninety days for up to one year. The court shall dismiss the petition without prejudice if, at any time during the year, the court finds that a child cannot be treated to competency or if, after one year, the court determines that a child is incompetent to stand trial or participate in his own defense. Upon dismissal, the court may recommend that the children's court attorney initiate proceedings pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

H. Involuntary residential treatment shall only occur pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act."

Chapter 189 Section 19 Laws 2005

Section 19. Section 32A-2-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 51, as amended) is amended to read:

"32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT JUDGMENT--
CONSENT DECREE--DISPOSITION.--

A. At any time after the filing of a delinquency petition and before the entry of a judgment, the court may, on motion of the children's court attorney or that of counsel for the child, suspend the proceedings and continue the child under supervision in the child's own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree". An admission of some or all of the allegations stated in the delinquency petition shall not be required for a consent decree order.

B. If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the children's court attorney after consultation with probation services, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for six months unless the child is discharged sooner by probation services. Prior to the expiration of the six-month period and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

D. If either prior to discharge by probation services or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition that would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child for damages arising from the child's conduct.

F. A judge who pursuant to this section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies the allegations; or

(2) a consent decree is granted but the delinquency petition is subsequently reinstated.

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privileges or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent child's driver's license or driving privileges. Nothing in this section shall prohibit the delinquent child from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition

Interlock Licensing Act, and nothing in this section precludes the delinquent child's participation in an appropriate educational, counseling or rehabilitation program."

Chapter 189 Section 20 Laws 2005

Section 20. Section 32A-2-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 52, as amended) is amended to read:

"32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32A-2-19 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child, subject to the provisions of Section 32A-7-8 NMSA 1978;

(2) the supervision of a child after release under Paragraph (1) of this subsection shall be conducted by the department; and

(3) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the provisions of the Delinquency Act.

B. A judgment of probation or protective supervision shall remain in force for an indeterminate period not to exceed the term of commitment from the date entered.

C. A child shall be released by an agency and probation or supervision shall be terminated by juvenile probation and parole services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

D. Prior to the expiration of a short-term commitment of one year, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for up to one six-month period if the court finds that the extension is necessary to safeguard the welfare of the child or the public safety. If a short-term commitment is extended, the mandatory ninety-day parole, as required by Section 32A-2-19 NMSA 1978, shall be included in the extension. Notice and hearing are required for any extension of a juvenile's commitment.

E. Prior to the expiration of a long-term commitment, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to safeguard the welfare of the child or the public safety. If a long-term commitment is extended, the mandatory ninety-day parole, as required by Section 32A-2-19 NMSA 1978, shall be included in the extension. Notice and hearing are required for any extension of a juvenile's commitment.

F. Prior to the expiration of a judgment of probation, the court may extend the judgment for an additional period of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

G. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

H. A child may make a motion to modify a children's court or adult disposition within thirty days of the judge's decision. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency."

Chapter 189 Section 21 Laws 2005

Section 21. Section 32A-2-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 54) is amended to read:

"32A-2-25. PAROLE REVOCATION--PROCEDURES.--

A. A child on parole from an agency that has legal custody who violates a term of parole may be proceeded against in a parole revocation proceeding conducted by the department or the supervising agency or by a hearing officer contracted by the department who is neutral to the child and the agency in accordance with procedures established by the department in cooperation with the juvenile parole board. A juvenile probation and parole officer may detain a child on parole status who is alleged to have violated a term or condition of parole until the completion and review of a preliminary parole revocation hearing. A child may waive the right to a preliminary parole revocation hearing after consultation with the child's attorney, parent, guardian or custodian.

B. If a retake warrant is issued by the department upon the completion of the preliminary parole revocation hearing, the juvenile institution to which the warrant is issued shall promptly transport the child to that institution at the expense of the

department. If a child absconds from parole supervision and is apprehended in another state after the issuance of a retake warrant by the department, the juvenile justice division of the department shall cause the return of the child to this state at the expense of the department."

Chapter 189 Section 22 Laws 2005

Section 22. Section 32A-2-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 56) is amended to read:

"32A-2-27. INJURY TO PERSON OR DESTRUCTION OF PROPERTY--LIABILITY--COSTS AND ATTORNEY FEES--RESTITUTION.--

A. Any person may recover damages not to exceed four thousand dollars (\$4,000) in a civil action in a court or tribunal of competent jurisdiction from the parent or guardian having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this section is limited to the actual damages proved in the action, not to exceed four thousand dollars (\$4,000) taxable court costs and, in the discretion of the court, reasonable attorney fees to be fixed by the court or tribunal.

C. Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by the child when the child has been found to be within the provisions of the Delinquency Act.

D. Nothing contained in this section shall be construed so as to impute liability to any foster parent."

Chapter 189 Section 23 Laws 2005

Section 23. Section 32A-2-30 NMSA 1978 (being Laws 1993, Chapter 77, Section 59) is amended to read:

"32A-2-30. INDIGENCY STANDARD--FEE SCHEDULE--REIMBURSEMENT.--

A. The court shall use a standard adopted and information provided by the public defender department to determine indigency of children in proceedings on petitions alleging delinquency.

B. The court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent children in proceedings on petitions alleging delinquency.

C. The court shall order reimbursement from the parents or guardians of a child who has received or desires to receive legal representation or another benefit under the Public Defender Act after a determination is made that the child was not indigent according to the standard for indigency of children adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund."

Chapter 189 Section 24 Laws 2005

Section 24. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61, as amended) is amended to read:

"32A-2-32. CONFIDENTIALITY--RECORDS.--

A. All social records pertaining to the child, including all related diagnostic evaluations, psychiatric reports, medical reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pre-parole reports and supervision histories obtained by the juvenile probation office, parole officers and parole board or in possession of the department, are confidential and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be disclosed only to:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's attorney or guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (6) corrections department personnel;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) any state government social services agency in any state;

(10) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(11) tribal juvenile justice system and social service representatives;

(12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;

(13) school personnel involved with the child if the records concern the child's educational needs as necessary for the child's educational planning and shall include only that information necessary to provide for the child's educational needs;

(14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;

(15) representatives of the protection and advocacy system;

(16) the child's parent, guardian or legal custodian when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for the treatment or care of the child; and

(17) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor.

D. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Chapter 189 Section 25 Laws 2005

Section 25. Section 32A-3A-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 63) is amended to read:

"32A-3A-1. SHORT TITLE--PURPOSE.--

A. Chapter 32A, Article 3A NMSA 1978 may be cited as the "Family Services Act".

B. The Family Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:

(1) to recognize that many instances of a child's behavior are symptomatic of a family in need of family services; and

(2) to provide prevention, diversion and intervention services for a child or family."

Chapter 189 Section 26 Laws 2005

Section 26. Section 32A-3A-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 64) is amended to read:

"32A-3A-2. DEFINITIONS.--As used in the Family Services Act:

A. "child or family in need of family services" means:

(1) a family whose child's behavior endangers the child's health, safety, education or well-being;

(2) a family whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;

(3) a family in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or

(4) a family in which the child refuses to live with his parent, guardian or custodian; and

B. "family services" means services that address specific needs of the child or family."

Chapter 189 Section 27 Laws 2005

Section 27. Section 32A-3A-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 65) is amended to read:

"32A-3A-3. REQUEST FOR FAMILY SERVICES--WITHDRAWAL OF REQUEST-- PRESUMPTION OF GOOD FAITH.--

A. Any child or family member who has a reasonable belief that the child or family is in need of family services may request family services from the department.

B. Any person who has a reasonable belief that a child or family is in need of family services may submit a referral to the department.

C. A family that requests or accepts family services may withdraw its request for or acceptance of family services at any time.

D. A person who refers a child or family for family services is presumed to be acting in good faith and shall be immune from civil or criminal liability, unless the person acted in bad faith or with malicious purpose."

Chapter 189 Section 28 Laws 2005

Section 28. Section 32A-3A-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 66, as amended) is amended to read:

"32A-3A-4. REFERRAL PROCESS.--

A. The department shall, subject to the availability of resources, design and implement a referral process to assist a child or family in accessing appropriate services.

B. When the child involved in the referral process is an Indian child, the assessment and referral process shall include contact with the Indian child's tribe for the purpose of consulting and exchanging information."

Chapter 189 Section 29 Laws 2005

Section 29. Section 32A-3B-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 73) is amended to read:

"32A-3B-1. SHORT TITLE--PURPOSE.--

A. Chapter 32A, Article 3B NMSA 1978 may be cited as the "Family in Need of Court-Ordered Services Act".

B. The Family in Need of Court-Ordered Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:

(1) through court intervention, to provide services for a family in need of services when voluntary services have been exhausted; and

(2) to recognize that many instances of truancy and running away by a child are symptomatic of a family in need of services and that in some family situations the child and parent are unable to share a residence."

Chapter 189 Section 30 Laws 2005

Section 30. Section 32A-3B-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 76) is amended to read:

"32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME LIMITATIONS.--

A. A law enforcement officer who takes a child into protective custody shall, with all reasonable speed:

(1) inform the child of the reasons for the protective custody; and

(2) contact the department.

B. When the department is contacted by a law enforcement officer who has taken a child into protective custody, the department may:

(1) accept custody of the child and designate an appropriate facility in which to place the child; or

(2) return the child to the child's parent, guardian or custodian if the child's safety is assured.

C. A child taken into protective custody shall not be placed in or transported in a law enforcement vehicle or any other vehicle that contains an adult placed under arrest, unless circumstances exist in which any delay in transporting the child to an appropriate facility would be likely to result in substantial danger to the child's physical safety. When such circumstances exist, the circumstances shall be described in writing by the driver of the vehicle and submitted to the driver's supervisor within two days after the driver transported the child.

D. A child taken into protective custody shall not be held involuntarily for more than two days, unless a petition to extend the custody is filed pursuant to the provisions of the Family in Need of Court-Ordered Services Act or the Abuse and Neglect Act.

E. When a petition is filed or any time thereafter, the children's court or district court may issue an ex-parte custody order based upon a sworn written

statement of facts showing that probable cause exists to believe that protective custody of the child is necessary.

F. The protective custody order shall be served on the respondent by a person authorized to serve arrest warrants and shall direct the law enforcement officer to take custody of the child and deliver the child to a place designated by the court.

G. The Rules of Evidence do not apply to the issuance of an ex-parte custody order."

Chapter 189 Section 31 Laws 2005

Section 31. Section 32A-3B-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 77) is amended to read:

"32A-3B-5. NOTIFICATION TO FAMILY--RELEASE FROM PROTECTIVE CUSTODY.--

A. When the department takes a child into protective custody and the child is not released to the child's parent, guardian or custodian, the department shall provide written notice as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian, with a statement of the reasons for taking the child into protective custody.

B. When the department releases a child placed in protective custody to the family, the department shall refer the family for voluntary family services.

C. When the department releases a child from protective custody and the child's parent, guardian or custodian refuses to allow the child to return home, the department shall file a petition pursuant to the provisions of the Abuse and Neglect Act.

D. If the department is not releasing the child to the parent, guardian or custodian within two days, the department shall notify the tribe if the child is an Indian child."

Chapter 189 Section 32 Laws 2005

Section 32. Section 32A-3B-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 80) is amended to read:

"32A-3B-8. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. In proceedings on a petition alleging a family in need of court-ordered services, the court may appoint counsel if appointment of counsel would serve the interests of justice.

C. In proceedings on a petition alleging a family in need of court-ordered services, the court shall appoint a guardian ad litem for a child under the age of fourteen and an attorney for a child fourteen years of age or older at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem or attorney for the child.

D. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

E. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

F. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a court order."

Chapter 189 Section 33 Laws 2005

Section 33. Section 32A-3B-9 NMSA 1978 (being Laws 1993, Chapter 77, Section 81) is amended to read:

"32A-3B-9. CHANGE IN PLACEMENT.--

A. When a child's placement is changed, including a return to the child's home, written notice of the placement change shall be given to the parties and to the child's tribe if the child is an Indian child ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When a child's guardian ad litem or attorney requests a court hearing to contest the proposed placement change, the department shall not change the child's placement pending the result of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed and notice pursuant to the provisions of Subsection A of this section is not provided, written notice shall be sent to the parties and to the child's tribe if the child is an Indian child within three days after the placement change.

D. Notice pursuant to the provisions of this section is not required for removal of the child from temporary emergency care, emergency foster care or respite care."

Chapter 189 Section 34 Laws 2005

Section 34. Section 32A-3B-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 85) is amended to read:

"32A-3B-13. CONDUCT OF HEARINGS--PENALTY.--

A. All hearings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All hearings regarding a family in need of court-ordered services shall be closed to the general public, subject to the following exceptions:

(1) the parties, the parties' counsel, witnesses and other persons approved by the court may be present at the hearings. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings; and

(2) accredited representatives of the news media shall be allowed to be present at the hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and further subject to enabling regulations the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

C. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Family in Need of Court-Ordered Services Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

D. A person or party granted admission to a closed hearing who intentionally divulges information concerning the hearing in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 189 Section 35 Laws 2005

Section 35. Section 32A-3B-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 89, as amended) is amended to read:

"32A-3B-17. DISPOSITION OF A CHILD WITH A DEVELOPMENTAL DISABILITY OR MENTAL DISORDER--PROCEEDINGS.--

A. If during any stage of a proceeding regarding a family in need of court-ordered services petition the evidence indicates that the child has or may have a developmental disability or a mental disorder, the court may order the department to:

(1) secure an assessment of the child;

(2) prepare appropriate referrals for services for the child; and

(3) if necessary, initiate proceedings for the involuntary placement of the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

B. When a child in department custody needs involuntary placement for residential mental health or developmental disability services, the department shall file a motion for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

C. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Family in Need of Court-Ordered Services Act, may be heard by the court as a part of the family in need of court-ordered services proceedings or may be heard in a separate proceeding. All parties to the family in need of court-ordered services proceedings shall be provided with notice of the involuntary placement hearing.

D. A guardian ad litem appointed pursuant to the Family in Need of Court-Ordered Services Act shall serve as the guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older, the child shall be represented by an attorney unless, after consultation between the child and the child's attorney, the child elects to be represented by counsel appointed by the court in the proceedings under the Children's Mental Health and Developmental Disabilities Act.

E. When a child is subject to the provisions of the Family in Need of Court-Ordered Services Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act shall be filed with the court as part of the family in need of court-ordered services proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided in the Children's Mental Health and Developmental Disabilities Act.

F. The clerk of the court shall maintain a separate section within a child's family in need of court-ordered services file for documents pertaining to actions taken under the Children's Mental Health and Developmental Disabilities Act.

G. A child subject to the provisions of the Family in Need of Court-Ordered Services Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act."

Chapter 189 Section 36 Laws 2005

Section 36. Section 32A-3B-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 94) is amended to read:

"32A-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a family in need of court-ordered services, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports, obtained as a result of an investigation in anticipation of or incident to a family in need of court-ordered services proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and to:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem or attorney;
- (4) the child's attorney representing the child in an abuse or neglect action, a delinquency action or any other action, including a public defender;
- (5) department personnel;
- (6) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) a state or tribal government social services agency of any state;

(10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(11) tribal juvenile justice system and social service representatives;

(12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

(13) school personnel involved with the child, if the records concern the child's social or educational needs;

(14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian or custodian or other family members;

(15) protection and advocacy representatives, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records that are closed to the public pursuant to the provisions of the Children's Code or releases or makes other unlawful use of records in violation of that code is guilty of a petty misdemeanor.

D. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Chapter 189 Section 37 Laws 2005

Section 37. A new section of the Family in Need of Court-Ordered Services Act is enacted to read:

"INDIAN CHILD PLACEMENT--PREFERENCES.--

A. An Indian child accepted in department custody shall be placed in the least restrictive setting that most closely approximates a family in which the child's special needs, if any, may be met. The Indian child shall be placed within reasonable

proximity to the child's home, taking into account any special needs of the child. Preference shall be given to placement with:

- (1) a member of the Indian child's extended family;
- (2) a foster care home licensed, approved and specified by the Indian child's tribe;
- (3) an Indian foster care home licensed or approved by an authorized non-Indian licensing authority; or
- (4) an institution for children approved by the Indian child's tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

B. When the placement preferences set forth in Subsection A of this section are not followed or if the Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural ties are protected and fostered."

Chapter 189 Section 38 Laws 2005

Section 38. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97, as amended) is amended to read:

"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY.--

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;
- (2) the department; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of

the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.

D. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

E. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

F. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 189 Section 39 Laws 2005

Section 39. Section 32A-4-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 98) is amended to read:

"32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

A. Reports alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a court order.

B. During the investigation of a report alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. A representative of the department shall, at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made.

C. After completion of the investigation on a neglect or abuse report, the department shall either recommend or refuse to recommend the filing of a petition.

D. When a child is taken into custody, the department shall file a petition within two days. If a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian."

Chapter 189 Section 40 Laws 2005

Section 40. Section 32A-4-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 99, as amended) is amended to read:

"32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY OF REPORTING PERSON--INVESTIGATION OF REPORT.--

A. In any proceeding alleging neglect or abuse under the Children's Code resulting from a report required by Section 32A-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a

physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32A-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32A-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section or an employee of the department, to interview a child with respect to a report without the permission of the

child's parent or guardian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. An investigation may be conducted by law enforcement, the district attorney's office, a program described in Subsection E of this section and the department. Interviews shall be conducted in a manner and place that protects the child and family from unnecessary trauma and embarrassment. The investigating entity shall conduct the investigation in a manner that will protect the privacy of the child and the family, with the paramount consideration being the safety of the child.

E. If a community has a program for child abuse investigation that includes an investigation interview of the alleged victim, the investigation may be conducted at a site designated by the community program.

F. Prior to interviewing a child, the department shall notify the parent or guardian of the child who is being interviewed, unless the department determines that notification would adversely affect the safety of the child about whom the report has been made or compromise the investigation."

Chapter 189 Section 41 Laws 2005

Section 41. Section 32A-4-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 100) is amended to read:

"32A-4-6. TAKING INTO CUSTODY--PENALTY.--

A. A child may be held or taken into custody:

(1) by a law enforcement officer when the officer has reasonable grounds to believe that the child is suffering from illness or injury as a result of alleged abuse or neglect or has been abandoned or is in danger from the child's surroundings and removal from those surroundings is necessary; or

(2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child or until a law enforcement officer has authorized release of the child to the department.

B. When a child is taken into custody, the department shall make reasonable efforts to determine whether the child is an Indian child.

C. If a child taken into custody is an Indian child and is alleged to be neglected or abused, the department shall give notice to the agent of the Indian child's tribe in accordance with the federal Indian Child Welfare Act of 1978.

D. Any person who intentionally interferes with protection of a child, as provided by Subsection A of this section, is guilty of a petty misdemeanor."

Chapter 189 Section 42 Laws 2005

Section 42. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101, as amended) is amended to read:

"32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(2) deliver the child to the department or to an appropriate shelter-care facility or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a shelter-care facility or a medical facility, the officer shall immediately notify the department that the child has been placed in the department's legal custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to an appropriate shelter-care facility or medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within two days from the date that the child was taken into custody."

Chapter 189 Section 43 Laws 2005

Section 43. Section 32A-4-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 104) is amended to read:

"32A-4-10. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. At the inception of an abuse or neglect proceeding, counsel shall be appointed for the parent, guardian or custodian of the child. The appointed counsel shall represent the parent, guardian or custodian who is named as a party until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court's discretion, appointment of counsel is required in the interest of justice.

C. At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed as guardian ad litem of or attorney for the child. Only an attorney with appropriate experience shall be appointed as guardian ad litem of or attorney for the child.

D. When reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's particular cultural background.

E. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:

(1) the child requests a different attorney;

(2) the guardian ad litem requests to be removed; or

(3) the court determines that the appointment of a different attorney is appropriate.

F. The court shall assure that the child's guardian ad litem zealously represents the child's best interest and that the child's attorney zealously represents the child.

G. A person afforded rights under the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code."

Chapter 189 Section 44 Laws 2005

Section 44. Section 32A-4-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 108) is amended to read:

"32A-4-14. CHANGE IN PLACEMENT.--

A. When the child's placement is changed, including a return to the child's home, written notice shall be sent to the child's guardian ad litem, all parties, the child's CASA, the child's foster parents and the court ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When the child's guardian ad litem requests a court hearing to contest the proposed change, the department shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem, all parties, the child's CASA, the child's foster parents and the court within three days after the placement change.

D. Written notice is not required for removal of a child from temporary emergency care, emergency foster care or respite care. The department shall provide oral notification of the removal to the child's guardian ad litem.

E. Notice need not be given to the parties, other than the child, or to the court when placement is changed at the request of the child's foster parents or substitute care provider. Notice shall be given to the child's guardian ad litem or attorney."

Chapter 189 Section 45 Laws 2005

Section 45. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall return legal custody of the child to his parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;

(2) the child is in immediate danger from his surroundings, and removal from those surroundings is necessary for the child's safety or well-being;

(3) the child will be subject to injury by others if not placed in the custody of the department;

(4) there has been an abandonment of the child by his parent, guardian or custodian; or

(5) the parent, guardian or custodian is not able or willing to provide adequate supervision and care for the child.

D. At the conclusion of the custody hearing, if the court determines that probable cause exists pursuant to Subsection C of this section, the court may:

(1) return legal custody of the child to his parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision by the department; or

(2) award legal custody of the child to the department.

Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.

E. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

F. The Rules of Evidence shall not apply to custody hearings."

Chapter 189 Section 46 Laws 2005

Section 46. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, preadoptive parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

E. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

F. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of neglect or abuse, shall make and record its findings on whether the child is a neglected child, an abused child or both. If the petition alleges that the parent, guardian or custodian has subjected the child to aggravated circumstances, then the court shall also make and record its findings on whether the aggravated circumstances have been proven.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does

not find that the child is neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

I. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

J. On the court's motion or that of a party, the court may continue the hearing on the petition for a period not to exceed thirty days to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody."

Chapter 189 Section 47 Laws 2005

Section 47. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

"32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

- (1) the interaction and interrelationship of the child with his parent, siblings and any other person who may significantly affect the child's best interest;
- (2) the child's adjustment to his home, school and community;
- (3) the mental and physical health of all individuals involved;
- (4) the wishes of the child as to the child's placement;
- (5) the wishes of the child's parent, guardian or custodian as to the child's custody;
- (6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of Section 32A-4-21 NMSA 1978;

(8) the ability of the parent to care for the child in the home so that no harm will result to the child;

(9) whether reasonable efforts were used by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were used to attempt reunification of the child with the natural parent; and

(10) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the department;
or

(3) transfer legal custody of the child to any of the following:

(a) the noncustodial parent, if it is found to be in the child's best interest;

(b) an agency responsible for the care of neglected or abused children; or

(c) a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The court may determine that reasonable efforts are not required to be made when the court finds that:

(1) the efforts would be futile; or

(2) the parent, guardian or custodian has subjected the child to aggravated circumstances.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to a child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf.

J. When the court determines pursuant to Subsection C of this section that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to implement and finalize the permanency plan in a timely manner."

Chapter 189 Section 48 Laws 2005

Section 48. Section 32A-4-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 117, as amended) is amended to read:

"32A-4-23. DISPOSITION OF A CHILD WITH A MENTAL DISORDER OR A DEVELOPMENTAL DISABILITY IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

A. If in a hearing, at any stage of a proceeding on a neglect or abuse petition, the evidence indicates that a child has a mental disorder or a developmental disability, the court shall adjudicate the issue of neglect or abuse under the provisions of the Children's Code.

B. When a child in department custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

C. Any child in department custody who is placed for residential treatment or habilitation pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall remain in the legal custody of the department while in residential treatment or habilitation or until further order of the court.

D. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Abuse and Neglect Act, may be heard by the court as part of the abuse or neglect proceedings or may be heard in a separate proceeding. All parties to the abuse or neglect proceedings shall be provided with notice of the involuntary placement hearing.

E. A guardian ad litem appointed pursuant to the Abuse and Neglect Act shall serve as a guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older, the child shall be represented by an attorney unless, after consultation between the child and the child's attorney, the child elects to be represented by counsel appointed in the proceedings under the Children's Mental Health and Developmental Disabilities Act.

F. When a child is subject to the provisions of the Abuse and Neglect Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act shall be filed with the court as part of the abuse or neglect proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided in the Children's Mental Health and Developmental Disabilities Act.

G. The clerk of the court shall maintain a separate section within an abuse or neglect file for documents pertaining to actions taken under the Children's Mental Health and Developmental Disabilities Act.

H. A child subject to the provisions of the Abuse and Neglect Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act."

Chapter 189 Section 49 Laws 2005

Section 49. Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the disposition. At the initial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. A representative of the local substitute care review board shall be permitted to attend and comment to the court.

B. Subsequent periodic reviews of dispositional orders shall be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

C. The children's court attorney shall give notice to all parties, the child's guardian ad litem, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this section.

D. At any judicial review hearing held pursuant to Subsection B of this section, the department, the child's guardian ad litem and all parties given notice pursuant to Subsection C of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

E. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

F. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

G. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to his parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with his parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to his parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department, subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the court finds that such efforts are not required. The court may determine that reasonable efforts are not required to be made when the court finds that:

(a) the efforts would be futile; or

(b) the parent, guardian or custodian has subjected the child to aggravated circumstances;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why he should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

I. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

J. The report of the local substitute care review board submitted to the court pursuant to Subsection B of this section shall become a part of the child's permanent court record.

K. When the court determines, pursuant to Paragraph (5) of Subsection H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to place the child in a timely manner in

accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

Chapter 189 Section 50 Laws 2005

Section 50. Section 32A-4-25.1 NMSA 1978 (being Laws 1997, Chapter 34, Section 8) is amended to read:

"32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW HEARINGS.--

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care pursuant to Subsection E of this section, whichever occurs first. Prior to the initial permanency hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the permanency hearing and develop a proposed treatment plan that serves the child's best interest. Prior to the initial permanency hearing, the department shall submit a progress report regarding the child to the local substitute care review board for that judicial district. The local substitute care review board may review the child's dispositional order, any continuation of that order and the department's progress report and report its findings and recommendations to the court.

B. At the permanency hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the conclusion of the permanency hearing, the court shall order one of the following permanency plans for the child:

(1) reunification;

(2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.

C. If the court adopts a permanency plan of reunification, the court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If the child is reunified, the subsequent hearing may be vacated.

D. At the permanency review hearing, all parties and the child's guardian ad litem or attorney shall have the opportunity to present evidence and cross-examine witnesses. Based on the evidence, the court shall:

(1) change the plan from reunification to one of the alternative plans provided in Subsection B of this section;

(2) dismiss the case and return custody of the child to his parent, guardian or custodian; or

(3) return the child to the custody of his parent, guardian or custodian, subject to any conditions or limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six months, after which the case shall be dismissed. The department may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under Section 32A-4-6 NMSA 1978 during the period of protective supervision if the child's best interest requires such action. When a child is removed in this situation, a permanency hearing shall be scheduled within thirty days of the child coming back into the department's legal custody.

E. The court shall hold a permanency hearing and adopt a permanency plan for a child within twelve months of the child entering foster care. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been abused or neglected; or

(2) sixty days after the date on which the child was removed from the home.

F. The court shall hold permanency hearings every twelve months when a child is in the legal custody of the department.

G. The children's court attorney shall give notice to all parties, the child's guardian ad litem, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any permanency hearing or permanency review hearing held pursuant to this section.

H. The rules of evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to

cross-examination."

Chapter 189 Section 51 Laws 2005

Section 51. 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; or

(b) the parent has subjected the child to aggravated circumstances; 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."

Chapter 189 Section 52 Laws 2005

Section 52. 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 by a party to the proceeding.

B. The motion for termination of parental rights 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 legal 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. 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 Children's Court Rules for the service of motions, 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.

D. 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.

E. In any action for the termination of parental rights brought by a party other than the department and involving a child in the legal 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.

F. When a motion to terminate parental rights is filed, the department shall perform concurrent planning.

G. When a child has been in foster care for not less than fifteen of the previous twenty-two months, the department shall file a motion to terminate parental rights, unless:

(1) a parent has made substantial progress toward eliminating the problem that caused the child's placement in foster care; it is likely that the child will be able to safely return to the parent's home within three months; and the child's return to the parent's home will be in the child's best interests;

(2) the child has a close and positive relationship with a parent and a permanent plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child;

(3) the child is fourteen 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.

H. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been abused or neglected; or

(2) the date that is sixty days after the date on which the child was removed from the home.

I. 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).

J. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

K. 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.

L. 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."

Chapter 189 Section 53 Laws 2005

Section 53. Section 32A-4-30 NMSA 1978 (being Laws 1993, Chapter 77, Section 124) is amended to read:

"32A-4-30. ATTORNEY FEES.--The court may order the department to pay attorney fees for the child's guardian ad litem or attorney if:

A. the child is in the legal custody of the department;

B. the child's guardian ad litem or the child, through the child's attorney:

(1) requests in writing that the department move for the termination of parental rights;

(2) gives the department written notice that if the department does not move for termination of parental rights, the guardian ad litem or the child, through the child's attorney, intends to move for the termination of parental rights and seek an award of attorney fees;

(3) successfully moves for the termination of parental rights; and

(4) applies to the court for an award of attorney fees; and

C. the department refuses to litigate the motion for the termination of parental rights or fails to act in a timely manner."

Chapter 189 Section 54 Laws 2005

Section 54. Section 32A-4-31 NMSA 1978 (being Laws 1993, Chapter 77, Section 125) is amended to read:

"32A-4-31. PERMANENT GUARDIANSHIP OF A CHILD.--

A. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than those rights and responsibilities of the natural or adoptive parent, if any, set forth in the decree of permanent guardianship.

B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that the department grants consent to the guardianship if the child is in the legal custody of the department. An agency or institution may not be a permanent guardian. The court shall appoint a person nominated by the child, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the child.

C. The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interest and when:

(1) the child has been adjudicated as an abused or neglected child;

(2) the department has made reasonable efforts to reunite the parent and child and further efforts by the department would be unproductive;

(3) reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child; and

(4) the likelihood of the child being adopted is remote or it is established that termination of parental rights is not in the child's best interest."

Chapter 189 Section 55 Laws 2005

Section 55. Section 32A-4-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 126, as amended) is amended to read:

"32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

A. A motion for permanent guardianship may be filed by any party.

B. A motion for permanent guardianship shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the facts and circumstances supporting the grounds for permanent guardianship;

(3) the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;

(5) the relationship of the child to the petitioner and the prospective guardian; and

(6) 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 petitioner 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 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. If the motion is not filed by the prospective guardian, the motion shall be verified by the prospective guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, the foster parent, preadoptive parent or relative providing care for the child with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Children's Court Rules for the service of motions. In a case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail

to the Indian tribes of the child's parents and to any "Indian custodian" as that term is defined in

25 U.S.C. Section 1903(6). Further notice shall not be required to a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

E. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.

F. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

G. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

H. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

I. Any party may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances, including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

J. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship.

K. The court may revoke the order granting guardianship when a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship."

Chapter 189 Section 56 Laws 2005

Section 56. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem;
- (4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;
- (5) department personnel;
- (6) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- (8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- (9) any state government social services agency in any state;
- (10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;
- (12) school personnel involved with the child if the records concern the child's social or educational needs;

(13) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

(14) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(15) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. When a child's death is allegedly caused by abuse or neglect, the department may release information about the case after consultation with and the consent of the district attorney.

F. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Chapter 189 Section 57 Laws 2005

Section 57. A new section of the Abuse and Neglect Act is enacted to read:

"DUTIES OF EMPLOYEES.--All employees of the department shall be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation and throughout any treatment."

Chapter 189 Section 58 Laws 2005

Section 58. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 130, as amended by Laws 2003, Chapter 294, Section 2 and by Laws 2003, Chapter 321, Section 2) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "accrediting entity" means an entity that has entered into an agreement with the United States secretary of state pursuant to the federal Intercountry Adoption Act of 2000 and regulations adopted by the United States secretary of state pursuant to that act, to accredit agencies and approve persons who provide adoption services related to convention adoptions;

B. "adoptee" means a person who is the subject of an adoption petition;

C. "adoption service" means:

(1) identifying a child for adoption and arranging the adoption of the child;

(2) securing termination of parental rights to a child or consent to adoption of the child;

(3) performing a background study on a child and reporting on the study;

(4) performing a home study on a prospective adoptive parent and reporting on the study;

(5) making determinations regarding the best interests of a child and the appropriateness of an adoptive placement for the child;

(6) performing post-placement monitoring of a child until an adoption is final; and

(7) when there is a disruption before an adoption of a child is final, assuming custody of the child and providing or facilitating the provision of child care or other social services for the child pending an alternative placement of the child;

D. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;

E. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;

F. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or

(4) has openly held out the adoptee as his own child by establishing a custodial, personal or financial relationship with the adoptee as follows:

(a) for an adoptee under six months old at the time of placement: 1) has initiated an action to establish paternity; 2) is living with the adoptee at the time the adoption petition is filed; 3) has lived with the mother a minimum of ninety days during the two-hundred-eighty-day-period prior to the birth or placement of the adoptee; 4) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 5) has provided reasonable and fair financial support to the mother during the pregnancy and in connection with the adoptee's birth in accordance with his means and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee or the adoptee's mother; 6) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or has brought current any delinquent child support payments; or 7) any other factor the court deems necessary to establish a custodial, personal or financial relationship with the adoptee; or

(b) for an adoptee over six months old at the time of placement: 1) has initiated an action to establish paternity; 2) has lived with the adoptee within the ninety days immediately preceding the adoptive placement; 3) has continuously paid child support to the mother since the adoptee's birth in an amount at least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or is making reasonable efforts to bring delinquent child support payments current; 4) has contact with the adoptee on a monthly basis when physically and financially able and when not prevented by the person or authorized agency having lawful custody of the adoptee; or 5) has regular communication with the adoptee, or with the person or agency having the care or custody of the adoptee, when physically and financially unable to visit the adoptee and when not prevented from doing so by the person or authorized agency having lawful custody of the adoptee;

G. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as provided for in Section 32A-5-20 NMSA 1978;

H. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another;

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody; or

(3) signed by the adoptee if the child is fourteen years of age or older;

I. "convention adoption" means:

(1) an adoption by a United States resident of a child who is a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; or

(2) an adoption by a resident of a foreign country that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of a child who is a resident of the United States;

J. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

K. "department adoption" means an adoption when the child is in the custody of the department;

L. "foreign born child" means any child not born in the United States who is not a citizen of the United States;

M. "former parent" means a parent whose parental rights have been terminated or relinquished;

N. "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;

O. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

P. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

Q. "office" means a place for the regular transaction of business or performance of particular services;

R. "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;

S. "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;

T. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

U. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

V. "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;

W. "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;

X. "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;

Y. "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

Z. "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."

Chapter 189 Section 59 Laws 2005

Section 59. Section 32A-5-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 134, as amended) is amended to read:

"32A-5-7. CLERK OF THE COURT--DUTIES.--

A. The clerk of the court shall file pleadings captioned pursuant to the provisions of Section 32A-5-9 NMSA 1978. The clerk of the court shall not file incorrectly captioned pleadings.

B. The clerk of the court shall mail a copy of the request for placement to the department within one working day of the request for placement being filed with the court. The attorney for the person requesting placement shall provide to the clerk of the court a copy of the request for placement and a stamped envelope addressed to the department as specified in department regulation.

C. The clerk of the court shall mail a copy of the petition for adoption within one working day of the petition for adoption being filed with the court. The attorney for the petitioner shall provide to the clerk of the court a copy of the petition for adoption and a stamped envelope addressed to the department as specified in department regulation.

D. The clerk of the court shall mail a copy of the decree of adoption to the department within one working day of the entry of the decree of adoption. The attorney for the petitioner shall provide to the clerk of the court a copy of the decree of adoption and a stamped envelope addressed to the department as specified in department regulation.

E. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978. The attorney for the petitioner shall provide to the clerk of the court a copy of an adoption decree, an adoptive placement order, any other information required by the federal Indian Child Welfare Act of 1978 and a stamped envelope addressed to the secretary of the interior.

F. The clerk of the court shall provide a certificate of adoption with an adoptee's new name.

G. The attorney for the petitioner shall forward the certificate of adoption provided for in Subsection F of this section as follows:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics."

Chapter 189 Section 60 Laws 2005

Section 60. Section 32A-5-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 135, as amended) is amended to read:

"32A-5-8. CONFIDENTIALITY OF RECORDS.--

A. Unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to

the release of the parent's identity to the petitioner, the attorneys, the court, the agency and the department shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner, the department or the agency, any attorney appointed as a guardian ad litem for the adoptee, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

B. All records, whether on file with the court, an agency, the department, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to the provisions of the Adoption Act. All information and documentation provided for the purpose of full disclosure is confidential. Documentation provided for the purpose of full disclosure shall remain the property of the person making full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing full disclosure. A prospective adoptive parent shall not disclose any confidential information received during the full disclosure process, except as necessary to make a placement decision or to provide information to a child's guardian ad litem or the court.

C. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel.

D. A person who intentionally and unlawfully releases any information or records closed to the public pursuant to the Adoption Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. Prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute an affidavit stating whether the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents."

Chapter 189 Section 61 Laws 2005

Section 61. 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. Only a pre-placement study that has been prepared or updated within one year immediately prior to the date of placement, 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."

Chapter 189 Section 62 Laws 2005

Section 62. Section 32A-5-14.1 NMSA 1978 (being Laws 2003, Chapter 294, Section 8 and Laws 2003, Chapter 321, Section 8) is amended to read:

"32A-5-14.1. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. A nationwide criminal history records check shall be conducted on a person who files a petition to adopt a child, on prospective foster parents and on other

adults residing in the prospective adoptive or foster parent's household. A person who files a petition to adopt a child shall provide the department with a set of fingerprints. The department is authorized to use the set of fingerprints to conduct a background check of the person providing the fingerprints by submitting the fingerprints to the department of public safety and the federal bureau of investigation.

B. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 189 Section 63 Laws 2005

Section 63. Section 32A-5-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 144, as amended) is amended to read:

"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--

A. Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

(1) the adoptee, if fourteen years of age or older, except when the court finds that the adoptee does not have the mental capacity to give consent;

(2) the adoptee's mother;

(3) the adoptee's proposed adoptive parent;

(4) the presumed father of the adoptee;

(5) the adoptee's acknowledged father;

(6) the department or the agency to whom the adoptee has been relinquished that has placed the adoptee for adoption or the department or the agency that has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the

adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and

(7) the guardian of the adoptee's parent when, pursuant to provisions of the Uniform Probate Code, that guardian has express authority to consent to adoption.

B. In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of parental rights shall be obtained from an "Indian custodian", as required pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

C. A consent or relinquishment executed by a parent who is a minor shall not be subject to avoidance or revocation solely by reason of the parent's minority."

Chapter 189 Section 64 Laws 2005

Section 64. Section 32A-5-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 148) is amended to read:

"32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

A. Except when consent or relinquishment is implied, a consent or relinquishment by a parent shall be in writing, signed by the parent consenting or relinquishing and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) if a consent to adoption is being executed, the identity of the petitioner, if known, or when the adoption is an independent adoption and the identity of the petitioner is unknown, how the petitioner was selected by the consenting parent;

(4) if a relinquishment of parental rights is being executed, the name and address of the agency or the department;

(5) that the person executing the consent or relinquishment has been counseled, as provided in Section 32A-5-22 NMSA 1978, by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting to the adoption of the named adoptee;

(6) that the consenting party has been advised of the legal consequences of the relinquishment or consent either by independent legal counsel or a judge;

(7) if the adoption is closed, that all parties understand that the court will not enforce any contact, regardless of any informal agreements that have been made between the parties;

(8) that the consent to or relinquishment for adoption cannot be withdrawn;

(9) that the person executing the consent or relinquishment has received or been offered a copy of the consent or relinquishment;

(10) that a counseling narrative has been prepared pursuant to department regulations and is attached to the consent or relinquishment;

(11) that the person who performed the counseling meets the requirements set forth in the Adoption Act; and

(12) that the person executing the consent or relinquishment waives further notice of the adoption proceedings.

B. The consent of an adoptee, if fourteen years of age or older, shall be in writing, signed by the adoptee, consenting to the adoption and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) the name of the petitioner;

(4) that the adoptee has been counseled regarding the consent pursuant to department regulation;

(5) that the adoptee has been advised of the legal consequences of the consent;

(6) that the adoptee is voluntarily and unequivocally consenting to the adoption;

(7) that the consent or relinquishment cannot be withdrawn;

(8) that a counseling narrative has been prepared pursuant to department regulation and is attached to the consent; and

(9) that the person who performed the counseling meets the requirements set forth in the Adoption Act.

C. In cases when the consent or relinquishment is in English and English is not the first language of the consenting or relinquishing person, the person taking the consent or relinquishment shall certify in writing that the document has been read and explained to the person whose consent or relinquishment is being taken in that person's first language, by whom the document was so read and explained and that the meaning and implications of the document are fully understood by the person giving the consent or relinquishment.

D. Unconditional consents or relinquishments are preferred and therefore, conditional consents or relinquishments shall be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, all conditions permitted under this subsection shall be met within one hundred eighty days of the execution of the conditional consent or relinquishment or the conclusion of any litigation concerning the petition for adoption. The court may grant an extension of this time for good cause.

E. Agency or department consents required pursuant to the provisions of Section 32A-5-17 NMSA 1978 shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) the name of the petitioner; and
- (4) the consent of the agency or department.

F. A consent or relinquishment taken by an individual appointed to take consents or relinquishments by an agency shall be notarized, except that a consent or relinquishment signed in the presence of a judge need not be notarized. A hearing before the court for the purpose of taking a consent or relinquishment shall be heard by the court within seven days of request for setting.

G. No consent to adoption or relinquishment of parental rights shall be valid if executed within forty-eight hours after the adoptee's birth. Consent to adoption or relinquishment of parental rights involving an Indian child shall comply with the more stringent requirements of the federal Indian Child Welfare Act of 1978.

H. The requirements of a consent to adoption or relinquishment of parental rights involving an Indian child and the rights of a parent of an Indian child to withdraw the consent or relinquishment shall be governed by the relevant provisions of the federal Indian Child Welfare Act of 1978.

I. A consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and opportunity to be heard is afforded to the petitioner, to the person seeking the withdrawal and to the agency placing a child for adoption, that the consent or relinquishment was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption."

Chapter 189 Section 65 Laws 2005

Section 65. Section 32A-5-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 150, as amended) is amended to read:

"32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR RELINQUISHMENTS.--

A. A consent to adoption or relinquishment of parental rights shall be signed before and approved on the record by a judge who has jurisdiction over adoption proceedings, within or without this state, and who is in the jurisdiction in which the child is present or in which the parent resides at the time it is signed.

B. No parent may relinquish parental rights to the department or an agency without the department's or the agency's consent.

C. The consent or relinquishment shall be filed with the court in which the petition for adoption has been filed before adjudication of the petition."

Chapter 189 Section 66 Laws 2005

Section 66. Section 32A-5-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 151) is amended to read:

"32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

A. When a parent elects to relinquish parental rights to the department, a petition to accept the relinquishment shall be filed, unless an abuse or neglect proceeding is pending. If an abuse or neglect proceeding is pending, the relinquishment shall be heard in the context of that proceeding.

B. In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem.

C. If a proposed relinquishment of parental rights is not in contemplation of adoption, the court shall not allow the relinquishment of parental rights unless it finds that good cause exists, that the department has made reasonable efforts to preserve the family and that relinquishment of parental rights is in the child's best interest. Whenever a parent relinquishes his parental rights pursuant to this subsection, the

parent shall remain financially responsible for the child. The court may order the parent to pay the reasonable costs of support and maintenance of the child. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

D. When a parent relinquishes the parent's rights under this section, the parent shall be notified that no contact will be enforced by the court, regardless of any informal agreement, unless the parties have agreed to an open adoption pursuant to Section 32A-5-35 NMSA 1978. The consent for relinquishment shall be in writing and shall state that the parties understand that any informal agreement allowing contact will not be enforced by the courts."

Chapter 189 Section 67 Laws 2005

Section 67. Section 32A-5-34 NMSA 1978 (being Laws 1993, Chapter 77, Section 161, as amended) 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 reasonably 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 is in violation of the Adoption Act 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."

Chapter 189 Section 68 Laws 2005

Section 68. 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. An agreement entered into pursuant to this section shall be considered an open adoption.

B. The court may appoint a guardian ad litem for the adoptee. The court shall adopt a presumption in favor of appointing a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is included in an agreement; however, this requirement may be waived by the court for good cause shown. 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. If the child is fourteen years of age or older, the court may appoint an attorney for the child. 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 or the child's attorney. The duties of the guardian ad litem or child's attorney end upon the filing of the decree, unless otherwise ordered by the court.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee.

E. The court shall retain jurisdiction after the decree of adoption is entered, 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."

Chapter 189 Section 69 Laws 2005

Section 69. Section 32A-5-37 NMSA 1978 (being Laws 1993, Chapter 77, Section 164) is amended to read:

"32A-5-37. STATUS OF ADOPTEE AND PETITIONER UPON ENTRY OF DECREE OF ADOPTION.--

A. Once adopted, an adoptee shall take a name designated by the petitioner, except in stepparent adoptions. In stepparent adoptions, the adoptee shall take the new name designated by the petitioner in the petition so long as the petitioner's spouse and the child, if over the age of fourteen years, consent to the new name. The name change need not be requested in the petition.

B. After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child. The adoptee shall have all rights and be subject to all of the duties of that relation, including the right of inheritance from and through the petitioner, and the petitioner shall have all rights and be subject to all duties of that relation, including right of inheritance from and through the adoptee."

Chapter 189 Section 70 Laws 2005

Section 70. Section 32A-5-38 NMSA 1978 (being Laws 1993, Chapter 77, Section 165) is amended to read:

"32A-5-38. BIRTH CERTIFICATES.--

A. Within thirty days after an adoption decree becomes final, the petitioner shall prepare an application for a birth certificate in the new name of the adoptee, showing the petitioner as the adoptee's parent, and shall provide the application to the clerk of the court. The petitioner shall forward the application:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics. In the case of the adoption of a person born outside the United States, if requested by the petitioner, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth of the adoptee. These findings shall be certified by the court and included with the application for a birth certificate.

B. The state registrar of vital statistics shall prepare a birth record in the new name of the adoptee in accordance with the vital statistics laws, but subject to the requirements of the Adoption Act as to the confidentiality of adoption records."

Chapter 189 Section 71 Laws 2005

Section 71. Section 32A-5-39 NMSA 1978 (being Laws 1993, Chapter 77, Section 166, as amended by Laws 2003, Chapter 294, Section 6 and by Laws 2003, Chapter 321, Section 6) is amended to read:

"32A-5-39. RECOGNITION OF FOREIGN DECREES.--

A. Every decree or order of adoption terminating the parent-child relationship or establishing the relationship of parent and child by adoption entered by a court or other entity in another country acting pursuant to that country's law or pursuant to any convention or treaty or intercountry adoption that the United States has ratified shall be recognized in this state, so that the rights and obligations of the parties as to

matters within the jurisdiction of this state shall be determined as though the decree or order of adoption were issued by the courts of this state.

B. A convention adoption in a foreign country that is certified by the United States secretary of state shall be recognized as a final adoption in this state."

Chapter 189 Section 72 Laws 2005

Section 72. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167, as amended) is amended to read:

"32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a child who was the adoptee in the particular proceeding, by the department or by an adoptee's sibling; provided that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

(1) the health and medical histories of the adoptee's biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background, including ancestral information, without name references or geographical designations;

(4) physical descriptions; and

(5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. Any changes to post-adoption access to records referred to in Subsection B of this section shall be filed with the court, the placing agency and the department.

D. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing agency or the department unless for good cause the court orders to the contrary.

E. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

F. If mutual authorizations for release of identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

(1) the reason the information is sought;

(2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including appointment of a confidential intermediary to contact the individual and request specific information;

(3) whether the individual about whom identifying information is sought is alive;

(4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families and the likely effect of disclosure on those individuals;

(5) the age, maturity and expressed needs of the adoptee;

(6) the report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

G. An adoptee shall have the right, for the purpose of enrolling in the adoptee's tribe of origin, to access information kept by the department. Information needed by an adoptee to enroll in his tribe of origin may be requested from the department by the following persons:

(1) the adoptee, after he reaches eighteen years of age;

(2) when the adoptee is a child, his adoptive parent or guardian; or

(3) an adoptee's descendant or, if the adoptee's descendant is a child, an adult representative for the descendant.

H. When the department receives a request for information regarding an adoptee's tribe of origin, the department shall examine its records to determine if the adoptee is of Indian descent. If the department establishes that an adoptee is of Indian descent, the department shall:

(1) provide the requester with the tribal affiliation of the adoptee's biological parents;

(2) submit to the tribe information necessary to establish tribal enrollment for the adoptee and to protect any rights flowing from the adoptee's tribal relationship; and

(3) provide notice to the requester of the department's submission of information to the adoptee's tribe."

Chapter 189 Section 73 Laws 2005

Section 73. Section 32A-5-45 NMSA 1978 (being Laws 1993, Chapter 77, Section 172) is amended to read:

"32A-5-45. ADMINISTRATION OF SUBSIDIZED ADOPTIONS.--

A. The department shall promulgate all necessary regulations for the administration of the program of subsidized adoptions or placement with permanent guardians.

B. Subsidy payments may include payments to vendors for medical and surgical expenses and payments to the adoptive parents or permanent guardians for maintenance and other costs incidental to the adoption, care, training and education of the child. The payments in any category of assistance shall not exceed the cost of providing the assistance in foster care. Payments shall not be made under this section after the child reaches eighteen years of age, except for a child who is enrolled in the medically fragile waiver program, in which case the payments may extend until the child is twenty-one years of age.

C. A written agreement between the adoptive family or permanent guardians and the department shall precede the decree of adoption or permanent guardianship. The agreement shall incorporate the terms and conditions of the subsidy plan based on the individual needs of the child within the permanent family. In cases of subsidies that continue for more than one year, there shall be an annual redetermination of the need for a subsidy. The department shall develop an appeal procedure whereby a permanent family may contest a division determination to deny, reduce or terminate a subsidy."

Chapter 189 Section 74 Laws 2005

Section 74. Section 32A-15-1 NMSA 1978 (being Laws 1985, Chapter 103, Section 1 and Laws 1985, Chapter 140, Section 1, as amended) is amended to read:

"32A-15-1. SHORT TITLE.--Chapter 32A, Article 15 NMSA 1978 may be cited as the "New Mexico Children's and Juvenile Facility and Program Criminal Records Screening Act"."

Chapter 189 Section 75 Laws 2005

Section 75. Section 32A-15-2 NMSA 1978 (being Laws 1985, Chapter 103, Section 2 and Laws 1985, Chapter 140, Section 2) is amended to read:

"32A-15-2. PURPOSE.--The purpose of the New Mexico Children's and Juvenile Facility and Program Criminal Records Screening Act is to comply with the provisions of Public Law 98-473 and Public Law 108-36 and to protect the safety and welfare of children."

Chapter 189 Section 76 Laws 2005

Section 76. Section 32A-15-3 NMSA 1978 (being Laws 1985, Chapter 103, Section 3 and Laws 1985, Chapter 140, Section 3, as amended) is amended to read:

"32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. Nationwide criminal history record checks shall be conducted on all operators, staff and employees and prospective operators, staff and employees of child care facilities, including every facility or program that has primary custody of children for twenty hours or more per week, and juvenile detention, correction or treatment facilities. Nationwide criminal history record checks shall also be conducted on all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household. The objective of conducting the record checks is to protect the children involved and promote the children's safety and welfare while receiving service from the facilities and programs.

B. The department shall fingerprint all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household. The department shall conduct a background check of all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household and shall submit a fingerprint card for those individuals to the department of public safety and the federal bureau of investigation for this purpose.

C. Criminal history records obtained by the department pursuant to the provisions of this section are confidential. The department is authorized to use criminal history records obtained from the federal bureau of investigation to conduct background checks on prospective operators, staff and employees of child care facilities and foster parents.

D. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 189 Section 77 Laws 2005

Section 77. REPEAL.--

A. Sections 32A-3-1 and 32A-3A-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 62 and Laws 1993, Chapter 77, Section 67) are repealed.

B. Laws 2003, Chapter 225, Section 10 is repealed.

SENATE BILL 233, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 190

AN ACT

RELATING TO PUBLIC HEALTH; REQUIRING THAT HAND WASHING FACILITIES BE PROVIDED IN PUBLIC LOCATIONS WITH PORTABLE TOILETS.

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

Chapter 190 Section 1 Laws 2005

Section 1. HAND WASHING FACILITIES--REQUIREMENT.--Portable hand washing facilities shall be provided with at least one hand wash facility to every one-to-ten portable toilets in public locations where portable toilets are required by law or ordinance. The facilities shall be in close proximity to the toilets.

SENATE BILL 538, AS AMENDED

WITH CERTIFICATE OF CORRECTION

Approved April 6, 2005

LAWS 2005, CHAPTER 191

AN ACT

RELATING TO REAL ESTATE TRANSACTIONS; ESTABLISHING DEADLINES FOR THE FUNDING OF REAL ESTATE TRANSACTIONS; PROVIDING FOR ENFORCEMENT; AMENDING AND ENACTING SECTIONS OF THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT.

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

Chapter 191 Section 1 Laws 2005

Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended by Laws 2001, Chapter 251, Section 1 and by Laws 2001, Chapter 264, Section 1) 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. "closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

C. "division" means the financial institutions division of the regulation and licensing department;

D. "director" means the director of the financial institutions division of the regulation and licensing department;

E. "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;

F. "lender" means a person or government agency making a mortgage loan;

G. "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;

H. "mortgage loan" means a loan secured by a dwelling permanently affixed to real property; and

I. "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."

Chapter 191 Section 2 Laws 2005

Section 2. A new section of the Mortgage Loan Company and Loan Broker Act is enacted to read:

"EXECUTION OF DOCUMENTATION FOR REAL ESTATE TRANSACTION.--A closing agent for any purchase of real property shall not require or permit any party to such a transaction to execute documentation necessary to finalize that transaction unless the consideration necessary to complete that transaction has been previously delivered to the seller or to the closing agent."

Chapter 191 Section 3 Laws 2005

Section 3. A new section of the Mortgage Loan Company and Loan Broker Act is enacted to read:

"FUNDING OF REAL ESTATE TRANSACTIONS--ENFORCEMENT.--

A. Unless the consideration necessary to complete a purchase of real property has been previously delivered to the seller or to the closing agent, a lender shall comply with the following:

(1) funds in an amount sufficient to complete the purchase of real property shall be provided to the closing agent at the same time the lender provides to the closing agent the documentation to be reviewed and executed by the parties to the real estate transaction; and

(2) within two business days from the time the lender receives copies of all previously required documentation to the real estate transaction, including documentation executed by the parties to that transaction, the lender shall:

(a) authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and release the proceeds of the real estate transaction in accordance with agreed upon escrow instructions;

(b) advise the closing agent of any funding conditions, as set forth in the lender's escrow instructions, that have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or

(c) advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instructions, specify the manner in which that documentation does not satisfy those instructions and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow.

B. In the event a lender does not comply with the requirements of Subsection A of this section, unreasonably refuses to approve the documentation necessary to complete a real estate action or unreasonably delays authorization of the recordation of closing documents and release of proceeds of a real estate transaction, the director of the division may, upon receipt of a complaint and in accordance with the procedures set forth in the Mortgage Loan Company and Loan Broker Act, suspend or revoke any state registration or license issued to the lender for a period not to exceed one year."

Chapter 191 Section 4 Laws 2005

Section 4. REPEAL.--Section 48-7-10.1 NMSA 1978 (being Laws 2003, Chapter 200, Section 1) is repealed.

Chapter 191 Section 5 Laws 2005

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

SENATE BILL 652, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 192

AN ACT

RELATING TO EDUCATION; ENACTING THE COLLEGE AFFORDABILITY ACT;
PROVIDING FOR SCHOLARSHIPS; CREATING FUNDS.

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

Chapter 192 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "College Affordability Act".

Chapter 192 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the College Affordability Act is to encourage New Mexico students with financial need to attend and complete educational programs at public post-secondary educational institutions in New Mexico.

Chapter 192 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the College Affordability Act:

A. "commission" means the commission on higher education;

B. "returning adult" means a student enrolling in a public post-secondary educational institution at any time later than the first semester following high school graduation or the award of a general educational development certificate; and

C. "student" means a resident of New Mexico who is enrolled or will be enrolled, at the time the scholarship is awarded, in a public post-secondary educational institution in New Mexico.

Chapter 192 Section 4 Laws 2005

Section 4. CONDITIONS FOR ELIGIBILITY.--A college affordability scholarship may be awarded to any person who:

A. is a resident of New Mexico for the purpose of tuition payment;

B. has not earned a baccalaureate degree and is enrolled or will be enrolled at least half-time in a degree program in a public post-secondary educational institution in New Mexico at the time the scholarship is awarded;

C. has demonstrated financial need consistent with the criteria promulgated by the commission; and

D. has complied with other rules promulgated by the commission to carry out the provisions of the College Affordability Act.

Chapter 192 Section 5 Laws 2005

Section 5. SCHOLARSHIP AUTHORIZED--ADMINISTRATION--PREFERENCE IN SCHOLARSHIP AWARDS.--

A. The commission shall administer the College Affordability Act and shall promulgate rules to carry out the provisions of that act.

B. Scholarships shall be awarded to qualified applicants. Qualifications shall be determined by rule of the commission.

C. The commission shall allocate money to public post-secondary educational institutions based on a student need formula calculated according to income reported on the free application for federal student aid and on the percentage of the institution's students classified as returning adults who are otherwise ineligible for state financial aid.

D. Public post-secondary educational institutions shall make awards to qualifying students based on financial need in an amount not to exceed one thousand dollars (\$1,000) per semester as determined by rule of the commission.

E. Money for an awarded scholarship shall be placed in an account at the public post-secondary educational institution in the name of the student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

Chapter 192 Section 6 Laws 2005

Section 6. DURATION OF SCHOLARSHIP.--Each scholarship is for a period of one semester. A scholarship may be renewed, provided the recipient continues to meet the conditions of eligibility, until the award recipient has received eight consecutive semester scholarship awards or until the student graduates from an eligible four-year public post-secondary educational institution, whichever occurs first.

Chapter 192 Section 7 Laws 2005

Section 7. TERMINATION OF SCHOLARSHIP.--A scholarship is terminated upon occurrence of one or more of the following:

A. withdrawal of the award recipient from the public post-secondary educational institution or failure to remain as at least a half-time student;

B. failure of the award recipient to achieve satisfactory academic progress;
or

C. substantial noncompliance by the award recipient with the College Affordability Act or the rules promulgated pursuant to that act.

Chapter 192 Section 8 Laws 2005

Section 8. FUNDS CREATED.--

A. The "college affordability endowment fund" is created in the state treasury, consisting of appropriations; unspecified gifts, grants and donations; and income from investment of the fund. Income from investment of the fund shall be distributed to the college affordability scholarship fund as provided in Subsection C of this section and no other distributions, transfers or reversions shall be made from the fund at the end of any fiscal year.

B. The "college affordability scholarship fund" is created in the state treasury, consisting of income from investment of the fund as provided in Subsection C of this section and any specified appropriations, gifts, grants and donations. Money in the scholarship fund is appropriated to the commission for scholarship awards as provided in the College Affordability Act. Expenditures from the scholarship fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education or the executive director's authorized representative.

C. Until the corpus of the endowment fund is two hundred fifty million dollars (\$250,000,000), fifty percent of the income from investment of the fund shall be applied to the corpus of the fund and fifty percent shall be distributed annually to the scholarship fund, from which the commission will make scholarship awards as provided in the College Affordability Act.

SENATE BILL 669, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 193

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE NAME OF THE LUNA VOCATIONAL-TECHNICAL INSTITUTE TO LUNA COMMUNITY COLLEGE AND THE NAME OF MESA TECHNICAL COLLEGE TO MESALANDS COMMUNITY COLLEGE;

PROVIDING FOR CONTINUING OPERATION OF LUNA AND MESALANDS
COMMUNITY COLLEGES.

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

Chapter 193 Section 1 Laws 2005

Section 1. NAME CHANGE.--

A. Luna vocational-technical institute shall be known as "Luna community college", and Mesa technical college shall be known as "Mesalands community college" and shall be organized as provided in Chapter 21, Article 13 NMSA 1978.

B. The governing board of the Luna vocational-technical institute shall be the governing board of Luna community college, and the governing board of the Mesa technical college shall be the governing board of the Mesalands community college.

C. All taxes levied to pay any principal and interest on bonds of the Luna vocational-technical institute or Mesa technical college for operating, maintaining and providing facilities shall continue in effect until dissolution pursuant to procedures set forth in Chapter 21, Article 13 NMSA 1978.

D. All references in law to the Luna vocational-technical institute shall be construed to be references to Luna community college, and all references in law to the Mesa technical college shall be construed to be references to Mesalands community college.

Chapter 193 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION.--

A. All functions, personnel, appropriations, money, records, equipment and other property of Luna vocational-technical institute shall be transferred to Luna community college and of Mesa technical college shall be transferred to Mesalands community college.

B. All existing contracts and agreements in effect as to Luna vocational-technical institute shall be binding on Luna community college and as to Mesa technical college shall be binding on Mesalands community college.

SENATE EDUCATION COMMITTEE

SUBSTITUTE SENATE BILL 884

Approved April 6, 2005

LAWS 2005, CHAPTER 194

AN ACT

RELATING TO PUBLIC HOUSING; EXPANDING THE STATE INVESTMENT COUNCIL SERVICES TO INCLUDE THE NEW MEXICO MORTGAGE FINANCE AUTHORITY.

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

Chapter 194 Section 1 Laws 2005

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, the New Mexico mortgage finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency."

SENATE BILL 443

Approved April 6, 2005

LAWS 2005, CHAPTER 195

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WATER QUALITY ACT TO ELIMINATE DE NOVO HEARINGS TO THE WATER QUALITY CONTROL

COMMISSION AND PROVIDE FOR REVIEW BY THE COMMISSION BASED ON THE RECORD OF A PUBLIC HEARING.

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

Chapter 195 Section 1 Laws 2005

Section 1. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

"74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

A. By regulation, the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or reuse of septage or sludge.

B. The commission shall adopt regulations

establishing procedures for certifying federal water quality permits.

C. Prior to the issuance of a permit, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.

E. The constituent agency shall deny any application for a permit or deny the certification of a federal water quality permit if:

(1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations;

(2) any provision of the Water Quality Act would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharges' effect on surface waters shall be measured at the point of discharge; or

(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application:

application for a permit;

(a) knowingly misrepresented a material fact in an

under the Water Quality Act;

(b) refused or failed to disclose any information required

turpitude;

(c) been convicted of a felony or other crime involving moral

defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(d) been convicted of a felony in any court for any crime

laws of any state or the United States; or

(e) exhibited a history of willful disregard for environmental

suspended for cause under any environmental laws of any state or the United States.

(f) had an environmental permit revoked or permanently

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance, renewal or modification of a permit. Public notice shall include:

(1) for issuance or modification of a permit:

(a) notice by mail to adjacent and nearby landowners; local, state and federal governments; land grant organizations; ditch associations; and Indian nations, tribes or pueblos;

(b) posting at a place conspicuous to the public and near the discharge or proposed discharge site; and

(c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections; and

(2) for issuance of renewals of permits:

(a) notice by mail to the interested public, municipalities, counties, land grant organizations, ditch associations and Indian nations, tribes or pueblos; and

(b) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge; provided, however,

that the advertisement shall not be displayed in the classified or legal advertisement sections.

G. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. Any person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

H. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

I. Permits shall be issued for fixed terms not to exceed five years, except that for new discharges, the term of the permit shall commence on the date the discharge begins, but in no event shall the term of the permit exceed seven years from the date the permit was issued.

J. By regulation, the commission may impose reasonable conditions upon permits requiring permittees to:

(1) install, use and maintain effluent monitoring devices;

(2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;

(3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;

(4) provide any other information relating to the discharge or direct or indirect release of water contaminants; and

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

K. The commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees collected pursuant to this section shall be deposited in the water quality management fund.

L. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

M. A permit may be terminated or modified by the constituent agency that issued the permit prior to its date of expiration for any of the following causes:

- (1) violation of any condition of the permit;
- (2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;
- (4) violation of any applicable state or federal effluent regulations or limitations; or
- (5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

N. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons. Notice shall also be given by mail to persons who participated in the permitting action.

O. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. Unless a timely petition for review is made, the decision of the constituent agency shall be final and not subject to judicial review. The petition shall:

- (1) be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action;
- (2) include a statement of the issues to be raised and the relief sought; and
- (3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the constituent agency.

P. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition. The commission 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 review. If the petitioner is not the applicant or permittee,

the applicant or permittee shall be a party to the proceeding. The commission shall ensure that the public receives notice of the date, time and place of the review.

Q. The commission shall review the record compiled before the constituent agency, including the transcript of any public hearing held on the application or draft permit, and shall allow any party to submit arguments. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission. The commission shall consider and weigh only the evidence contained in the record before the constituent agency and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the constituent agency. Based on the review of the evidence, the arguments of the parties and recommendations of the hearing officer, the commission shall sustain, modify or reverse the action of the constituent agency. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

R. Prior to the date set for review, if a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that additional comment or evidence be taken by the constituent agency. Based on the additional evidence, the constituent agency may revise the decision and shall promptly file with the commission the additional evidence received and action taken. The commission shall consider the additional evidence within ninety days after receipt of the additional evidence and shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the review.

S. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action."

HOUSE BILL 35, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 196

AN ACT

RELATING TO PUBLIC EMPLOYEES; CLARIFYING THE DEFINITION OF "PUBLIC EMPLOYER" IN THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 196 Section 1 Laws 2005

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "disability retired member" means a retired member who is receiving a pension pursuant to the disability retirement provisions of the Public Employees Retirement Act;

E. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

F. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

G. "employee" means any employee of an affiliated public employer;

H. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

I. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

J. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

K. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

L. "fund" means the funds included under the Public Employees Retirement Act;

M. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "adult correctional officer member" means a member who is an adult correctional officer or an adult correctional officer specialist employed by a correctional facility of the corrections department or its successor agency;

(2) "hazardous duty member" means a member who is a juvenile correctional officer employed by the children, youth and families department or its successor agency;

(3) "municipal detention officer member" means a member who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of persons charged with or convicted of a violation of a law or ordinance;

(4) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer and who has taken the oath prescribed for firefighters;

(5) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers; and

(6) "state police member" means any member who is an officer of the New Mexico state police and who has taken the oath prescribed for such officers;

N. "membership" means membership in the association;

O. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

P. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer, so long as these entities fall within the meaning of governmental plan as that term is used in Section 414(d) of the Internal Revenue Code of 1986, as amended;

Q. "refund beneficiary" means a person designated by the member, in writing, in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

R. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or the educational retirement system;

S. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

T. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

U. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a) (17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this subsection, "eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

V. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

W. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act; and

X. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member."

House Bill 40

Approved April 6, 2005

LAWS 2005, CHAPTER 197

AN ACT

RELATING TO SPORTS; CREATING THE NEW MEXICO SPORTS AUTHORITY;
PROVIDING POWERS AND DUTIES.

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

Chapter 197 Section 1 Laws 2005

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

Chapter 197 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the New Mexico Sports Authority Act:

- A. "authority" means the New Mexico sports authority;
- B. "department" means the tourism department; and
- C. "director" means the director of the authority.

Chapter 197 Section 3 Laws 2005

Section 3. AUTHORITY MEMBERSHIP--TERMS--CO-CHAIRPERSONS--
QUORUM--VOTING--COMPENSATION.--

A. The "New Mexico sports authority" is created, consisting of twenty-five members of the public appointed by the governor and six ex-officio, voting members as follows:

- (1) the superintendent of regulation and licensing;
- (2) the secretary of economic development;
- (3) the secretary of tourism;

- (4) the secretary of taxation and revenue;
- (5) the chief counsel to the governor; and
- (6) the governor's deputy chief of staff for legislative affairs.

B. 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 the ex-officio member's stead.

C. Members shall be appointed for four-year terms and shall serve at the pleasure of the governor. The terms of the initial members of the authority shall expire on January 1, 2007. Members serve until their successors have been appointed and qualified. The governor may fill any vacancies on the authority for the remainder of an unexpired term.

D. The authority shall have two co-chairpersons appointed by the governor, one of whom shall be an ex-officio member and one of whom shall be a public member. The authority may elect such other officers as it deems necessary to carry out its duties.

E. A majority of the appointed members of the authority shall constitute a quorum for the transaction of business of the authority. Authority members shall not vote by proxy.

F. Public members of the authority 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.

Chapter 197 Section 4 Laws 2005

Section 4. ADMINISTRATIVELY ATTACHED AGENCY.--The authority is administratively attached to the department.

Chapter 197 Section 5 Laws 2005

Section 5. DUTIES OF THE AUTHORITY.--

A. The authority shall:

(1) develop an overall strategic plan for recruiting and retaining all forms of professional and amateur sporting events;

(2) identify existing infrastructure for sporting activities, identify and propose future infrastructure and locations and identify opportunities for private and public partnerships on infrastructure;

(3) foster relationships between sporting event organizers and event sponsors;

(4) foster relationships among state and local agencies and provide advice and direction needed to increase the number and quality of sporting events held in New Mexico; and

(5) meet at the call of one of the co-chairpersons, but not less than quarterly.

B. The authority may develop and recommend to the governor legislation and may adopt rules necessary to:

(1) further the purpose of the authority;

(2) provide additional professional and amateur sports participation by New Mexico citizens;

(3) provide for the welfare of participants in sporting events;

(4) provide for adequate safety measures for and ethical operation of sporting events;

(5) recruit and maintain professional and amateur sporting events to be held in New Mexico; and

(6) address the fiscal and tax implications of Paragraphs (1) through (5) of this subsection.

Chapter 197 Section 6 Laws 2005

Section 6. DIRECTOR--STAFF.--The governor shall appoint a director to serve as the administrative officer of the authority, and may appoint deputy directors and the general counsel of the authority. The director shall employ other staff, including deputy directors and general counsel, as necessary to carry out the duties of the authority. The director, deputy directors and general counsel shall be exempt from the provisions of the Personnel Act.

Chapter 197 Section 7 Laws 2005

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

Approved April 6, 2005

LAWS 2005, CHAPTER 198

AN ACT

RELATING TO COMMITMENT PROCEDURES; ENACTING THE DETOXIFICATION REFORM ACT; PROVIDING FOR PROTECTIVE CUSTODY OF PERSONS IMPAIRED BY ALCOHOL OR DRUGS; ESTABLISHING REQUIREMENTS FOR DISCHARGE OF VOLUNTARY CLIENTS; LIMITING CIVIL LIABILITY.

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

Chapter 198 Section 1 Laws 2005

Section 1. A new section of Chapter 43, Article 2 NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 43, Article 2 NMSA 1978 may be cited as the "Detoxification Reform Act"."

Chapter 198 Section 2 Laws 2005

Section 2. Section 43-2-2 NMSA 1978 (being Laws 1977, Chapter 374, Section 1, as amended) is amended to read:

"43-2-2. DEFINITIONS.--As used in the Detoxification Reform Act:

A. "alcohol-impaired person" means a person who uses alcoholic beverages to the extent that the person's health and well-being are substantially impaired or endangered;

B. "authorized person" means a physician or police officer;

C. "consistent with the least drastic means principle" means that the habilitation, protective custody or treatment and the conditions of habilitation, protective custody or treatment separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives or protection for the person committed; and

(2) involve no restrictions on physical movement except as reasonably necessary for the administration of treatment, for the security of the facility or for the protection of the person committed or another from physical injury;

D. "department" means the department of health;

E. "detention center" means a city, county or other jail, the administration of which agrees to accept intoxicated persons for protective custody; provided, however, that a detention center is authorized to hold a person in protective custody pursuant to Section 43-2-8 NMSA 1978 but is not otherwise subject to the provisions of the Detoxification Reform Act;

F. "drug-impaired person" means a person who uses drugs to the extent that the person's health and well-being are substantially impaired or endangered;

G. "incapacitated person" means a person who, as a result of the use of alcohol or drugs, is unconscious or has the person's judgment otherwise so impaired that the person is incapable of realizing and making rational decisions;

H. "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs;

I. "likely to inflict serious physical harm on another" means that it is more likely than not that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from that person;

J. "likely to inflict serious physical harm on himself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or passive or other self-destructive means as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm to himself;

K. "protective custody" means confinement of an intoxicated person, for a period not less than twelve hours or more than seventy-two hours in length and under conditions consistent with the least drastic means principle;

L. "treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including protective custody, diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-impaired, drug-impaired and intoxicated persons; and

M. "treatment facility" means:

(1) an institution under the supervision of the department and approved by the department for the care and treatment of alcohol-impaired persons or drug-impaired persons;

(2) a public institution approved by the department for the care and treatment of alcohol-impaired persons or drug-impaired persons, but not specifically under the supervision of the department; or

(3) any other facility that provides any of the services specified in the Detoxification Reform Act and is licensed by the department for those services."

Chapter 198 Section 3 Laws 2005

Section 3. Section 43-2-3 NMSA 1978 (being Laws 1989, Chapter 378, Section 4) is amended to read:

"43-2-3. POLICY OF STATE REGARDING SUBSTANCE ABUSE.--It is the policy of this state that intoxicated and incapacitated persons may not be subjected to criminal prosecution, but rather should be afforded protection. It is further the policy of this state that alcohol-impaired persons and drug-impaired persons should be afforded treatment in order that they may lead normal lives as productive members of society."

Chapter 198 Section 4 Laws 2005

Section 4. Section 43-2-5 NMSA 1978 (being Laws 1949, Chapter 114, Section 3, as amended) is amended to read:

"43-2-5. DUTIES OF THE DEPARTMENT.--

A. The department shall study the problem of alcoholism and drug abuse, including methods and facilities available for the care, custody, detention, treatment, employment and rehabilitation of persons addicted to the intemperate use of spirituous or intoxicating liquors or drugs. The department shall promote meetings for the discussion of problems confronting treatment facilities, clinics and agencies engaged in protective custody, treatment and rehabilitation of alcohol-impaired persons and drug-impaired persons and shall disseminate information on the subject of alcoholism and drug abuse for the assistance and guidance of residents and courts of the state.

B. The department shall make such reasonable rules for treatment facilities concerning physical conditions for protective custody commitments pursuant to Section 43-2-8 NMSA 1978 as it deems necessary, including such rules it deems appropriate for minors."

Chapter 198 Section 5 Laws 2005

Section 5. Section 43-2-8 NMSA 1978 (being Laws 1977, Chapter 374, Section 5, as amended) is amended to read:

"43-2-8. PROTECTIVE CUSTODY.--

A. An intoxicated or incapacitated person may be committed to a treatment facility at the request of an authorized person for protective custody, if the authorized person has probable cause to believe that the person to be committed:

- (1) is disorderly in a public place;
- (2) is unable to care for the person's own safety;
- (3) has threatened, attempted or inflicted physical harm on himself or another;
- (4) has threatened, attempted or inflicted damage to the property of another;
- (5) is likely to inflict serious physical harm on himself;
- (6) is likely to inflict serious physical harm on another; or
- (7) is incapacitated by alcohol or drugs.

A refusal to undergo treatment does not constitute conclusive evidence of lack of judgment as to the need for treatment.

B. An authorized person shall make a written application for commitment under this section, directed to the administration of the treatment facility. The application shall state facts in support of the need for protective custody.

C. Upon approval of the form of the application by the administration in charge of the treatment facility, the person shall be retained at the facility to which the person was admitted or transferred to another appropriate treatment facility until discharged under Subsection E of this section.

D. The administration in charge of a treatment facility may refuse an application if the treatment facility is at its relevant capacity or if the person to be committed is deemed too ill, injured, disruptive or dangerous to himself or another to be managed at the treatment facility.

E. An intoxicated person transported to a treatment facility pursuant to this subsection shall not be detained at the facility:

- (1) once the person's blood or breath alcohol concentration level is zero, if alcohol-impaired, and there is no probable cause to believe the person remains at risk of physical harm to himself or another; or
- (2) for more than seventy-two hours after admission, absent pendency of a petition filed pursuant to Section 43-2-9 NMSA 1978.

F. An intoxicated person held in protective custody pursuant to the Detoxification Reform Act shall not be considered to have been arrested or charged with any crime.

G. A record of protective custody shall not be considered as an arrest or criminal record.

H. A copy of the written application for commitment and a written explanation of the person's right to contact counsel shall be given by the administration to the person as soon as practicable after commitment. The administration of the treatment facility shall arrange translation of the application and explanation of rights for those who are unable to read the same. The administration shall also provide a reasonable opportunity for the person to contact counsel."

Chapter 198 Section 6 Laws 2005

Section 6. Section 43-2-11 NMSA 1978 (being Laws 1949, Chapter 114, Section 9, as amended) is amended to read:

"43-2-11. VOLUNTARY CLIENTS.--

A. The administration of a treatment facility may receive any intoxicated person, alcohol-impaired person or drug-impaired person who applies to be received as a client into the facility. If the voluntary client is:

(1) intoxicated, the client shall be discharged pursuant to Subsection E of Section 43-2-8 NMSA 1978; or

(2) not intoxicated, the client shall be discharged at the request of the client or, in the absence of such a request, at the discretion of the administration.

B. If a voluntary client leaves a treatment facility with or against the advice of the administration in charge of the facility, the department shall make reasonable provisions for the client's transportation to another facility or to the client's home.

C. A client who voluntarily submits himself for treatment in accordance with the Detoxification Reform Act shall not forfeit or abridge thereby any of the client's rights. The fact that the client has submitted himself for treatment or that the client has been given help or guidance shall not be used against the client in any proceeding in any court. The record of the voluntary commitment shall be confidential and shall not be divulged except on order of the court or upon receipt of a waiver and release duly executed by the client volunteering for commitment."

Chapter 198 Section 7 Laws 2005

Section 7. Section 43-2-19 NMSA 1978 (being Laws 1973, Chapter 331, Section 4) is amended to read:

"43-2-19. PEACE OFFICER OR PUBLIC SERVICE OFFICER--NO LIABILITY.--

A. A peace officer or public service officer may, if the officer reasonably believes it necessary for the officer's own safety, make a protective search of an intoxicated person before transporting the person to a residence, treatment facility or detention center.

B. A peace officer or public service officer shall not be held civilly liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the authority of the Detoxification Reform Act, if such measures were, in fact, reasonable and did not involve use of excessive or unnecessary force."

Chapter 198 Section 8 Laws 2005

Section 8. Section 43-2-20 NMSA 1978 (being Laws 1973, Chapter 331, Section 5) is amended to read:

"43-2-20. NOTIFICATION OF FAMILY.--Whenever an intoxicated person is committed to protective custody, the administration in charge of the treatment facility shall provide the person an opportunity to contact a member of the intoxicated person's family as soon as practicable."

Chapter 198 Section 9 Laws 2005

Section 9. Section 43-2-21 NMSA 1978 (being Laws 1973, Chapter 331, Section 6) is amended to read:

"43-2-21. LIABILITY FOR COSTS.--Any intoxicated person having transportation, shelter or treatment furnished to the person as an intoxicated person under the Detoxification Reform Act shall be liable to the furnishing city, county or treatment facility for its reasonable costs in providing that transportation, shelter or treatment."

Chapter 198 Section 10 Laws 2005

Section 10. A new section of Chapter 43, Article 2 NMSA 1978 is enacted to read:

"CIVIL LIABILITY.--Physicians and treatment facilities and their officers, directors and employees shall not be liable to any person held on account of reasonable measures taken under the authority of the Detoxification Reform Act, absent proof of negligence or intentional misconduct."

Chapter 198 Section 11 Laws 2005

Section 11. REPEAL.--Sections 43-2-9, 43-2-10, 43-2-16 through 43-2-18 and Section 43-2-22 NMSA 1978 (being Laws 1977, Chapter 374, Section 6, Laws 1949, Chapter 114, Section 8 and Laws 1973, Chapter 331, Sections 1 through 3 and 7, as amended) are repealed.

Chapter 198 Section 12 Laws 2005

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 66, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 199

AN ACT

RELATING TO LICENSURE; DESCRIBING OCCUPATIONAL THERAPY SERVICES; EXPANDING QUALIFICATIONS FOR PROFESSIONAL MEMBERSHIP ON THE BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY; CHANGING LICENSURE REQUIREMENTS; EXTENDING AGENCY LIFE.

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

Chapter 199 Section 1 Laws 2005

Section 1. Section 61-12A-1 NMSA 1978 (being Laws 1996, Chapter 55, Section 1) is amended to read:

"61-12A-1. SHORT TITLE.--Chapter 61, Article 12A NMSA 1978 may be cited as the "Occupational Therapy Act"."

Chapter 199 Section 2 Laws 2005

Section 2. Section 61-12A-2 NMSA 1978 (being Laws 1996, Chapter 55, Section 2) is amended to read:

"61-12A-2. PURPOSE.--It is the purpose of the Occupational Therapy Act to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare; to protect the public from being misled by incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services."

Chapter 199 Section 3 Laws 2005

Section 3. Section 61-12A-3 NMSA 1978 (being Laws 1996, Chapter 55, Section 3) is amended to read:

"61-12A-3. DEFINITIONS.--As used in the Occupational Therapy Act:

- A. "board" means the board of examiners for occupational therapy;
- B. "censure" means a formal expression of disapproval that is publicly announced;
- C. "denial of license" means that a person is barred from becoming licensed to practice in accordance with the provisions of the Occupational Therapy Act either indefinitely or for a certain period;
- D. "licensee" means an occupational therapist or occupational therapy assistant, as appropriate;
- E. "occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico;
- F. "occupational therapy" means the therapeutic use of everyday life activities with persons or groups to participate in roles and situations in home, school, workplace, community and other settings to promote health and wellness in clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. "Occupational therapy" includes addressing the physical, cognitive, psychosocial, sensory and other aspects of performance in a variety of contexts to support a client's engagement in everyday life activities that affect health, well-being and quality of life;
- G. "occupational therapy aide or technician" means an unlicensed person who assists in occupational therapy, who works under direct supervision of an occupational therapist or occupational therapy assistant;
- H. "occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice

occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist;

I. "person" means an individual, association, partnership, unincorporated organization or corporate body;

J. "probation" means continued licensure is subject to fulfillment of specified conditions such as monitoring, education, supervision or counseling;

K. "reprimand" means a formal expression of disapproval that is retained in the licensee's file but not publicly announced;

L. "revocation" means permanent loss of licensure; and

M. "suspension" means the loss of licensure for a certain period, after which the person may be required to apply for reinstatement."

Chapter 199 Section 4 Laws 2005

Section 4. Section 61-12A-4 NMSA 1978 (being Laws 1996, Chapter 55, Section 4) is repealed and a new Section 61-12A-4 NMSA 1978 is enacted to read:

"61-12A-4. OCCUPATIONAL THERAPY SERVICES.--Occupational therapy services include:

A. selected strategies to direct the process of interventions, such as:

(1) establishment, remediation or restoration of a skill or ability that has not yet developed or is impaired;

(2) compensation, modification or adaptation of activity or environment to enhance performance;

(3) maintenance and enhancement of capabilities without which performance in everyday life activities would decline;

(4) health promotion and wellness to enable enhanced performance in everyday life activities; and

(5) prevention of barriers to performance, including disability prevention;

B. evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(1) client factors, including neuromuscular, sensory, visual, perceptual and cognitive functions and cardiovascular, digestive, integumentary and genitourinary systems;

(2) habits, routines, roles and behavior patterns;

(3) cultural, physical, environmental, social and spiritual contexts and activity demands that affect performance; and

(4) performance skills, including motor, process and communication and interaction skills; and

C. interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(1) therapeutic use of occupations, exercises and activities;

(2) training in self-care, self-management, home management and community-work reintegration;

(3) development, remediation or compensation of physical, cognitive, neuromuscular and sensory functions and behavioral skills;

(4) therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process;

(5) education and training of persons, including family members, caregivers and others;

(6) care coordination, case management and transition services;

(7) consultative services to groups, programs, organizations or communities;

(8) modification of environments and adaptation or processes, including the application of ergonomic principles;

(9) assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices and orthotic devices and training in the use of prosthetic devices;

(10) assessment, recommendation and training in techniques to enhance functional mobility, including wheelchair management;

(11) driver rehabilitation and community mobility;

(12) management of feeding, eating and swallowing to enable eating and feeding performance; and

(13) application of physical agent modalities and use of a range of specific therapeutic procedures such as wound care management; techniques to enhance sensory, perceptual and cognitive processing; and manual therapy techniques to enhance performance skills."

Chapter 199 Section 5 Laws 2005

Section 5. Section 61-12A-5 NMSA 1978 (being Laws 1996, Chapter 55, Section 5) is amended to read:

"61-12A-5. SUPERVISION--REQUIRED--DEFINED.--

A. Occupational therapy shall not be performed by an occupational therapy assistant, occupational therapy aide or technician or by any person practicing on a provisional permit unless such therapy is supervised by an occupational therapist. The board shall adopt rules defining supervision, which definitions may include various categories such as "close supervision", "routine supervision" and "general supervision".

B. An occupational therapy aide or technician is not a primary service provider of occupational therapy in any practice setting and, therefore, does not provide skilled occupational therapy services. An occupational therapy aide or technician is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks, and the occupational therapist is responsible for the overall use and actions of the occupational therapy aide or technician. An occupational therapy aide or technician must demonstrate competence to perform the assigned, delegated client and nonclient tasks."

Chapter 199 Section 6 Laws 2005

Section 6. Section 61-12A-6 NMSA 1978 (being Laws 1996, Chapter 55, Section 6) is amended to read:

"61-12A-6. LICENSE REQUIRED.--

A. Unless licensed to practice the level of occupational therapy provided in the Occupational Therapy Act, a person shall not practice as an occupational therapist or occupational therapy assistant.

B. It is unlawful for a person not licensed pursuant to the Occupational Therapy Act or whose license has been denied, suspended or revoked in this or another state to hold himself out as an occupational therapist or occupational therapy assistant or to use words or titles containing "occupational therapist" or "occupational therapy

assistant" that would indicate or imply that the person is licensed as an occupational therapist or occupational therapy assistant.

C. A facility or employer shall not represent that it offers occupational therapy unless it uses the services of a licensee pursuant to the provisions of the Occupational Therapy Act.

D. A person offering or assisting in the offering of occupational therapy shall be properly identified by a name badge or other identification indicating whether the person is an occupational therapist, an occupational therapy assistant, an occupational therapy aide or technician or a person practicing under a provisional permit."

Chapter 199 Section 7 Laws 2005

Section 7. Section 61-12A-8 NMSA 1978 (being Laws 1996, Chapter 55, Section 8, as amended) is amended to read:

"61-12A-8. BOARD CREATED.--

A. The "board of examiners for occupational therapy" is created.

B. The board shall be administratively attached to the regulation and licensing department.

C. The board shall consist of five members appointed by the governor who have been residents of the state for at least two years preceding the appointment.

D. Three members shall be licensed under the provisions of the Occupational Therapy Act; have a minimum of five years' professional experience, with two years' experience in New Mexico; and have not had their licenses suspended or revoked by this or any other state. One of the professional members may be an occupational therapy assistant and one of the professional members may be a retired occupational therapist or occupational therapy assistant, who has been retired for no more than five years at the time of appointment.

E. Two members shall represent the public. The two public members shall have no direct interest in the profession of occupational therapy. The public members shall not:

(1) have been convicted of a felony;

(2) be habitually intemperate or be addicted to the use of habit-forming drugs or be addicted to any other vice to such a degree as to render the member unfit to fulfill his board duties and responsibilities; or

(3) be guilty of a violation of the Controlled Substances Act.

F. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A board member shall not serve more than two consecutive terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting.

G. An individual member of the board shall not be liable in a civil or criminal action for an act performed in good faith in the execution of his duties as a member of the board.

H. Members of the board shall be reimbursed for per diem and travel expenses as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the board members currently serving shall constitute a quorum of the board for the conduct of business.

J. The board shall meet at least four times a year and at other times as it deems necessary. Additional meetings may be convened at the call of the president of the board or on the written request of any two board members to the president. Meetings of the board shall be conducted in accordance with the provisions of the Open Meetings Act.

K. A member failing to attend three consecutive meetings, unless excused as provided by board policy, shall automatically be recommended for removal as a member of the board.

L. At the beginning of each fiscal year, the board shall elect a president, vice president and secretary-treasurer."

Chapter 199 Section 8 Laws 2005

Section 8. Section 61-12A-11 NMSA 1978 (being Laws 1996, Chapter 55, Section 11) is amended to read:

"61-12A-11. REQUIREMENTS FOR LICENSURE.--

A. An applicant applying for a license as an occupational therapist or occupational therapy assistant shall file a written application provided by the board, accompanied by the required fees and documentation, and demonstrating to the satisfaction of the board that the applicant has:

(1) successfully completed the academic requirements of an educational program in occupational therapy that is either:

(a) accredited by the American occupational therapy association's accreditation council for occupational therapy education; or

(b) in the case of a foreign educational program, accepted by the national board for certification in occupational therapy when the therapist applies to take that board's examination;

(2) successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the occupational therapist or the occupational therapy assistant has met the academic requirements of Paragraph (1) of this subsection; provided that:

(a) an occupational therapist shall complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation; and

(b) an occupational therapy assistant shall complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation;

(3) has passed an examination prescribed by the national board for certification in occupational therapy or the board; and

(4) has no record of unprofessional conduct or incompetence.

B. In the case of an occupational therapy assistant or a person practicing on a provisional permit, the applicant shall file with the board a signed, current statement of supervision by the occupational therapist who will be the responsible supervisor.

C. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license."

Chapter 199 Section 9 Laws 2005

Section 9. Section 61-12A-12 NMSA 1978 (being Laws 1996, Chapter 55, Section 12) is amended to read:

"61-12A-12. EXAMINATIONS.--The board shall require proof of passage of the national board for certification in occupational therapy examination. The board may require each applicant to pass an examination on the state laws and rules that pertain to the practice of occupational therapy."

Chapter 199 Section 10 Laws 2005

Section 10. Section 61-12A-13 NMSA 1978 (being Laws 1996, Chapter 55, Section 13) is amended to read:

"61-12A-13. PROVISIONAL PERMITS.--A provisional permit may be granted to a person who has completed the education and experience requirements of the Occupational Therapy Act. The permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist. The provisional permit shall be valid until the date on which the results of the next qualifying examination have been made public. The provisional permit shall not be renewed if the applicant has failed the examination. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license."

Chapter 199 Section 11 Laws 2005

Section 11. Section 61-12A-14 NMSA 1978 (being Laws 1996, Chapter 55, Section 14) is amended to read:

"61-12A-14. LICENSURE BY ENDORSEMENT.--Upon verification, the board may grant a license to an applicant who presents a current license in good standing as an occupational therapist or an occupational therapy assistant in another state, the District of Columbia or a territory of the United States that meets the requirements of Section 61-12A-11 NMSA 1978."

Chapter 199 Section 12 Laws 2005

Section 12. Section 61-12A-24 NMSA 1978 (being Laws 1996, Chapter 55, Section 24, as amended) is amended to read:

"61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of examiners for occupational therapy is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, 2016. Effective July 1, 2016, the Occupational Therapy Act is repealed."

Chapter 199 Section 13 Laws 2005

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

WITH CERTIFICATE OF CORRECTION

Approved April 6, 2005

LAWS 2005, CHAPTER 200

AN ACT

RELATING TO AGRICULTURE; AMENDING THE PESTICIDE CONTROL ACT TO RAISE FEES.

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

Chapter 200 Section 1 Laws 2005

Section 1. Section 76-4-22 NMSA 1978 (being Laws 1973, Chapter 366, Section 22, as amended) is amended to read:

"76-4-22. FEES.--

A. Fees for the registration of pesticides, the various licenses, inspection of apparatuses and examination of applicants required by the Pesticide Control Act shall be set by the board not to exceed the amount authorized below:

not more than (1) annual registration fee for each pesticide or device registered, \$150;

(2) annual pesticide dealer license for each location or outlet within the state or, if there is no outlet in the state, for the principal out-of-state location or outlet, not more than \$100;

\$100; (3) annual pest management consultant license, not more than

\$100; (4) annual commercial pesticide applicator license, not more than

(5) annual operator license, not more than . \$75.00;

(6) annual noncommercial applicator license, not more than \$100;

\$25.00; (7) private applicator certification or renewal, not more than

(8) additional inspection required to certify each unit of aircraft, ground or manual equipment that fails to pass inspection, not more than \$25.00; and

(9) examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial pesticide applicator, noncommercial applicator or operator or any combination thereof, not more than \$20.00.

B. If the application for the renewal of a pesticide registration or any annual license provided for in the Pesticide Control Act is not filed prior to the expiration date of the prior registration or license, the fee for renewal of registration or license shall be double the amount specified in this section and shall be paid by the applicant before the renewal registration or license is issued. Any person holding a current valid license may renew the license for the next year without taking an examination unless the department determines that additional knowledge relating to the classification for which the applicant has applied makes a new examination necessary. However, if the license is not renewed within thirty days after expiration, the licensee shall be required to take new certification examinations."

HOUSE BILL 93

Approved April 6, 2005

LAWS 2005, CHAPTER 201

AN ACT

RELATING TO HIGHER EDUCATION; BROADENING THE POWER OF THE EDUCATIONAL ASSISTANCE FOUNDATION TO ISSUE EDUCATIONAL LOANS.

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

Chapter 201 Section 1 Laws 2005

Section 1. Section 21-21A-1 NMSA 1978 (being Laws 1981, Chapter 319, Section 1) is amended to read:

"21-21A-1. SHORT TITLE.--Chapter 21, Article 21A NMSA 1978 may be cited as the "Educational Assistance Act"."

Chapter 201 Section 2 Laws 2005

Section 2. Section 21-21A-2 NMSA 1978 (being Laws 1981, Chapter 319, Section 2) is amended to read:

"21-21A-2. PURPOSE.--The purpose of the Educational Assistance Act is to promote the public welfare and prosperity of the people of New Mexico by stimulating the availability of financial assistance for post-secondary education so as to give greater higher education opportunities."

Chapter 201 Section 3 Laws 2005

Section 3. Section 21-21A-3 NMSA 1978 (being Laws 1981, Chapter 319, Section 3, as amended) is amended to read:

"21-21A-3. DEFINITIONS.--As used in the Educational Assistance Act:

- A. "bond" means any bond, note or other evidence of indebtedness;
- B. "corporation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to guarantee educational loans;
- C. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;
- D. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and
- E. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or other institution of higher education approved by the foundation."

Chapter 201 Section 4 Laws 2005

Section 4. Section 21-21A-5 NMSA 1978 (being Laws 1981, Chapter 319, Section 5, as amended) is amended to read:

"21-21A-5. NONPROFIT FOUNDATION AUTHORIZED--PURPOSE.--A majority of the four-year institutions of higher education may form, pursuant to the provisions of the Nonprofit Corporation Act, a nonprofit foundation, separate and apart from the state. The purpose of the foundation is to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified persons, including a program of making, financing, purchasing, holding and selling educational loans, and by servicing educational loan, scholarship, grant, work study and other educational assistance programs."

Chapter 201 Section 5 Laws 2005

Section 5. Section 21-21A-7 NMSA 1978 (being Laws 1981, Chapter 319, Section 7, as amended) is amended to read:

"21-21A-7. FOUNDATION POWERS.--The foundation may from time to time issue negotiable bonds in conformity with the applicable provisions of the Uniform Commercial Code. The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act, including the following powers:

A. to make or participate in the making of educational loans, to purchase or participate in the purchase of educational loans and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

B. to sell or participate in the sale of educational loans to the student loan marketing association or to other purchasers, in conformity with the federal Higher Education Act of 1965, as amended, any such sale to be public or private and on such terms as the foundation may authorize, and to contract in advance for any such sale or to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

C. to collect and pay reasonable fees and charges in connection with the making, purchasing, selling and servicing or the causing to be made, purchased, sold or serviced of educational loans held by the foundation;

D. to enter into an agreement with insurance carriers to insure against any loss in connection with its operations, including without limitation the repayment of any educational loan, in such amounts and from such insurers as it deems necessary or desirable and pay the premiums for that insurance;

E. to consent, when it deems appropriate, to the modification of the rate of interest, the time of payment of any installment of principal or interest or any other terms of any educational loan held by the foundation; provided that no such consent shall be made or given if the effect would be to lessen or invalidate any insurance coverage or reinsurance in respect of any such educational loan;

F. to employ an executive director and such other officers and employees as it deems necessary and set their compensation and prescribe their duties; provided that no salary of any officer or employee of the foundation shall exceed ninety percent of the average of the salaries of the presidents of the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico;

G. to adopt and publish rules in accordance with the provisions of the State Rules Act respecting the foundation's educational loan program and such other rules as are necessary to effectuate the program's purposes and the functions and duties of the foundation;

H. to make, execute and effectuate any and all agreements or other documents with any federal or state agency or other person, corporation, association,

partnership, organization or entity necessary to accomplish its purposes under the Educational Assistance Act;

I. to authorize a retirement program for salaried officers and employees of the foundation;

J. to authorize reimbursement of expenses of salaried officers and employees of the foundation not exceeding the amounts authorized by law for salaried state public officers and employees;

K. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;

L. to accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests, federal grants and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

M. to sue and be sued in its own name and to plead and interplead;

N. to adopt an official seal and alter it at pleasure;

O. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

P. to employ fiscal consultants, attorneys, counselors and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;

Q. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement as provided in Section 21-21A-17 NMSA 1978;

R. to fix, revise from time to time, charge and collect fees and other charges for services rendered by the foundation in connection with educational loan, scholarship, grant, work study and other educational assistance programs; and

S. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act."

Chapter 201 Section 6 Laws 2005

Section 6. Section 21-21A-8 NMSA 1978 (being Laws 1981, Chapter 319, Section 8, as amended) is amended to read:

"21-21A-8. ISSUANCE OF REVENUE BONDS.--The foundation may from time to time issue negotiable revenue bonds. The proceeds of the sale of the bonds issued pursuant to the Educational Assistance Act may be used to fund reserves for the bonds,

to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including bond counsel and fiscal advisory fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest payable as prescribed by the foundation. The bonds shall mature serially or otherwise not later than thirty years from their date and may be redeemable before maturity, at the option of the foundation, at prices and under terms and conditions fixed by the foundation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the place of the payment of the principal and interest of the bonds. The bonds shall be executed on behalf of the foundation as special obligations of the foundation payable only from the funds specified in the Educational Assistance Act and shall not be a debt of the state, any eligible post-secondary institution or any municipality, and neither the state nor any eligible post-secondary institution or municipality shall be liable for the bonds. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the office of the foundation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the foundation, and the bonds and coupons are negotiable instruments under the laws of the state. The bonds may be sold at public or private sale by the foundation at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The foundation may provide for replacement of any bond that is mutilated or destroyed."

Chapter 201 Section 7 Laws 2005

Section 7. Section 21-21A-11 NMSA 1978 (being Laws 1981, Chapter 319, Section 11) is amended to read:

"21-21A-11. TRUST AGREEMENTS AUTHORIZED.--In the discretion of the foundation, any bonds issued under the provisions of the Educational Assistance Act may be secured by a trust agreement by and between the foundation and a corporate trustee, which may be a bank or trust company having trust powers within or without the state. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign all or any part of the revenues or assets of the foundation, including without limitation educational loan receipts, educational loans, federal interest subsidies, special allowance payments and educational loan commitments; temporary loans, contracts, agreements and other security or investment obligations; the fees or charges made or received by the foundation; the money received in payment of educational loans and interest on that money, including the proceeds of insurance thereon; and any other money received or due to be received by the foundation. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the foundation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the

revenues or assets of the foundation and the custody, safeguarding and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money pursuant to the Educational Assistance Act to furnish such indemnifying bonds or to pledge such securities as may be required by the foundation. The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any bondholders. The trust agreement or resolution may contain such other provisions as the foundation deems reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the foundation."

Chapter 201 Section 8 Laws 2005

Section 8. Section 21-21A-18 NMSA 1978 (being Laws 1981, Chapter 319, Section 18) is amended to read:

"21-21A-18. INVESTMENT OF SEVERANCE TAX PERMANENT FUND IN BONDS AND EDUCATIONAL LOAN NOTES.--

A. In addition to all other investments of the severance tax permanent fund authorized by law, the state treasurer may, with the prior approval of the state board of finance, annually invest a portion of the severance tax permanent fund in bonds and educational loan notes authorized by the Educational Assistance Act, which bonds and notes shall be held by the state treasurer until maturity unless earlier repurchased or repaid by the foundation.

B. Payments of principal on bonds and educational loan notes purchased by the state treasurer from the severance tax permanent fund shall be credited by the state treasurer to the severance tax permanent fund. Payments of interest on such bonds and educational loan notes shall be credited to the severance tax income fund.

C. The foundation may from time to time purchase any or all of such bonds and educational loan notes from the state treasurer.

D. The commission on higher education may enter into an agreement with the foundation for the servicing of educational loans held by the state treasurer."

Chapter 201 Section 9 Laws 2005

Section 9. Section 21-21A-19 NMSA 1978 (being Laws 1981, Chapter 319, Section 19, as amended) is amended to read:

"21-21A-19. GIFTS BY PERSONS, CORPORATIONS, INSTITUTIONS AND ASSOCIATIONS.--

A. Any person or domestic corporation or association organized for the purpose of carrying on a business in New Mexico may, regardless of the provisions of any certificate of incorporation, charter or other articles of organization, make contributions or gifts, grants, bequests, devises or loans to the foundation.

B. Any institution of higher education or nonprofit corporation having funds available for student scholarships or student loans, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan these restricted funds to the foundation under such terms and conditions as may be mutually agreed upon for the purpose of making educational loans."

HOUSE BILL 132, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 202

AN ACT

RELATING TO TEACHER LOANS FOR SERVICE; ALLOWING COSTS OF TWO-YEAR POST-SECONDARY EDUCATION IN AN EDUCATION TRANSFER MODULE TO QUALIFY FOR LOANS AS PART OF THE TEACHER PREPARATION PROGRAM.

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

Chapter 202 Section 1 Laws 2005

Section 1. Section 21-22E-1 NMSA 1978 (being Laws 2001, Chapter 288, Section 1) is amended to read:

"21-22E-1. SHORT TITLE.--Chapter 21, Article 22E NMSA 1978 may be cited as the "Teacher Loan for Service Act"."

Chapter 202 Section 2 Laws 2005

Section 2. Section 21-22E-3 NMSA 1978 (being Laws 2001, Chapter 288, Section 3) is amended to read:

"21-22E-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 a program that has been formally approved as meeting the requirements of the public education department and that leads to initial licensure or to additional licensure endorsements, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978."

HOUSE BILL 173

Approved April 6, 2005

LAWS 2005, CHAPTER 203

AN ACT

RELATING TO EMERGENCY 911 SERVICE; ESTABLISHING ONE SURCHARGE AND FUND FOR FINANCING EMERGENCY 911 SERVICE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 203 Section 1 Laws 2005

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 and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico;

B. "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service;

C. "access line" means a telecommunications company's line that has the capability to reach local public safety agencies by dialing 911, but does not include a line used for the provision of interexchange services or commercial mobile radio service;

D. "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;

E. "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;

F. "commission" means the public regulation commission;

G. "database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the enhanced 911 system, including geographic information system (GIS) addressing and digital mapping information;

H. "department" means the taxation and revenue department;

I. "division" means the local government division of the department of finance and administration;

J. "enhanced 911 system" means a landline or wireless system consisting of network switching equipment, database, mapping 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;

(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;

(3) provide one or more access paths for communications between users at different geographic locations through a network system that may be designed for voice or data, or both, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies; and

(4) relay to a designated public safety answering point a 911 caller's number and base station or cell site location and the latitude and longitude of the 911 caller's location in relation to the designated public safety answering point;

K. "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, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers;

L. "equipment supplier" means a person who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

M. "fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement;

N. "fund" means the enhanced 911 fund;

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. "proprietary information" means customer lists, customer counts, technology descriptions or trade secrets, including the actual or development costs of individual components of an enhanced 911 system; provided that such information is designated as proprietary by the commercial mobile radio service provider or telecommunications company; 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;

Q. "public safety answering point" means a twenty-four-hour local 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;

R. "subscriber" means a person who is a retail purchaser of telecommunications services that are capable of originating a 911 call;

S. "surcharge" means the 911 emergency surcharge;

T. "telecommunications company" means a person who provides wire telecommunications services that are capable of originating a 911 call; and

U. "vendor" means a person that provides 911 equipment, service or network support."

Chapter 203 Section 2 Laws 2005

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 ENHANCED 911 SERVICES BY LOCAL GOVERNING BODIES--ENHANCED 911 SYSTEM COSTS--PAYMENT OF COSTS--JOINT POWERS AGREEMENTS--AID OUTSIDE JURISDICTIONAL BOUNDARIES.--

A. A local governing body or a consortium of local governing bodies may incur costs for the purchase, lease, installation or maintenance of enhanced 911 equipment and training necessary for the establishment of an enhanced 911 system and may pay such costs through disbursements from the fund; provided that the local governing body has employed properly trained staff in its public safety answering point pursuant to the Public Safety Telecommunicator Training Act.

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 enhanced 911 system shall be entered into by the fiscal agent designated by the local governing bodies. A local governing body may expressly exclude itself from the agreement. 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 system customer.

C. A public agency in an enhanced 911 service area shall provide that, once an emergency unit is dispatched in response to a request for aid through the enhanced 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries.

D. A local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping data to the public safety answering point that provides the enhanced 911 service to the local governing body."

Chapter 203 Section 3 Laws 2005

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.--

A. There is imposed a 911 emergency surcharge in the amount of fifty-one cents (\$.51) to be billed to each subscriber access line by a telecommunications company and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico; provided, however, that the surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act.

B. Commercial mobile radio service providers shall be required to bill and collect the surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. Telecommunications companies shall be required to bill and collect the surcharge from their subscribers. The surcharge required to be collected by the commercial mobile radio service provider or telecommunications company shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the commercial mobile radio service provider or telecommunications company shall not be considered revenue of the commercial mobile radio service provider or telecommunications company.

C. A billed subscriber is liable for payment of the 911 emergency surcharge until it has been paid to the commercial mobile radio service provider or telecommunications company.

D. A commercial mobile radio service provider or telecommunications company has no obligation to take legal action to enforce the collection of the surcharge; an action may be brought by or on behalf of the department. A commercial mobile radio service provider or telecommunications company, upon request and not more than once a year, shall provide to the department a list of the 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 or telecommunications company to be nonpayment of the surcharge. The commercial mobile radio service provider or telecommunications company shall not be held liable for uncollected surcharge amounts.

E. The surcharge shall commence with the first billing period of each subscriber on or following July 1, 2005."

Chapter 203 Section 4 Laws 2005

Section 4. 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 surcharge collected shall be remitted monthly to the department, which shall administer and enforce collection of the surcharge in accordance with the Tax Administration Act. The 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 or commercial mobile radio service provider shall agree upon. A telecommunications company or commercial mobile radio service provider required to file a return shall deliver the return together with a remittance of the amount of the surcharge payable to the department. The telecommunications company or 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 were collected.

B. From a remittance to the department made on or before the date it becomes due, a telecommunications company or 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 administrative cost for collecting the surcharge."

Chapter 203 Section 5 Laws 2005

Section 5. 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 fund shall be administered by the division.

B. All surcharges collected and remitted to the department shall be deposited in the fund.

C. Money deposited in the 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 fund to, or on behalf of, participating local governing bodies or their fiscal agents upon vouchers signed by the director of the division solely for the purpose of reimbursing local governing bodies or their fiscal agents, commercial mobile radio service providers or telecommunications companies for their costs of providing enhanced 911 service. A person who purchases commercial mobile radio services or telecommunications services from a commercial mobile radio

service provider or telecommunications company for the purpose of reselling that service is not eligible for reimbursement from the fund. Money in the fund may be used for the payment of bonds issued pursuant to the Enhanced 911 Bond Act.

E. Annually, the division may expend no more than five percent of all money deposited annually in the fund for administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. Money in the fund may be awarded as grant assistance to provide enhanced 911 service and equipment upon application of local governing bodies or their fiscal agents 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. After requesting enhanced 911 service from a telecommunications company or commercial mobile radio service provider, a local governing body may, by ordinance or resolution, recover from the fund an amount necessary to recover the costs of providing the enhanced 911 system in its designated 911 service area. The division, on behalf of local governing bodies, shall directly pay or reimburse commercial mobile radio service providers and telecommunications companies for their costs of providing enhanced 911 service. If a commercial mobile radio service provider or telecommunications company does not receive payment or reimbursement for the costs of providing enhanced 911 service, the provider is not obligated to provide that service.

H. The division shall report to the legislature each session the status of the 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."

Chapter 203 Section 6 Laws 2005

Section 6. 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 enhanced 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. Division powers are limited and do not include power to intervene between two vendors or restrict marketing efforts of vendors.

D. The division and the local governing body may establish 911 service areas.

E. 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 the director. 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.

F. All rules shall be filed in accordance with the State Rules Act."

Chapter 203 Section 7 Laws 2005

Section 7. Section 63-9D-10 NMSA 1978 (being Laws 1989, Chapter 25, Section 10, as amended) is amended to read:

"63-9D-10. IMMUNITY.--Enhanced 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 an enhanced 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 enhanced 911 systems or transmitting 911 calls."

Chapter 203 Section 8 Laws 2005

Section 8. Section 63-9D-11 NMSA 1978 (being Laws 1989, Chapter 25, Section 11, as amended) 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 or telecommunications company 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 or telecommunications company."

Chapter 203 Section 9 Laws 2005

Section 9. 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 enhanced 911 system; and

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."

Chapter 203 Section 10 Laws 2005

Section 10. 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;

(2) reimbursing a commercial mobile radio service provider or telecommunications company for its reasonable costs of providing enhanced 911 service, the payment of which shall be secured by enhanced 911 revenues; or

(3) reimbursing a local governing body or its fiscal agent for its reasonable costs of providing the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues.

C. The board may pledge irrevocably 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 expenditures are reasonably related to and constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds."

Chapter 203 Section 11 Laws 2005

Section 11. Section 63-9D-17 NMSA 1978 (being Laws 1990, Chapter 61, Section 6, as amended) 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 to be the source of pledged revenues."

Chapter 203 Section 12 Laws 2005

Section 12. 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.--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."

Chapter 203 Section 13 Laws 2005

Section 13. Section 63-9D-20 NMSA 1978 (being Laws 1992, Chapter 102, Section 5, as amended) is amended to read:

"63-9D-20. AMOUNT OF SURCHARGE--SECURITY FOR BONDS.--

A. The legislature shall provide for the continued imposition, collection and deposit of the 911 emergency surcharge into the enhanced 911 fund in amounts that, together with other amounts deposited into the fund, 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 in a manner that impairs any outstanding enhanced 911 bonds secured by a pledge of the 911 emergency surcharge unless:

(1) the outstanding enhanced 911 bonds to which the revenues from the surcharge 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 the surcharge are pledged.

C. Nothing in this section shall require any increase in the 911 emergency surcharge."

Chapter 203 Section 14 Laws 2005

Section 14. TEMPORARY PROVISION--TRANSFER OF FUNDS.--All money in the wireless enhanced 911 fund and network and database surcharge fund is transferred to the enhanced 911 fund.

Chapter 203 Section 15 Laws 2005

Section 15. REPEAL.--Sections 63-9D-6, 63-9D-8.2 and 63-9D-9 through 63-9D-9.3 NMSA 1978 (being Laws 1989, Chapter 25, Section 6, Laws 1993, Chapter 48, Section 11, Laws 1989, Chapter 25, Section 9 and Laws 2001, Chapter 110, Sections 12 through 14, as amended) are repealed.

Chapter 203 Section 16 Laws 2005

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

Approved April 6, 2005

LAWS 2005, CHAPTER 204

AN ACT

RELATING TO GENETIC INFORMATION; PROHIBITING THE USE OF GENETIC INFORMATION IN NONMEDICAL CONTEXTS.

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

Chapter 204 Section 1 Laws 2005

Section 1. Section 24-21-2 NMSA 1978 (being Laws 1998, Chapter 77, Section 2) is amended to read:

"24-21-2. DEFINITIONS.--As used in the Genetic Information Privacy Act:

A. "DNA" means deoxyribonucleic acid, including mitochondrial DNA, complementary DNA and DNA derived from ribonucleic acid;

B. "gene products" means gene fragments, ribonucleic acids or proteins derived from DNA that would be a reflection of or indicate DNA sequence information;

C. "genetic analysis" means a test of a person's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental; that demonstrates genetic or chromosomal damage due to environmental factors; or that indicates carrier status for disease or disorder; excluded, however, are routine physical measurements, chemical, blood and urine analysis, tests for drugs, tests for the presence of HIV virus and any other tests or analyses commonly accepted in clinical practice at the time ordered;

D. "genetic information" means information about the genetic makeup of a person or members of a person's family, including information resulting from genetic testing, genetic analysis, DNA composition, participation in genetic research or use of genetic services;

E. "genetic propensity" means the presence in a person or members of a person's family of real or perceived variations in DNA or other genetic material from that of the normal genome that do not represent the outward physical or medical signs of a genetic disease at the time of consideration;

F. "genetic testing" means a test of an individual's DNA, ribonucleic acid, chromosomes or proteins, including carrier status, that are linked with physical or mental disorders, impairments or genetic characteristics or that indicate that an individual may be predisposed to an illness, disease, impairment or other disorder; and

G. "insurer" means an insurance company, insurance service or insurance organization that is licensed to engage in the business of insurance in the state and that is subject to state law that regulates insurance within the meaning of Paragraph (2) of Subsection (b) of Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended. "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 not licensed under the Prepaid Dental Plan Law, but under another provision of the New Mexico Insurance Code."

Chapter 204 Section 2 Laws 2005

Section 2. Section 24-21-4 NMSA 1978 (being Laws 1998, Chapter 77, Section 4) is amended to read:

"24-21-4. GENETIC DISCRIMINATION PROHIBITED.--

A. Discrimination by an insurer against a person or member of the person's family on the basis of genetic analysis, genetic information or genetic propensity is prohibited.

B. The provisions of this section do not require a health insurer to provide particular benefits other than those provided under the terms of the plan or coverage. A health insurer shall not consider a genetic propensity, susceptibility or carrier status as a pre-existing condition for the purpose of limiting or excluding benefits, establishing rates or providing coverage.

C. The provisions of this section do not prohibit use of genetic analysis, genetic propensity or genetic information by an insurer in the ordinary conduct of business in connection with life, disability income or long-term care insurance if use of genetic analysis, genetic propensity or genetic information in underwriting is based on sound actuarial principles or related to actual or reasonably anticipated experience.

D. It is unlawful for a person to use genetic information in employment, recruiting, housing or lending decisions or in extending public accommodations and services."

Chapter 204 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 183

Approved April 6, 2005

LAWS 2005, CHAPTER 205

AN ACT

RELATING TO LAND GRANTS; ESTABLISHING AN OFFICIAL COMMUNITY LAND GRANT REGISTRY.

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

Chapter 205 Section 1 Laws 2005

Section 1. COMMUNITY LAND GRANT REGISTRY ESTABLISHED--
REPORTING REQUIREMENTS.--

A. The secretary of state shall establish the "New Mexico community land grant registry".

B. A community land grant organized and governed pursuant to Chapter 49, Article 1 NMSA 1978 and operating as a political subdivision of the state shall register its bylaws and a list of current officers with the secretary of state. The board of trustees of that land grant shall notify the secretary of state of the names and positions of the land grant's elected or appointed officers upon their election or appointment.

C. Community land grants organized and operating pursuant to special statutes or other general statutes may also register their bylaws and lists of officers with the secretary of state.

D. A community land grant that registers in accordance with Subsections B or C of this section may request the secretary of state to keep on file copies of current or historical documents or maps submitted by the board of trustees to the secretary of state; provided that the secretary of state may store such documents and maps in the state archives and records center.

HOUSE BILL 209, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 206

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; INCLUDING NATIONAL BOARD CERTIFICATION IN THE PROGRAM COST CALCULATION.

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

Chapter 206 Section 1 Laws 2005

Section 1. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2003, Chapter 144, Section 1 and by Laws 2003, Chapter 152, Section 7) is amended to read:

"22-8-18. PROGRAM COST CALCULATION--LOCAL SCHOOL BOARD RESPONSIBILITY.--

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (5) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (6) through (10) in this subsection. The itemized program units are as follows:

- (1) early childhood education;
- (2) basic education;
- (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (4) bilingual multicultural education;
- (5) fine arts education;
- (6) size adjustment;
- (7) at-risk program;
- (8) enrollment growth or new district adjustment;
- (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers; and
- (10) national board for professional teaching standards certification.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility

of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act are discretionary to local school boards, provided that the special program needs as enumerated in this section are met."

HOUSE BILL 249

Approved April 6, 2005

LAWS 2005, CHAPTER 207

AN ACT

RELATING TO EDUCATION; CREATING THE NEW MEXICO GOVERNMENT EDUCATION FUND.

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

Chapter 207 Section 1 Laws 2005

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

"NEW MEXICO GOVERNMENT EDUCATION FUND.--

A. The "New Mexico government education fund" is created in the state treasury.

B. The New Mexico government education fund shall consist of appropriations by the legislature, gifts, grants and donations.

C. The New Mexico government education fund shall be administered by the department. Money in the fund is appropriated to the department to contract for annual, week-long, high school civics courses focusing on New Mexico state government for boys and girls to be held at varying post-secondary educational institutions in New Mexico.

D. Disbursements from the New Mexico government education fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary.

E. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the New Mexico government education fund."

HOUSE BILL 268, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 208

AN ACT

RELATING TO STATE AGENCIES; CHANGING SUNSET DATES FOR CERTAIN BOARDS AND COMMISSIONS; REMOVING CERTAIN BOARDS AND COMMISSIONS FROM SUNSET REVIEW.

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

Chapter 208 Section 1 Laws 2005

Section 1. Section 9-15-51 NMSA 1978 (being Laws 2003, Chapter 166, Section 4 and Laws 2003, Chapter 170, Section 4) is amended to read:

"9-15-51. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The office of military base planning and support and the military base planning commission are terminated on July 1, 2009 pursuant to the provisions of the Sunset Act. The office and the commission shall continue to operate according to the provisions of this act until July 1, 2010. Effective July 1, 2010, this act is repealed."

Chapter 208 Section 2 Laws 2005

Section 2. Section 50-1-9 NMSA 1978 (being Laws 1987, Chapter 333, Section 2, as amended) is amended to read:

"50-1-9. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The labor and industrial commission and the office of the director of the labor and industrial division of the labor department are terminated on July 1, 2013 pursuant to the Sunset Act. The commission and the director shall continue to operate according to the provisions of Chapter 50, Article 1 NMSA 1978 until July 1, 2014. Effective July 1, 2014, Chapter 50, Article 1 NMSA 1978 is repealed."

Chapter 208 Section 3 Laws 2005

Section 3. Section 60-1-26 NMSA 1978 (being Laws 1987, Chapter 333, Section 3, as amended) is amended to read:

"60-1-26. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state racing commission is terminated on July 1, 2011 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 60, Article 1 NMSA 1978 until July 1, 2012. Effective July 1, 2012, Chapter 60, Article 1 NMSA 1978 is repealed."

Chapter 208 Section 4 Laws 2005

Section 4. Section 60-2A-30 NMSA 1978 (being Laws 1980, Chapter 90, Section 30, as amended) is amended to read:

"60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico athletic commission is terminated on July 1, 2011 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Professional Athletic Competition Act until July 1, 2012. Effective July 1, 2012, Chapter 60, Article 2A NMSA 1978 is repealed."

Chapter 208 Section 5 Laws 2005

Section 5. Section 61-7A-15 NMSA 1978 (being Laws 1989, Chapter 387, Section 15, as amended) is amended to read:

"61-7A-15. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The nutrition and dietetics practice board is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Nutrition and Dietetics Practice Act until July 1, 2016. Effective July 1, 2016, the Nutrition and Dietetics Practice Act is repealed."

Chapter 208 Section 6 Laws 2005

Section 6. Section 61-9A-30 NMSA 1978 (being Laws 1993, Chapter 49, Section 30, as amended) is amended to read:

"61-9A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The counseling and therapy practice board is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Counseling and Therapy Practice Act until July 1, 2016. Effective July 1, 2016, the Counseling and Therapy Practice Act is repealed."

Chapter 208 Section 7 Laws 2005

Section 7. Section 61-12A-24 NMSA 1978 (being Laws 1996, Chapter 55, Section 24, as amended) is amended to read:

"61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of examiners for occupational therapy is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, 2016. Effective July 1, 2016, the Occupational Therapy Act is repealed."

Chapter 208 Section 8 Laws 2005

Section 8. Section 61-12C-28 NMSA 1978 (being Laws 1993, Chapter 173, Section 21, as amended) is amended to read:

"61-12C-28. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The massage therapy board is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Massage Therapy Practice Act until July 1, 2016. Effective July 1, 2016, Chapter 61, Article 12C NMSA 1978 is repealed."

Chapter 208 Section 9 Laws 2005

Section 9. Section 61-13-17 NMSA 1978 (being Laws 1978, Chapter 206, Section 1, as amended) is amended to read:

"61-13-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of nursing home administrators is terminated on July 1, 2013 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 2014. Effective July 1, 2014, Chapter 61, Article 13 NMSA 1978 is repealed."

Chapter 208 Section 10 Laws 2005

Section 10. Section 61-14-20 NMSA 1978 (being Laws 1979, Chapter 76, Section 2, as amended) is amended to read:

"61-14-20. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of veterinary medicine is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 NMSA 1978 until July 1, 2012. Effective July 1, 2012, Chapter 61, Article 14 NMSA 1978 is repealed."

Chapter 208 Section 11 Laws 2005

Section 11. Section 61-14A-22 NMSA 1978 (being Laws 1993, Chapter 158, Section 30, as amended by Laws 2000, Chapter 4, Section 10 and also by Laws 2000, Chapter 53, Section 13) is amended to read:

"61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of acupuncture and oriental medicine is terminated on July 1, 2017 pursuant to the Sunset Act. The board shall continue to operate according to the Acupuncture and Oriental Medicine Practice Act until July 1, 2018. Effective July 1, 2018, Chapter 61, Article 14A NMSA 1978 is repealed."

Chapter 208 Section 12 Laws 2005

Section 12. Section 61-14B-25 NMSA 1978 (being Laws 1996, Chapter 57, Section 25, as amended) is amended to read:

"61-14B-25. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The speech language pathology, audiology and hearing aid dispensing practices board is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act until July 1, 2016. Effective July 1, 2016, the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is repealed."

Chapter 208 Section 13 Laws 2005

Section 13. Section 61-14D-19 NMSA 1978 (being Laws 1993, Chapter 325, Section 19, as amended) is amended to read:

"61-14D-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The athletic trainer practice board is terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Athletic Trainer Practice Act until July 1, 2016. Effective July 1, 2016, Chapter 61, Article 14D NMSA 1978 is repealed."

Chapter 208 Section 14 Laws 2005

Section 14. Section 61-15-13 NMSA 1978 (being Laws 1979, Chapter 362, Section 10, as amended) is amended to read:

"61-15-13. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of examiners for architects is terminated on July 1, 2011 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Architectural Act until July 1, 2012. Effective July 1, 2012, the Architectural Act is repealed."

Chapter 208 Section 15 Laws 2005

Section 15. 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, 2013 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 2014. Effective July 1, 2014, the Barbers and Cosmetologists Act is repealed."

Chapter 208 Section 16 Laws 2005

Section 16. Section 61-23-32 NMSA 1978 (being Laws 1987, Chapter 336, Section 32, as amended) is amended to read:

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state board of licensure for professional engineers and surveyors is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2012. Effective July 1, 2012, the Engineering and Surveying Practice Act is repealed."

Chapter 208 Section 17 Laws 2005

Section 17. Section 61-24B-17 NMSA 1978 (being Laws 1985, Chapter 151, Section 18, as amended) is amended to read:

"61-24B-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of landscape architects is terminated on July 1, 2013 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Landscape Architects Act until July 1, 2014. Effective July 1, 2014, the Landscape Architects Act is repealed."

Chapter 208 Section 18 Laws 2005

Section 18. Section 61-24C-17 NMSA 1978 (being Laws 1993, Chapter 83, Section 5, as amended) is amended to read:

"61-24C-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The interior design board is terminated on July 1, 2011 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Interior Designers Act until July 1, 2012. Effective July 1, 2012, Chapter 61, Article 24C NMSA 1978 is repealed."

Chapter 208 Section 19 Laws 2005

Section 19. Section 61-27A-21 NMSA 1978 (being Laws 2000, Chapter 4, Section 16) is amended to read:

"61-27A-21. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The private investigators and polygraphers advisory board is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Private Investigators and Polygraphers Act until July 1, 2012. Chapter 61, Article 27A NMSA 1978 is repealed effective July 1, 2012."

Chapter 208 Section 20 Laws 2005

Section 20. Section 61-28B-29 NMSA 1978 (being Laws 1999, Chapter 179, Section 29) is amended to read:

"61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico public accountancy board is terminated on July 1, 2011 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the 1999 Public Accountancy Act until July 1, 2012. Effective July 1, 2012, the 1999 Public Accountancy Act is repealed."

Chapter 208 Section 21 Laws 2005

Section 21. Section 61-29-19 NMSA 1978 (being Laws 1978, Chapter 203, Section 2, as amended) is amended to read:

"61-29-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico real estate commission is terminated on July 1, 2011 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2012. Effective July 1, 2012, Chapter 61, Article 29 NMSA 1978 is repealed."

Chapter 208 Section 22 Laws 2005

Section 22. Section 61-30-24 NMSA 1978 (being Laws 1993, Chapter 269, Section 21, as amended) is amended to read:

"61-30-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The real estate appraisers board is terminated effective July 1, 2011. The Real Estate Appraisers Act shall continue in effect until July 1, 2012. Chapter 61, Article 30 NMSA 1978 is repealed effective July 1, 2012."

Chapter 208 Section 23 Laws 2005

Section 23. Section 61-31-25 NMSA 1978 (being Laws 1989, Chapter 51, Section 27, as amended) is amended to read:

"61-31-25. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of social work examiners is terminated on July 1, 2015 pursuant to the Sunset Act. The

board shall continue to operate according to the provisions of the Social Work Practice Act until July 1, 2016. Effective July 1, 2016, the Social Work Practice Act is repealed."

Chapter 208 Section 24 Laws 2005

Section 24. Section 61-32-31 NMSA 1978 (being Laws 1993, Chapter 204, Section 31, as amended) is amended to read:

"61-32-31. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of thanatopractice is terminated on July 1, 2011, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2012. Effective July 1, 2012, the Thanatopractice Act is repealed."

Chapter 208 Section 25 Laws 2005

Section 25. Section 69-25A-36 NMSA 1978 (being Laws 1987, Chapter 333, Section 14, as amended) is amended to read:

"69-25A-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The coal surface mining commission is terminated on July 1, 2013 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Surface Mining Act until July 1, 2014. Effective July 1, 2014, Section 69-25A-4 NMSA 1978 is repealed."

Chapter 208 Section 26 Laws 2005

Section 26. Section 74-6-17 NMSA 1978 (being Laws 1987, Chapter 333, Section 15, as amended) is amended to read:

"74-6-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The water quality control commission is terminated on July 1, 2013 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, 2014. Effective July 1, 2014, Sections 74-6-3 and 74-6-4 NMSA 1978 are repealed."

Chapter 208 Section 27 Laws 2005

Section 27. REPEAL.--Section 28-1-15, 31-22-24, 60-13-58, 60-14-16 and 77-2-28 NMSA 1978 (being Laws 1987, Chapter 333, Section 1, Laws 1993, Chapter 207, Section 10, Laws 1978, Chapter 194, Section 1, Laws 1983, Chapter 295, Section 21 and Laws 1981, Chapter 5, Section 1, as amended) are repealed.

HOUSE BILL 306, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 209

AN ACT

RELATING TO MINING; REVISING APPEAL PROVISIONS OF THE SURFACE MINING ACT.

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

Chapter 209 Section 1 Laws 2005

Section 1. Section 69-25A-18 NMSA 1978 (being Laws 1979, Chapter 291, Section 18) is amended to read:

"69-25A-18. DECISIONS OF DIRECTOR AND APPEALS.--

A. If an informal conference has been held pursuant to Section 69-25A-17 NMSA 1978, the director, after receiving the recommendation of the hearing officer, shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the director, granting or denying the permit in whole or in part and stating the reasons therefor, within sixty days of the informal conference.

B. If there has been no informal conference held pursuant to Section 69-25A-17 NMSA 1978, the director shall notify the applicant for a permit within ninety days of the last publication required by Subsection A of Section 69-25A-17 NMSA 1978, whether the application has been approved or disapproved in whole or in part. Upon good cause shown, the time may be extended an additional ninety days.

C. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons for the disapproval shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the director on the permit application, the applicant or any person, with an interest that is or may be adversely affected, may request a hearing on the reasons for the final determination. The director shall hold a hearing within thirty days of the request and provide notification to all interested parties at the time that the applicant is notified. The hearing shall be of record, adjudicatory in nature, and a person who presided at a conference under Section 69-25A-17 NMSA 1978 shall not preside at the hearing or participate in the decision or in any administrative appeal from the decision. Within thirty days after the hearing, the director shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the director granting or denying the permit in whole or in part and stating the reasons therefor.

D. Where a hearing is requested pursuant to Subsection C of this section, the director may, under such conditions as the director may prescribe, grant such temporary relief as the director deems appropriate pending final determination of the proceeding if:

(1) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(3) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

E. For the purpose of the hearing, the director may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials and take evidence, including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by the Surface Mining Act shall be made and a transcript made available on the motion of any party or by order of the director.

F. Any applicant or any person with an interest that is or may be adversely affected, who has participated in the administrative proceedings as an objector and who is aggrieved by the decision of the director or the director's failure to act within the time limits specified in the Surface Mining Act has the right to seek judicial review in accordance with Section 69-25A-30 NMSA 1978."

Chapter 209 Section 2 Laws 2005

Section 2. Section 69-25A-29 NMSA 1978 (being Laws 1979, Chapter 291, Section 29) is amended to read:

"69-25A-29. ADMINISTRATIVE REVIEW.--

A. A permittee issued a notice or order by the director pursuant to the provisions of Section 69-25A-25 NMSA 1978, or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation or termination of the notice or order, may apply to the director for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation or termination. Upon receipt of the application, the director shall cause such investigation to be made as the director deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the permittee or the person having an interest that is or may be adversely affected, to enable the permittee or the person to present information relating to the issuance and continuance of the notice or

order or the modification, vacation or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any hearing shall be of record and adjudicatory in nature in accordance with the commission's rules.

C. Upon receiving the report of the investigation, the director shall make findings of fact and shall issue a written decision, incorporating an order vacating, affirming, modifying or terminating the notice or order or the modification, vacation or termination of the notice or order complained of and incorporate the director's findings in the decision. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Section 69-25A-25 NMSA 1978, the director shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the director pursuant to Subsection D of this section or by the court pursuant to Section 69-25A-30 NMSA 1978.

D. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under Section 69-25A-25 NMSA 1978, together with a detailed statement giving reasons for granting the relief. The director shall issue an order or decision granting or denying the relief expeditiously. If the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Section 69-25A-25 NMSA 1978, the order or decision on the request shall be issued within five days of its receipt. The director may grant the relief, under such conditions as the director may prescribe, if:

(1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

(3) the relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

E. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to Section 69-25A-25 NMSA 1978, the director shall hold a public hearing after giving written notice of the time, place and date of the hearing. Any hearing shall be of record and adjudicatory in nature in accordance with the commission's rules. Within sixty days following the public hearing, the director shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons for the decision, concerning suspension or revocation of the permit. If the director revokes the permit, the permittee shall immediately cease surface

coal mining operations on the permit area and complete reclamation within a period specified by the director, or the director shall declare as forfeited the performance bonds for the operation. Any order issued pursuant to this subsection shall be appealable directly to the court pursuant to Section 69-25A-30 NMSA 1978 without further review by the director.

F. Whenever an order is issued under this section or as a result of any administrative proceeding under the Surface Mining Act, at the request of any person a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the director to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the director or the court deems proper."

Chapter 209 Section 3 Laws 2005

Section 3. Section 69-25A-30 NMSA 1978 (being Laws 1979, Chapter 291, Section 30, as amended) is amended to read:

"69-25A-30. JUDICIAL REVIEW.--

A. A party to a proceeding before the director who is aggrieved by a decision of the director issued after a hearing may obtain a review of that decision, other than a promulgation of a rule, by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person who is or may be aggrieved by any rule, or any amendment or repeal of a rule, adopted by the commission may appeal to the court of appeals for relief. All appeals shall be based upon the record made at the hearing before the commission and shall be filed with the court of appeals within thirty days after filing of the rule under the State Rules Act. An appeal to the court of appeals under this subsection is perfected by the timely filing of a notice of appeal with the court of appeals with a copy attached of the rule from which the appeal is taken. The appellant shall certify in the appellant's notice of appeal that satisfactory arrangements have been made with the commission for preparation of transcripts of the record of the hearing at the expense of the appellant for filing with the court. Upon appeal, the court of appeals shall set aside the rule only if determined to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) contrary to law; or

(3) unsupported by substantial evidence on the entire record as submitted."

HOUSE BILL 311

Approved April 6, 2005

LAWS 2005, CHAPTER 210

AN ACT

RELATING TO LICENSURE; CHANGING THE SCOPE OF PRACTICE FOR COUNSELING AND THERAPY; AMENDING LICENSURE REQUIREMENTS; REVISING DEFINITIONS; PROVIDING FOR BOARD IMMUNITY AND CONFIDENTIALITY; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 210 Section 1 Laws 2005

Section 1. Section 61-9A-3 NMSA 1978 (being Laws 1993, Chapter 49, Section 3, as amended) is amended to read:

"61-9A-3. DEFINITIONS.--As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college accredited by an accrediting agency of institutions of higher education;

B. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature; "appraisal" shall not be construed to permit the performance of any act that a counselor or a therapist is not educated, trained and licensed to perform;

C. "appropriate clinical supervision" means as defined by rule, supervision provided by a licensed:

- (1) professional clinical mental health counselor;
- (2) marriage and family therapist;
- (3) professional art therapist;
- (4) psychiatrist;

(5) clinical psychologist;

(6) clinical nurse specialist in psychiatry;

(7) independent social worker with two years of mental health and supervised clinical experience; or

(8) alcohol and drug abuse counselor. A licensed alcohol and drug abuse counselor must have completed three years of alcohol and drug abuse experience prior to providing supervision;

D. "appropriate clinical supervisor for substance abuse associate" means a person who has education and experience specific to the career track of the associate and has training in transmitting knowledge, skills and attitudes through a relational process that includes direct oversight of the clinical work;

E. "approved clinical supervisor" means a person who is a licensed professional clinical mental health counselor, licensed marriage and family therapist, licensed professional art therapist, licensed psychiatrist, licensed clinical psychologist, clinical nurse specialist in psychiatry or licensed independent social worker and provides supervision to a licensed mental health counselor or therapist;

F. "art therapy" means the rendering of art therapy principles whereby communication is facilitated through therapeutic counseling and art media. This involves the application of the principles of human development and psychological theories, which are implemented in the full spectrum of models of assessment and treatment, including psychodynamics and cognitive, interpersonal and other therapeutic means to individuals, couples, families, groups and communities for the promotion of optimal mental health;

G. "board" means the counseling and therapy practice board;

H. "client contact hours" means the face-to-face time spent with a client to appraise, assess, evaluate, diagnose, treat psychopathology and provide counseling services;

I. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, diagnosis, treatment and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of assessing and treating psychopathology and promoting optimal mental health;

J. "consultation" means the voluntary, nonsupervisory relationship between professionals or other pertinent persons, in application of scientific counseling, guidance and human development principles and procedures to provide assistance in

understanding and resolving a current or potential problem that the consultee may have in relation to a third party, be it an individual, group, family or organization;

K. "counselor training and education" means a process that prepares counselors and therapists in both didactic and clinical aspects of counseling;

L. "course" means an integrated, organized course of study, which encompasses a minimum of one school semester or equivalent hours;

M. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

N. "counseling-related field" as defined by rule, means a degree in guidance counseling, mental health-community counseling or agency counseling; psychology, clinical psychology, counseling psychology; human and family studies; art therapy; and art education with an emphasis in art therapy;

O. "defined by rule" means rules and regulations published by the board to establish criteria, standards and procedures relevant to application, licensing, administration and enforcement of the Counseling and Therapy Practice Act;

P. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

Q. "diagnosis and treatment planning" means assessing, analyzing and providing diagnostic descriptions of mental, emotional or behavioral conditions; exploring possible solutions; and developing and implementing a treatment plan for mental, emotional and psychosocial adjustment or development. "Diagnosis and treatment planning" shall not be construed to permit the performance of any act that counselors or therapists are not educated, trained and licensed to perform;

R. "evaluation" means the act of making informed decisions based on the use and analysis of pertinent data;

S. "internship" means a distinctly defined, pre-graduate, supervised clinical experience in which the student refines, enhances and integrates professional knowledge with basic counselor or therapist skills appropriate to the student's program and preparation for postgraduate professional placement;

T. "licensure" means the process by which a state agency or government grants permission to an individual to engage in a given profession and to use the designated title of that profession after the applicant has attained the minimal degree of

competency necessary to ensure that the public health, safety and welfare are reasonably well protected;

U. "marriage and family therapy" means the assessment, diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems;

V. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of mental disorders;

W. "practicum" means a distinctly defined, supervised clinical experience in which the student develops basic counselor or therapist skills and integrates professional knowledge. Practicum is completed prior to or concurrent with an internship;

X. "program" means a structured sequence of curricular and clinical experiences housed within an academic unit;

Y. "referral" means evaluating and identifying the needs of a client to determine the advisability of referrals to other specialists, advising the client of such judgments and communicating as requested or deemed appropriate to such referral sources;

Z. "research" means a systematic effort to collect, analyze and interpret quantitative or qualitative data that describe how social characteristics, behavior, emotions, cognition, disabilities, mental disorders and interpersonal transactions among individuals, couples, families and organizations interact;

AA. "standard" means a minimal criterion that must be met; and

BB. "substance abuse-related fields" means a degree in guidance counseling, mental health-community counseling, agency counseling, psychology, clinical psychology, counseling psychology, human and family studies, social work, art therapy and art education with appropriate clinical background and two hundred seventy-six clock hours in education or training in alcohol and drug abuse counseling."

Chapter 210 Section 2 Laws 2005

Section 2. Section 61-9A-4 NMSA 1978 (being Laws 1993, Chapter 49, Section 4, as amended) is amended to read:

"61-9A-4. LICENSE OR REGISTRATION REQUIRED.--

A. Unless licensed or registered to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of professional mental health counseling;
- (2) the practice of professional clinical mental health counseling;
- (3) marriage and family therapy;
- (4) professional art therapy;
- (5) counseling as a licensed mental health counselor;
- (6) counseling as a licensed associate marriage and family therapist; or
- (7) counseling as a registered independent mental health counselor.

B. Unless licensed to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of alcohol and drug abuse counseling;
- (2) the practice of alcohol abuse counseling;
- (3) the practice of drug abuse counseling; or
- (4) substance abuse counseling as a substance abuse associate."

Chapter 210 Section 3 Laws 2005

Section 3. Section 61-9A-5 NMSA 1978 (being Laws 1993, Chapter 49, Section 5, as amended) is amended to read:

"61-9A-5. SCOPES OF PRACTICE.--

A. For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse associate if he advertises, offers himself to practice, is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered

independent mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse counselor associate, or holds out to the public or represents in any manner that he is licensed or registered to practice as a counselor or therapist enumerated in this section in this state.

B. "Practice of professional clinical mental health counseling" means the application of mental health, psychotherapeutic and human development principles through a therapeutic relationship to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using counseling treatment interventions and strategies.

C. "Practice of professional art therapy" means the licensed practice of counseling or therapy services to individuals, families or groups, of services that use art media as a means of expression and communication to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associate distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using counseling or therapy treatment interventions and strategies.

D. "Practice of marriage and family therapy" means the licensed practice of marriage and family therapy services delivered to persons, couples and families treated singly or in groups within the context of family systems to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associate distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using marriage and family therapy treatment interventions and strategies.

E. "Practice of licensed mental health counselor, licensed mental health associate, registered independent counselor and licensed associate marriage and family therapist under an appropriate clinical supervisor" consists of rendering counseling services, which may include evaluation, assessment, consultation, diagnosing, development of treatment plans, case management counseling referral, appraisal, crisis intervention education, reporting and record keeping to individuals, couples, families or groups as defined by rule.

F. The scopes of practice of alcohol and drug abuse counseling, or both, consists of rendering treatment and intervention services specific to alcohol and other drug use disorders to persons, couples, families or groups. The services may include evaluation, assessment, diagnosis of chemical abuse and chemical dependency disorders only, consultation, development of treatment plans, case management-counseling, referral, appraisal, crisis intervention, education, reporting and record keeping. Nothing in this scope of practice shall be construed as preventing licensed alcohol and drug abuse counselors from providing screening and referrals for mental health disorders. However, assessment, treatment and diagnosis for such disorders is not within the scope of practice of this license. The practice of these activities will be limited to the individual's level of training, education and supervised experience.

G. The scope of practice of a substance abuse associate under the supervision by an appropriate supervisor is limited to supervised work in a public or private institution. The associate may be involved in taking social histories or conducting home studies. The associate utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level and developing an intervention plan. The associate may implement the plan and conduct follow-ups pertaining specifically to alcohol and drug abuse counseling. The associate may provide client education and assist a licensed counselor-therapist with group or individual counseling sessions. A substance abuse associate shall not practice independently as a private practitioner."

Chapter 210 Section 4 Laws 2005

Section 4. Section 61-9A-6 NMSA 1978 (being Laws 1993, Chapter 49, Section 6, as amended by Laws 2003, Chapter 422, Section 4 and by Laws 2003, Chapter 423, Section 1) is amended to read:

"61-9A-6. EXEMPTIONS.--

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

(1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of the person's profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

(1) elementary and secondary school counselors acting on behalf of their employer who are otherwise regulated;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) duly ordained, commissioned or licensed ministers of a church providing pastoral services on behalf of a church;

(4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy or art therapy or a degree in substance abuse counseling;

(5) practitioners of Native American healing arts; and

(6) individuals who serve as peer counselors for a twelve-step recovery program or a similar self-help chemical dependency recovery program that:

(a) does not offer chemical dependency treatment;

(b) does not charge program participants a fee; and

(c) allows program participants to maintain anonymity.

C. Nothing in this section shall be construed to allow an individual whose license has been lost or suspended by the New Mexico counseling and therapy practice board or the New Mexico state board of psychology examiners to avoid such loss or suspension by utilizing this exemption."

Chapter 210 Section 5 Laws 2005

Section 5. Section 61-9A-8 NMSA 1978 (being Laws 1993, Chapter 49, Section 8, as amended) is amended to read:

"61-9A-8. DEPARTMENT DUTIES.--The department, with the consultation of the board, shall:

- A. process applications;
- B. conduct and review the required examinations;
- C. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act;
- D. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices that may violate the provisions of that act;
- E. approve the selection of primary staff assigned to the board;
- F. maintain records, including financial records; and
- G. maintain a current register of licensees and registrants as a matter of public record."

Chapter 210 Section 6 Laws 2005

Section 6. A new section of the Counseling and Therapy Practice Act is enacted to read:

"ACTIONS OF BOARD--IMMUNITY--CERTAIN RECORDS NOT PUBLIC RECORDS.--

A. No member of the board or person working on behalf of the board shall be civilly liable or subject to civil damages for any good-faith action undertaken or performed within the proper functions of the board.

B. All written and oral communication made by a person to the board relating to actual or potential disciplinary action shall be confidential communication and are not public records for the purposes of the Public Records Act. All data, communication and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

- (1) to the extent necessary to carry out the board's functions;

(2) as needed for judicial review of the board's actions; or

(3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communication and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Counseling and Therapy Practice Act shall be public records, pursuant to the provisions of the Public Records Act."

Chapter 210 Section 7 Laws 2005

Section 7. Section 61-9A-10 NMSA 1978 (being Laws 1993, Chapter 49, Section 10, as amended) is amended to read:

"61-9A-10. PROFESSIONAL MENTAL HEALTH COUNSELOR--
REQUIREMENTS FOR LICENSURE.--Effective July 1, 2007, the board will no longer license professional mental health counselors. Prior to the effective date, the board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or a counseling-related field from an accredited institution and has a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing the required examinations prescribed by the board;

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate clinical supervision consisting of at least one hundred supervision hours; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 8 Laws 2005

Section 8. Section 61-9A-11 NMSA 1978 (being Laws 1993, Chapter 49, Section 11, as amended) is amended to read:

"61-9A-11. PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR-- REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in a counseling or counseling-related field, as defined by rule, from an accredited institution. The applicant must have a master's degree and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing the required examination as prescribed by the board;

D. has a minimum of two years of professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of face-to-face supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 9 Laws 2005

Section 9. Section 61-9A-11.1 NMSA 1978 (being Laws 1999, Chapter 161, Section 10, as amended) is amended to read:

"61-9A-11.1. PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR-- REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees within the July 1, 2005 through July 1, 2007 period and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a current professional mental health counselor license;

C. holds a master's or doctoral degree from an accredited institution;

D. demonstrates professional competency by satisfactorily passing the required examinations as prescribed by the board;

E. has a minimum of three thousand hours of client contact experience, including at least one hundred hours of face-to-face supervision or a minimum of ten

thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision; and

F. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 10 Laws 2005

Section 10. Section 61-9A-12 NMSA 1978 (being Laws 1993, Chapter 49, Section 12, as amended) is amended to read:

"61-9A-12. MARRIAGE AND FAMILY THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a marriage and family therapist to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy and meets the requirements of the marriage and family therapy core curriculum, as defined by rule, in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by passing the examinations as prescribed by the board;

D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate clinical supervision, of which one hundred hours of such supervision was on an individual basis; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 11 Laws 2005

Section 11. A new section of the Counseling and Therapy Practice Act is enacted to read:

"LICENSED ASSOCIATE MARRIAGE AND FAMILY THERAPIST OR COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as an associate marriage and family therapist or counselor to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy or counselor from an accredited institution and meets the requirements of the marriage and family therapy or counselor core curriculum, as defined by rule;

C. has arranged for appropriate clinical supervision, as defined by rule, to meet the requirements for a licensed associate marriage and family therapist;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 12 Laws 2005

Section 12. Section 61-9A-13 NMSA 1978 (being Laws 1993, Chapter 49, Section 13, as amended) is amended to read:

"61-9A-13. PROFESSIONAL ART THERAPIST--REQUIREMENTS FOR LICENSURE.--

A. The board shall issue a license as a professional art therapist to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) has reached the age of twenty-one;

(2) demonstrates professional competency by passing an examination as prescribed by the board;

(3) holds one of the following:

(a) a master's or doctoral degree from an accredited institution or nationally approved art therapy program in art therapy that includes seven hundred hours of supervised internship experience from an accredited institution;

(b) a master's degree in counseling or a counseling-related field, as defined by rule, has a minimum of twenty-four semester hours of sequential course work in the history, theory and practice of art therapy and has completed seven hundred hours of supervised internship experience from an accredited institution. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; or

(c) a master's degree in counseling or a counseling-related field, as defined by rule, and completed a minimum of twenty-four semester hours in an

art therapy certificated program from an accredited institution or nationally approved American art therapy association program;

(4) has completed one thousand client contact hours of postgraduate face-to-face experience under appropriate supervision beyond the requirements in Subparagraphs (a), (b) and (c) of Paragraph (3) of this subsection. Supervision shall be under a New Mexico licensed professional art therapist or certified board art therapist for at least fifty percent of the working hours; and

(5) is of good moral character with conduct consistent with the code of ethics.

B. Effective July 1, 2005 applicants must meet the art therapy core curriculum, as defined by rule."

Chapter 210 Section 13 Laws 2005

Section 13. Section 61-9A-14 NMSA 1978 (being Laws 1993, Chapter 49, Section 14, as amended) is amended to read:

"61-9A-14. REQUIREMENTS FOR LICENSED MENTAL HEALTH COUNSELOR.--The board shall issue a license as a mental health associate to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds either a master's or doctoral degree from an accredited institution in a counseling or counseling-related field, as defined by rule and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the core curriculum;

C. has arranged for an appropriate clinical supervision plan and a postgraduate experience plan, as defined by rule, to meet the licensing requirements for a:

(1) professional art therapist;

(2) professional mental health counselor; or

(3) professional clinical mental health counselor;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 210 Section 14 Laws 2005

Section 14. Section 61-9A-14.1 NMSA 1978 (being Laws 1996, Chapter 61, Section 8, as amended) is amended to read:

"61-9A-14.1. SUBSTANCE ABUSE ASSOCIATE--REQUIREMENTS FOR LICENSURE.--

A. Effective July 1, 2005, the board shall license as a substance abuse associate any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant as defined by rule:

(1) is of good moral character, with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) holds an associate degree in a counseling, counseling-related field or substance abuse-related field from an accredited institution and has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse counseling; and

(4) has arranged for an appropriate supervision plan, as defined by rule, to meet the requirements for licensure as a substance abuse associate.

B. The applicant shall also provide two letters of recommendation."

Chapter 210 Section 15 Laws 2005

Section 15. Section 61-9A-14.2 NMSA 1978 (being Laws 1999, Chapter 161, Section 15, as amended) is amended to read:

"61-9A-14.2. ALCOHOL AND DRUG ABUSE COUNSELOR--REQUIREMENTS FOR LICENSURE.--

Effective July 1, 2005, the board shall license as an alcohol and drug abuse counselor a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant, as defined by rule:

A. is of good moral character with conduct consistent with the code of ethics;

B. has reached the age of twenty-one;

C. demonstrates professional competency by passing the required examinations prescribed by the board;

D. has provided three letters of recommendation: one letter from a current supervisor, one letter from a current employer and one letter from a professional substance abuse colleague; and

E. has one of the following combinations of education and experience:

(1) an associate degree in counseling, a counseling-related field or a substance abuse-related field from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol, drug and counseling, six hours of professional ethics, three years and three thousand client contract hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and two hundred hours of face-to-face supervision;

(2) a baccalaureate degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol, drug and counseling and six hours of professional ethics, two years and two thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and one hundred hours of face-to-face supervision; or

(3) a master's degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol, drug and counseling and six hours of professional ethics, one year and one thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and fifty hours of face-to-face supervision hours."

Chapter 210 Section 16 Laws 2005

Section 16. Section 61-9A-15 NMSA 1978 (being Laws 1993, Chapter 49, Section 15, as amended) is amended to read:

"61-9A-15. EXAMINATIONS.--

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examinations following the approval of the application. The board shall establish the board-approved examinations application deadline and the requirements for reexamination if the applicant has failed the examinations.

B. The examinations shall cover subjects appropriate to the scope of practice as a licensed mental health counselor, a licensed associate marriage and family therapist, a professional mental health counselor, a professional clinical mental

health counselor, a marriage and family therapist, a professional art therapist or an alcohol and drug abuse counselor."

Chapter 210 Section 17 Laws 2005

Section 17. Section 61-9A-22 NMSA 1978 (being Laws 1993, Chapter 49, Section 22, as amended) is amended to read:

"61-9A-22. LICENSURE BY CREDENTIALS.--The board may issue a license to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant holds a current license issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation and is:

A. a nationally certified counselor as determined by the national board of certified counselors;

B. a certified clinical mental health counselor or therapist as determined by the national board of certified counselors;

C. a clinical member of the American association for marriage and family therapy;

D. a registered art therapist, board certified by the art therapy credential board; or

E. an alcohol and drug abuse counselor who is a national certified addiction counselor level I.

Applicants who do not meet the licensure by credential must meet the current licensure requirements."

Chapter 210 Section 18 Laws 2005

Section 18. Section 61-9A-23 NMSA 1978 (being Laws 1993, Chapter 49, Section 23, as amended) is amended to read:

"61-9A-23. LICENSE AND REGISTRATION RENEWAL.--

A. Each licensee or registrant shall renew his license or registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. If a license is not renewed by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. The licensee or registrant may renew within a thirty-day grace period by submitting payment of the renewal fee, late fee and compliance with all renewal requirements. Upon receipt of payment and continuing education unit requirements, the licensee and registrant may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed professional counselor from the requirements for renewal.

C. If continuing education unit requirements are not completed within the licensing period and by the expiration date, the license or registration will be considered expired and the licensee or registrant will refrain from practicing.

D. Failure to renew a license or registration within thirty days from the date of expiration as provided in this section shall cause the license or registration to automatically expire. Reinstatement of an expired license or registration will require the licensee to reapply, submit all necessary documentation and meet all current standards for licensure.

E. A person licensed or registered under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or registration. If, within a period of five years from the year of retirement, the licensee or registrant wishes to resume practice, the licensee or registrant shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by rule of the board and the payment of a renewal license fee and reinstatement fee, his license or registration shall be restored to him in full effect."

Chapter 210 Section 19 Laws 2005

Section 19. Section 61-9A-24 NMSA 1978 (being Laws 1993, Chapter 49, Section 24, as amended) is amended to read:

"61-9A-24. LICENSE AND REGISTRATION FEES.--Applicants for licensure or registration shall pay fees set by the board in an amount not to exceed:

A. for application for initial licensure, seventy-five dollars (\$75.00), which is not refundable;

B. for licensure or renewal as a professional mental health counselor or registered independent mental health counselor, three hundred dollars (\$300);

C. for licensure or renewal as a clinical professional mental health counselor, marriage and family therapist or professional art therapist, four hundred twenty dollars (\$420);

D. for registration or renewal as a registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist or registered independent mental health counselor, two hundred forty dollars (\$240);

E. for all examinations, seventy-five dollars (\$75.00) or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;

F. for a duplicate or replacement license or registration, twenty-five dollars (\$25.00);

G. for failure to renew a license or registration within the allotted grace period, a late penalty fee not to exceed one hundred dollars (\$100);

H. reasonable administrative fees; and

I. for licensure, registration or renewal as an

alcohol and drug abuse counselor, an alcohol abuse counselor, a drug abuse counselor or a substance abuse associate, two hundred dollars (\$200)."

Chapter 210 Section 20 Laws 2005

Section 20. Section 61-9A-26 NMSA 1978 (being Laws 1993, Chapter 49, Section 26, as amended) is amended to read:

"61-9A-26. LICENSE AND REGISTRATION--DENIAL, SUSPENSION AND REVOCATION.--

A. In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act, or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or registration provided for in the Counseling and Therapy Practice Act;

(2) is adjudicated mentally incompetent by regularly constituted authorities;

(3) is found guilty of a felony or misdemeanor involving moral turpitude;

(4) is found guilty of unprofessional or unethical conduct;

(5) has illicitly been using any controlled substances, as defined in the Controlled Substances Act, or using a mood-altering substance or alcoholic beverage to an extent or in a manner dangerous to himself or any other person or the public or to an extent that the use impairs his ability to perform the work of a counselor or therapist practitioner;

(6) has violated any provision of the Counseling and Therapy Practice Act or regulations adopted by the board;

(7) is grossly negligent in practice as a professional counselor or therapist practitioner;

(8) willfully or negligently divulges a professional confidence;

(9) demonstrates marked incompetence in practice as a professional counselor or therapist practitioner;

(10) has had a license or registration to practice as a counselor, therapist or other mental health practitioner revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this subsection; or

(11) knowingly and willfully practices beyond the scope of practice, as defined by the board.

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

C. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

D. A person who violates any provision of the Counseling and Therapy Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978."

Chapter 210 Section 21 Laws 2005

Section 21. REPEAL.--Section 61-9A-11.2 NMSA 1978 (being Laws 2003, Chapter 422, Section 11, as amended) is repealed.

SUBSTITUTE FOR HOUSE BILL 314, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 211

AN ACT

RELATING TO TAXATION; PROVIDING PROVISIONS FOR A LAND GRANT-MERCED BOARD OF TRUSTEES TO PURCHASE FORMER GRANT LANDS SOLD AT DELINQUENT TAX AUCTIONS.

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

Chapter 211 Section 1 Laws 2005

Section 1. Section 7-38-67 NMSA 1978 (being Laws 1973, Chapter 258, Section 107, as amended by Laws 2001, Chapter 253, Section 3 and by Laws 2001, Chapter 254, Section 3) is amended to read:

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

A. Real property shall 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 shall 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 or the property is sold in accordance with the provisions of Subsection H of this section. 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.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant-merced shall be allowed to match the highest bid at a public auction, which shall entitle the board of trustees to purchase the property for the amount bid if:

(1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the bid covers all past taxes, penalties, interest and costs due on the property; and

(3) the land becomes part of the common lands of the land grant-merced."

Chapter 211 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 332, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 212

AN ACT

RELATING TO TAXATION; AUTHORIZING A COUNTY AND MUNICIPAL LOCAL OPTION QUALITY OF LIFE GROSS RECEIPTS TAX.

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

Chapter 212 Section 1 Laws 2005

Section 1. A new section of the County Local Option Gross Receipts Taxes Act is enacted to read:

"QUALITY OF LIFE GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS--USE OF REVENUE--ELECTION.--

A. Prior to January 1, 2016, the majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having enacted an ordinance imposing the tax prior to January 1, 2016 pursuant to the provisions of this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years; provided that each ordinance meets the requirements of this section and of the County Local Option Gross Receipts Taxes Act. The tax imposed pursuant to the provisions of this section may be referred to as the "quality of life gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing the quality of life gross receipts tax, shall dedicate the revenue to cultural programs and activities provided by a local government and to cultural programs, events and activities provided by contract or operating agreement with nonprofit or publicly owned cultural organizations and institutions.

C. The governing body of a class A county with a population of more than two hundred fifty thousand according to the most recent federal decennial census, when dedicating revenue pursuant to Subsection B of this section, shall specify that:

(1) the revenue may not be used for capital expenditures, endowments or fundraising;

(2) at least one percent but not more than three percent of the revenue shall be used for public education on the use of the revenue;

(3) at least three percent but not more than five percent of the revenue shall be dedicated to administration of the revenue; and

(4) at least one percent but not more than three percent of the revenue shall be used for implementation of the goals of the cultural plan for the county and the largest municipality located within the exterior boundaries of the county.

D. An ordinance imposing any increment of the quality of life 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 vote in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within ninety days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to this section. If a majority of the voters voting on the question approves the ordinance imposing the quality of life gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the quality of life 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. The quality of life gross receipts tax revenue shall be used to meet the following goals: promoting and preserving cultural diversity; enhancing the quality of cultural programs and activities; fostering greater access to cultural opportunities; promoting culture in order to further economic development within the county; and supporting programs, events and organizations with direct, identifiable and measurable public benefit to residents of the county. It is the objective of the quality of life gross receipts tax that the revenue from the tax be used to expand and sustain existing programs and to develop new programs, events and activities, rather than to replace other funding sources for existing programs, events and activities.

F. The governing body of a county that imposes the quality of life gross receipts tax shall, within sixty days of the election approving the imposition of the tax, appoint a county cultural advisory board consisting of between nine and fifteen members. Persons appointed to the board shall be residents of the county who are knowledgeable about the activities eligible for quality of life tax funding. At least one member of the board shall be appointed by the governing body of the most populous municipality within the county. The members of the board shall be appointed for fixed terms and shall not be removed during their terms except for malfeasance. The terms of the initial board members shall be staggered so that one-third of the members are appointed for one-year terms, one-third are appointed for two-year terms and one-third are appointed for three-year terms. Subsequent appointments to the board shall be for three-year terms. If a vacancy on the board occurs, the governing body shall appoint a replacement member for the remainder of the unexpired term. A board member shall not serve for more than two consecutive terms.

G. The county cultural advisory board shall have the responsibility of overseeing the distribution of the quality of life gross receipts tax revenue for the goals listed in Subsection E of this section. The board shall:

(1) biennially submit recommendations to the governing body for expenditures of revenue from the quality of life gross receipts tax that are allocated pursuant to this section through contracts for services with appropriate organizations and institutions;

(2) establish and publicize the necessary qualifications for organizations and institutions to receive quality of life gross receipts tax funding; and

(3) develop guidelines and procedures for applying for funding through a request for proposals process and the criteria by which contracts will be awarded. The evaluation process shall include a public review component.

H. The cultural advisory board shall establish reporting requirements for recipients of the quality of life gross receipts tax revenue. The board shall provide to the governing body an annual evaluation of the use of revenue from the quality of life gross receipts tax to ensure that it is meeting the goals listed in Subsection E of this section.

I. If the quality of life gross receipts tax is enacted in a class A county with a population of more than two hundred fifty thousand according to the most recent federal decennial census, the net revenue from the tax remaining after distributions pursuant to Subsection C of this section shall be distributed as follows subject to the recommendations of the county cultural advisory board pursuant to Subsection G of this section:

(1) for the purpose of enhancing cultural programs and activities, sixty-five percent to a municipality for cultural programs and activities within the exterior boundaries of the county and five percent to the county for cultural programs and activities within the unincorporated areas of the county; provided that:

(a) the funds are distributed according to a plan that takes into consideration progress indicators that include current budgets, fiscal responsibility and attendance;

(b) educational institutions serving kindergarten through twelfth grade are not eligible for distributions pursuant to this paragraph; and

(c) a portion of the funds may be expended by the municipality pursuant to an operating agreement with an organization that operates a facility owned by the municipality;

(2) for the purpose of providing cultural programs and services to the residents of the county, sixteen percent may be distributed through contracts for

services with private nonprofit organizations with an annual operating budget of more than one hundred thousand dollars (\$100,000) and two percent may be distributed through contracts for services with private nonprofit organizations with an annual operating budget of one hundred thousand dollars (\$100,000) or less. To be eligible for a distribution pursuant to this paragraph, an organization shall have:

(a) been granted for the prior three consecutive years exemption from the federal income tax by the United States commissioner of the internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) as its primary purpose cultural programs; and

(c) its principal office located within the exterior boundaries of the county; and

(3) for the purpose of providing cultural programs to residents of the county, twelve percent to:

(a) organizations that have a strong cultural program but do not have culture as their primary purpose; or

(b) foundations that are affiliated with state or federally owned institutions and that do not otherwise qualify for funding pursuant to this section but that offer cultural programs to the general public.

J. Every four years, the cultural advisory board shall review and revise as necessary:

(1) the guidelines and procedures for applying for funding;

(2) the criteria by which applications for funding will be evaluated;
and

(3) the percentages specified in Paragraph (1) of Subsection I of this section for distribution of net revenue to municipally owned or county-owned institutions.

K. As used in this section:

(1) "county area" means that portion of a county located outside the boundaries of any municipality, except that for H class counties and class A counties with a population in excess of two hundred fifty thousand, according to the most recent federal decennial census, "county area" means the entire county; and

(2) "cultural organizations and institutions" means organizations and institutions that have as a primary purpose the advancement or preservation of zoology, museums, library sciences, art, music, theater, dance, literature or the humanities."

Chapter 212 Section 2 Laws 2005

Section 2. A new section of the Municipal Local Option Gross Receipts Taxes Act is enacted to read:

"QUALITY OF LIFE GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--
ORDINANCE REQUIREMENTS--USE OF REVENUE--ELECTION.--

A. Prior to January 1, 2016, the majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the municipality for the privilege of engaging in business. The tax may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent. The tax shall be imposed for a period of not more than ten years from the effective date of the ordinance imposing the tax. Having enacted an ordinance imposing the tax prior to January 1, 2016 pursuant to the provisions of this section, the governing body may enact subsequent ordinances for succeeding periods of not more than ten years; provided that each ordinance meets the requirements of this section and of the Municipal Local Option Gross Receipts Taxes Act. The tax imposed pursuant to the provisions of this section may be referred to as the "quality of life gross receipts tax".

B. The governing body, at the time of enacting an ordinance imposing the quality of life gross receipts tax, shall dedicate the revenue to cultural programs and activities provided by a local government and to cultural programs, events and activities provided by contract or operating agreement with nonprofit or publicly owned cultural organizations and institutions.

C. An ordinance imposing any increment of the quality of life gross receipts tax shall not go into effect until after an election is held 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 ninety days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to this section. If a majority of the voters voting on the question approves the ordinance imposing the quality of life gross receipts tax, 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 quality of life

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.

D. The quality of life gross receipts tax revenue shall be used to meet the following goals: promoting and preserving cultural diversity; enhancing the quality of cultural programs and activities; fostering greater access to cultural opportunities; promoting culture in order to further economic development within the municipality; and supporting programs, events and organizations with direct, identifiable and measurable public benefit to residents of the municipality. It is the objective of the quality of life gross receipts tax that the revenue from the tax be used to expand and sustain existing programs and to develop new programs, events and activities, rather than to replace other funding sources for existing programs, events and activities.

E. The governing body of a municipality that imposes the quality of life gross receipts tax shall, within sixty days of the election approving the imposition of the tax, appoint a municipal cultural advisory board consisting of between nine and fifteen members. Persons appointed to the board shall be residents of the municipality who are knowledgeable about the activities eligible for quality of life tax funding. The members of the board shall be appointed for fixed terms and shall not be removed during their terms except for malfeasance. The terms of the initial board members shall be staggered so that one-third of the members are appointed for one-year terms, one-third are appointed for two-year terms and one-third are appointed for three-year terms. Subsequent appointments to the board shall be for three-year terms. If a vacancy on the board occurs, the governing body shall appoint a replacement member for the remainder of the unexpired term. A board member shall not serve for more than two consecutive terms.

F. The municipal cultural advisory board shall have the responsibility of overseeing the distribution of the quality of life gross receipts tax revenue for the goals listed in Subsection D of this section. The board shall:

(1) biennially submit recommendations to the governing body for expenditures of revenue from the quality of life gross receipts tax that are allocated pursuant to this section through contracts for services with appropriate organizations and institutions;

(2) establish and publicize the necessary qualifications for organizations and institutions to receive quality of life gross receipts tax funding; and

(3) develop guidelines and procedures for applying for funding through a request for proposals process and the criteria by which contracts will be awarded. The evaluation process shall include a public review component.

G. The municipal cultural advisory board shall establish reporting requirements for recipients of the quality of life gross receipts tax revenue. The board shall provide to the governing body an annual evaluation of the use of revenue from the

quality of life gross receipts tax to ensure that it is meeting the goals listed in Subsection D of this section.

H. Every four years, the municipal cultural advisory board shall review and revise as necessary:

- (1) the guidelines and procedures for applying for funding; and
- (2) the criteria by which applications for funding will be evaluated.

I. As used in this section:

(1) "cultural organizations and institutions" means organizations or institutions that have as a primary purpose the advancement or preservation of zoology, museums, library sciences, art, music, theater, dance, literature or the humanities; and

(2) "municipality" means an incorporated municipality except for an incorporated municipality with a population in excess of two hundred fifty thousand according to the most recent federal decennial census."

Chapter 212 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 336, AS AMENDED

WITH CERTIFICATE OF CORRECTION

Approved April 6, 2005

LAWS 2005, CHAPTER 213

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR ALLOCATIONS OF SCHOOL LIBRARY FUNDS.

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

Chapter 213 Section 1 Laws 2005

Section 1. Section 22-15C-6 NMSA 1978 (being Laws 2003, Chapter 149, Section 6) is amended to read:

"22-15C-6. DISTRIBUTION OF MONEY FOR SCHOOL LIBRARY MATERIAL.--

A. On or before July 1 of each year, the department shall allocate from the fund at least ninety percent of the estimated entitlement for each school district or state institution as determined from the estimated forty-day membership for the next school year to each school district and state institution. The entitlement of a school district or state institution is the portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Additional students shall be counted as six students for the purpose of the allocation.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department shall establish procedures to distribute funds directly to school districts and state institutions.

D. A school district or state institution that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years."

HOUSE BILL 349

Approved April 6, 2005

LAWS 2005, CHAPTER 214

AN ACT

RELATING TO PROCUREMENT; RAISING THE THRESHOLD FOR SMALL PURCHASES IN THE PROCUREMENT CODE; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 214 Section 1 Laws 2005

Section 1. Section 13-1-104 NMSA 1978 (being Laws 1984, Chapter 65, Section 77, as amended) is amended to read:

"13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

A. 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 twenty thousand dollars (\$20,000) 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 section, "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."

Chapter 214 Section 2 Laws 2005

Section 2. 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 twenty thousand dollars (\$20,000) 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 thirty thousand dollars (\$30,000), excluding applicable state and local gross receipts taxes, except for the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000) 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."

Chapter 214 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 368, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 215

AN ACT

RELATING TO AGING; AMENDING THE CONTINUING CARE ACT; CLARIFYING DEFINITIONS; REVISING DISCLOSURE REQUIREMENTS.

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

Chapter 215 Section 1 Laws 2005

Section 1. Section 24-17-3 NMSA 1978 (being Laws 1985, Chapter 102, Section 3, as amended) is amended to read:

"24-17-3. DEFINITIONS.--As used in the Continuing Care Act:

A. "affiliate" means a person having a five percent or greater interest in a provider;

B. "community" means a retirement home, retirement community, home for the aged or other place that undertakes to provide continuing care;

C. "continuing care" means furnishing, pursuant to a contract that requires entrance or advance fees and service or periodic fees, independent living and health or health-related services. Entrance or advanced fees do not include security or damage deposit fees that amount to less than three months' service or periodic fees. These services may be provided in the community, in the resident's independent living unit or in another setting, designated by the continuing care contract, to an individual not related by consanguinity or affinity to the provider furnishing the care. The services include, at a minimum, priority access to a nursing facility or hospital either on site or at a site designated by the continuing care contract;

D. "continuing care contract" means an agreement by a provider to furnish continuing care to a resident;

E. "person" means an individual, corporation, partnership, trust, association or other legal entity;

F. "priority access to a nursing facility or hospital" means that a nursing facility or hospital services the residents of independent living units or that there is a promise of such health care or health-related services being available in the future;

G. "provider" means the owner or manager of a community;

H. "resident" means, unless otherwise specified, an actual or prospective purchaser of, nominee of or subscriber to a continuing care contract; and

I. "unit" means the living quarters that a resident buys, leases or has assigned as part of the continuing care contract."

Chapter 215 Section 2 Laws 2005

Section 2. Section 24-17-4 NMSA 1978 (being Laws 1985, Chapter 102, Section 4, as amended) is amended to read:

"24-17-4. DISCLOSURE.--

A. A person who provides or offers to provide continuing care in this state shall furnish a current annual disclosure statement and a consumer's guide to continuing care communities as furnished by the aging and long-term services department or the attorney general's office to actual residents and to a prospective resident at least seven days prior to entering into a continuing care contract with the prospective resident. For the purposes of this subsection, the obligation to furnish information to actual residents shall be deemed satisfied if a copy is given to the residents' association, if there is one, and a written message has been delivered to all residents that personal copies are available upon request.

B. The disclosure statement shall include:

(1) a brief narrative summary of the contents of the disclosure statement written in plain language;

(2) the name and business address of the provider;

(3) if the provider is a partnership, corporation or association, the names, addresses and duties of its officers, directors, trustees, partners or managers;

(4) the name and business address of any affiliate;

(5) a statement as to whether the provider or any of its officers, directors, trustees, partners, managers or affiliates, within ten years prior to the date of application:

(a) was convicted of a felony, a crime that if committed in New Mexico would be a felony or any crime having to do with the provision of continuing care;

(b) has been held liable or enjoined in a civil action by final judgment, if the civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property;

(c) had a prior discharge in bankruptcy or was found insolvent in any court action; or

(d) had any state or federal licenses or permits suspended or revoked or had any state, federal or industry self-regulatory agency commence an action against him and the result of such action;

(6) the name and address of any person whose name is required to be provided in the disclosure statement who owns any interest in or receives any remuneration from, either directly or indirectly, any other person providing or expected to provide to the community goods, leases or services with a real or anticipated value of five hundred dollars (\$500) or more and the name and address of the person in which such interest is held. The disclosure shall describe such goods, leases or services and the actual or probable cost to the community or provider and shall describe why such goods, leases or services should not be purchased from an independent entity;

(7) the name and address of any person owning land or property leased to the community and a statement of what land or property is leased;

(8) a statement as to whether the provider is, or is associated with, a religious, charitable or other organization and the extent to which the associate organization is responsible for the financial and contractual obligations of the provider or community;

(9) the location and description of real property being used or proposed to be used in connection with the community's contracts to furnish care;

(10) a statement as to whether the community maintains reserves to assure payment of debt obligations and the ability to provide services to residents and a description of such reserves;

(11) for those communities that charge an entrance fee that were not in operation on June 14, 1985, an actuarial analysis of the community performed by an actuary experienced in analyzing continuing care communities;

(12) an audited financial statement as of the end of the provider's last fiscal year or a copy of the previous year's tax filings with the internal revenue service;

(13) a sample copy of the contract used by the provider; and

(14) a list of documents and other information available upon request, including:

(a) a copy of the Continuing Care Act;

(b) if the provider is a corporation, a copy of the articles of incorporation; if the provider is a partnership or other unincorporated association, a copy

of the partnership agreement, articles of association or other membership agreement; and if the provider is a trust, a copy of the trust agreement or instruments;

(c) resumes of the provider and officers, directors, trustees, partners or managers;

(d) a copy of lease agreements between the community and any person owning land or property leased to the community;

(e) information concerning the location and description of other properties, both existing and proposed, of the provider in which the provider owns any interest and on which communities are or are intended to be located and the identity of previously owned or operated communities;

(f) a copy of the community's policies and procedures; and

(g) such other data, financial statements and pertinent information requested by the resident with respect to the provider or community, or its directors, trustees, members, managers, branches, subsidiaries or affiliates, that is reasonably necessary for the resident to determine the financial status of the provider and community and the management capabilities of the managers and owners, including the most recent audited financial statements of comparable communities owned, managed or developed by the provider or its principal.

C. Each year, within one hundred eighty days after the end of the community's fiscal year, the provider shall furnish to actual residents the disclosure statement as outlined in this section. For purposes of this subsection, the obligation to furnish the required information to residents shall be deemed satisfied if the information is given to the residents' association, if there is one, and a written message has been delivered to all residents stating that personal copies of the information are available upon request."

Chapter 215 Section 3 Laws 2005

Section 3. Section 24-17-5 NMSA 1978 (being Laws 1985, Chapter 102, Section 5) is amended to read:

"24-17-5. CONTRACT INFORMATION.--

A. A continuing care contract shall be written in clear and understandable language.

B. A continuing care contract shall, at a minimum:

(1) describe the community's admission policies, including age, health status and minimum financial requirements, if any;

(2) describe the health and financial conditions required for a person to continue to be a resident;

(3) describe the circumstances under which the resident will be permitted to remain in the community in the event of possible financial difficulties of the resident;

(4) list the total consideration paid, including donations, entrance fees, subscription fees, periodic fees and other fees paid or payable; provided, however, that a provider cannot require a resident to transfer all the resident's assets to the provider or community as a condition for providing continuing care and the provider shall reserve the right to charge periodic fees;

(5) describe in detail all items of service to be received by the resident such as food, shelter, medical care, nursing care and other health services and whether services will be provided for a designated time period or for life;

(6) provide as an addendum to the contract a description of items of service, if any, that are available to the resident but are not covered in the entrance or monthly fee;

(7) specify taxes and utilities, if any, that the resident must pay;

(8) specify that deposits or entrance fees paid by or for a resident shall be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident has occupied his unit or the resident's contract cancellation period has ended;

(9) state the terms under which a continuing care contract may be canceled by the resident or the community and the basis for establishing the amount of refund of the entrance fee;

(10) state the terms under which a continuing care contract is canceled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;

(11) state when fees will be subject to periodic increases and what the policy for increases will be; provided, however, that the provider shall give advance notice of not less than thirty days to the residents before the change becomes effective and increases shall be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment as defined by rules promulgated by the aging and long-term services department no later than January 31, 2006;

(12) state the entrance fee and periodic fees that will be charged if the resident marries while living in the community, the terms concerning the entry of a

spouse to the community and the consequences if the spouse does not meet the requirements for entry;

(13) indicate funeral and burial services that are not furnished by the provider;

(14) state the rules and regulations of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;

(15) list the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;

(16) describe the rights of the residents to form a residents' association and the participation, if any, of the association in the community's decision-making process;

(17) describe the living quarters purchased by or assigned to the resident;

(18) provide under what conditions, if any, the resident may assign the use of a unit to another;

(19) include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;

(20) state the conditions upon which the community may sublet or relet a resident's unit;

(21) state, in the event of voluntary absence from the community for an extended period of time by the resident, what fee adjustments, if any, will be made;

(22) include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the community or by transfer to a health facility; provided that the contract shall state that such changes in accommodations shall only be made to protect the health or safety of the resident or the general and economic welfare of all other residents of the community;

(23) if the community includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;

(24) describe, if the resident is offered a priority for nursing facility admission at a facility that is not owned by the community, with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;

(25) include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility. The contract shall also state who will participate in the decision for permanent residency in the nursing facility and shall provide that the resident shall have an advocate involved in that decision; provided that if the resident has no family member, attorney, guardian or other responsible person to act as the resident's advocate, the provider shall request the local office of the human services department to serve as advocate;

(26) specify the types of insurance, if any, the resident must maintain, including medicare, other health insurance and property insurance;

(27) specify the circumstances, if any, under which the resident will be required to apply for medicaid, public assistance or any other public benefit programs;

(28) state, in bold type of not less than twelve-point type on the front of the contract, that a contract for continuing care may present a significant financial risk and that a person considering a continuing care contract should consult with an attorney and with a financial advisor concerning the advisability of pursuing continuing care. Provided, however, failure to consult with an attorney or financial advisor shall not be raised as a defense to bar recovery for a resident in any claims arising under the provisions of the Continuing Care Act;

(29) state, in bold type of not less than twelve-point type on the front of the contract, that nothing in the contract or the Continuing Care Act should be construed to constitute approval, recommendation or endorsement of any continuing care community by the state of New Mexico;

(30) state in immediate proximity to the space reserved in the contract for the signature of the resident in bold type of not less than twelve-point type the following:

"You, the buyer, may cancel this transaction at any time prior to midnight of the seventh day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."; and

(31) contain a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract and easily detachable, and which shall contain in twelve-point boldface type the following information and statements in the same language as that used in the contract.

"NOTICE OF CANCELLATION

Date: _____ (enter date of transaction)

You may cancel this transaction without any penalty or obligation within seven days from the above date. If you cancel, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the provider of your cancellation notice, and any security interest or lien arising out of the transaction will be canceled.

To cancel this transaction, deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to:

_____ (Name of Provider) at

_____ (Address of Provider's Place of Business)

not later than midnight of _____ (Date)

I hereby cancel this transaction.

Buyer's Signature)

(Date)". "

Chapter 215 Section 4 Laws 2005

Section 4. Section 24-17-6 NMSA 1978 (being Laws 1985, Chapter 102, Section 6) is amended to read:

"24-17-6. ESCROW REQUIREMENTS.--Any deposits or entrance fees paid by or for a resident shall be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident has occupied his unit or the resident's contract cancellation period has ended."

Chapter 215 Section 5 Laws 2005

Section 5. Section 24-17-8 NMSA 1978 (being Laws 1985, Chapter 102, Section 8) is amended to read:

"24-17-8. CONSUMER'S GUIDE TO CONTINUING CARE COMMUNITIES.--The office of the attorney general and the aging and long-term services department may

publish and distribute a consumer's guide to continuing care communities and may publish an annual directory of communities in New Mexico."

HOUSE BILL 392, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 216

AN ACT

RELATING TO WINE; REMOVING LIMITS ON INTRASTATE SHIPMENTS OF WINE; ALLOWING SALES BY THE GLASS AT OFF-PREMISES LOCATIONS; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 216 Section 1 Laws 2005

Section 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended by Laws 2001, Chapter 248, Section 1 and by Laws 2001, Chapter 260, Section 1) 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 two 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, sell by the glass 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. 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."

HOUSE BILL 425, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 217

AN ACT

RELATING TO PUBLIC RECORDS; PROVIDING FOR COMPUTER DATABASE INFORMATION OF COUNTIES AND MUNICIPALITIES AS PUBLIC RECORDS.

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

Chapter 217 Section 1 Laws 2005

Section 1. Section 14-3-18 NMSA 1978 (being Laws 1963, Chapter 186, Section 2, as amended) is amended to read:

"14-3-18. COUNTY AND MUNICIPAL RECORDS--GEOGRAPHIC INFORMATION SYSTEM--COMPUTER DATABASES--COPY FEES.--

A. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.

B. Notwithstanding the provisions of Subsection E of this section, a county or municipality may charge a reasonable fee, as adopted by ordinance of the respective board of county commissioners or governing body of a municipality, for a document or product generated by a geographic information system.

C. Except as otherwise provided by federal or state law, information contained in a computer database shall be a public record and shall be subject to disclosure in printed or typed format by a county or municipality that has inserted that information into the database, in accordance with the Public Records Act.

D. The administrator may advise and assist county and municipal officials with the procedures, schedules and technical standards for the retention of computer databases.

E. A county or municipality that has inserted data in a computer database shall authorize an electronic copy to be made of the computer database of a public record on a currently available electronic medium for a person if the person agrees to pay a reasonable fee based upon the cost of:

- (1) materials;
- (2) making an electronic copy of the computer database; and
- (3) personnel time to research and retrieve the electronic record.

F. Subject to any confidentiality provisions of law, a county or municipality may permit another federal, state or local government entity access to all or any portion of a computer database created by the county or municipality.

G. A county or municipality may at its option, and if it has the capability, permit access or use of its computer and network system to search, manipulate or retrieve information from a computer database and charge reasonable fees based on the cost of materials, personnel time, access time and the use of the county or municipality's computer network."

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 449, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 218

AN ACT

RELATING TO FOOD; AMENDING THE FOOD SERVICE SANITATION ACT TO RAISE PERMIT FEES; MAKING AN APPROPRIATION.

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

Chapter 218 Section 1 Laws 2005

Section 1. Section 25-1-5 NMSA 1978 (being Laws 1977, Chapter 309, Section 5, as amended) is amended to read:

"25-1-5. OPTIONAL POWERS.--

A. The board may establish a system of grading food service establishments for the purpose of certifying compliance with the Food Service Sanitation Act and regulations requiring food service establishments to display in a designated manner a grade as notice of compliance to the public. Such regulations shall include provisions for the revocation and reinstatement of the permit that are consistent with due process of law.

B. The board shall establish a schedule of fees for the issuance and renewal of permits issued by the division under the Food Service Sanitation Act. The board shall set the schedule of fees so that no fee established by such schedule shall be less than one hundred dollars (\$100) or more than two hundred dollars (\$200) annually for a food service establishment with not more than a twenty-five-dollar (\$25.00) incremental increase per fiscal year. The board shall establish a separate schedule of fees not to exceed twenty-five dollars (\$25.00) per single event or celebration per temporary food service establishment. Fees shall be waived for all temporary non-potentially hazardous food service operations, for any temporary food service establishment operating no more than two calendar days in any calendar month and for any food service establishment that provides food to the general public at no charge. Fees collected for the issuance and renewal of permits pursuant to the Food Service Sanitation Act shall be deposited in the food service sanitation fund."

Chapter 218 Section 2 Laws 2005

Section 2. Section 25-1-5.1 NMSA 1978 (being Laws 1993, Chapter 100, Section 5) is amended to read:

"25-1-5.1. FOOD SERVICE SANITATION FUND.--The "food service sanitation fund" is created in the state treasury, and money in the fund is subject to appropriation by the legislature to the department of environment for the purpose of paying the costs of administering regulations promulgated by the board to carry out the provisions of the Food Service Sanitation Act."

HOUSE BILL 455, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 219

AN ACT

RELATING TO INDIAN AFFAIRS; CREATING THE INTERTRIBAL CEREMONIAL OFFICE WITHIN THE TOURISM DEPARTMENT; ESTABLISHING THE INTERTRIBAL CEREMONIAL FUND; DECLARING AN EMERGENCY.

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

Chapter 219 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Intertribal Ceremonial Act".

Chapter 219 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Intertribal Ceremonial Act:

- A. "department" means the tourism department;
- B. "director" means the director of the intertribal ceremonial office;
- C. "fund" means the intertribal ceremonial fund; and
- D. "office" means the intertribal ceremonial office.

Chapter 219 Section 3 Laws 2005

Section 3. INTERTRIBAL CEREMONIAL OFFICE CREATED--POWERS AND DUTIES.--

- A. The "intertribal ceremonial office" is created and administratively attached to the department.
- B. The governor shall appoint a director, who shall serve at the pleasure of the governor. The director shall hire and terminate other necessary employees, who shall be subject to the provisions of the Personnel Act.
- C. The director shall:

(1) work with the department to establish steady funding for the intertribal ceremonial;

(2) supervise the activities of the office;

(3) work with the department to promote the intertribal ceremonial;
and

(4) prepare an annual budget and an annual report on the activities of the office.

D. The office, in cooperation with the department, shall:

(1) administer an annual intertribal ceremonial;

(2) cooperate with and assist public and private entities that seek to promote recognition of ceremonies significant to Indian tribes and pueblos;

(3) function as the coordinating office for all services and activities pertaining to the intertribal ceremonial;

(4) adopt rules in accordance with the State Rules Act to carry out the duties of the office;

(5) accept gifts, grants, donations, bequests and devises from any source to be used to carry out its duties; and

(6) enter into contracts.

E. The governor shall appoint an intertribal ceremonial board and the director shall serve ex officio on the board. The board shall consist of seven members who serve terms of five years each; provided that the first appointments shall be made of two board members for one-year terms, two for two-year terms, one for a three-year term and one for a four-year term. All intertribal ceremonial board members shall be bona fide residents of the state, and at least a majority of the members shall be Native American. A board member shall not be removed during the term of office except for cause, following notice and an opportunity for a hearing.

Chapter 219 Section 4 Laws 2005

Section 4. FUND CREATED--ADMINISTRATION.--The "intertribal ceremonial fund" is created in the state treasury. Money in the fund is appropriated to the intertribal ceremonial office. The fund shall consist of appropriations, gifts, grants, donations, bequests and devises. Money in the fund at the end of any fiscal year shall not revert. Interest and earnings from the fund shall be credited to the fund. The fund shall be administered by the office, and disbursements from the fund shall be made on warrant

drawn by the secretary of finance and administration pursuant to vouchers signed by the director or the director's authorized representative.

Chapter 219 Section 5 Laws 2005

Section 5. COMPENSATION.--Members of the intertribal ceremonial board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Chapter 219 Section 6 Laws 2005

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

HOUSE BILL 481, AS AMENDED,

WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 220

AN ACT

RELATING TO THE ARMED SERVICES; CREATING AN OPTIONAL DESIGNATION FOR A PERSONAL INCOME TAX CONTRIBUTION FOR ASSISTANCE TO MEMBERS OF THE NEW MEXICO NATIONAL GUARD ACTIVATED FOR SERVICE IN THE GLOBAL WAR ON TERRORISM AND TO THEIR FAMILIES; PROVIDING FOR A DISTRIBUTION; MAKING AN APPROPRIATION.

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

Chapter 220 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--CONTRIBUTIONS FOR NATIONAL GUARD MEMBER AND FAMILY ASSISTANCE.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the secretary of veterans' services in an amount equal to the money designated pursuant to the Income Tax Act as contributions for assistance to members of the New Mexico national guard activated for service in the global war on terrorism and to their families. The secretary of veterans' services shall deposit the money in a

temporary suspense account for distribution to members of the New Mexico national guard activated for service in the global war on terrorism and to their families."

Chapter 220 Section 2 Laws 2005

Section 2. A new section of the Income Tax Act is enacted to read:

"OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--NATIONAL GUARD MEMBER AND FAMILY ASSISTANCE.--

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of the individual for that tax year may designate a portion of the income tax refund due to the individual to be contributed for assistance to members of the New Mexico national guard activated for service in the global war on terrorism and to their families. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"National Guard Member and Family Assistance - Check ___ if you wish to contribute a part or all of your tax refund for assistance to members of the New Mexico national guard activated for service in the global war on terrorism and to their families. Enter here \$_____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act, and any designation made under the provisions of this section to such refunds is void."

Chapter 220 Section 3 Laws 2005

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

House Bill 484

Approved April 6, 2005

LAWS 2005, CHAPTER 221

AN ACT

RELATING TO EDUCATION; PROVIDING STANDARDS FOR CHARTER SCHOOL FACILITIES.

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

Chapter 221 Section 1 Laws 2005

Section 1. Section 22-8B-1 NMSA 1978 (being Laws 1999, Chapter 281, Section 1) is amended to read:

"22-8B-1. SHORT TITLE.--Chapter 22, Article 8B NMSA 1978 may be cited as the "1999 Charter Schools Act"."

Chapter 221 Section 2 Laws 2005

Section 2. 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 governed by a governing body in the manner set forth in the charter; provided that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.

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 contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government 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; provided that facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school may choose to continue using the school district facilities and equipment it had been using prior to conversion.

F. A school district shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational

purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a school district.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the school district, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act, the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act.

N. A charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the charter school shall revert to the local school board.

O. 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.

P. 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.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy."

Chapter 221 Section 3 Laws 2005

Section 3. A new section of the 1999 Charter Schools Act, Section 22-8B-4.2 NMSA 1978, is enacted to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section;

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."

Chapter 221 Section 4 Laws 2005

Section 4. Section 22-8B-6 NMSA 1978 (being Laws 1999, Chapter 281, Section 6) is amended to read:

"22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION PROCESS--AUTHORIZATION.--

A. A local school board has the authority to approve the establishment of a charter school within the school district in which it is located.

B. A charter school applicant shall apply to a local school board for a charter. An applicant shall only submit an application in the district in which the school is located. Applications shall be submitted by July 1 to be eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the local school board.

C. An application shall include a request for capital outlay funding.

D. An application for a start-up school may be made by one or more teachers, parents or community members.

E. An application for a conversion school shall include a petition of support signed by no less than sixty-five percent of the employees in the school. Additionally, a petition in support of the charter school signed by a majority of the households whose children are enrolled in a proposed conversion school shall accompany the application.

F. The local school board shall receive and review all applications for charter schools. The local school board shall not charge application fees. If the board finds the charter school application is incomplete, the board shall request the necessary information from the charter school applicant.

G. The local school board shall hold at least one meeting to obtain information and community input to assist the local school board in its decision whether to grant a charter school application. The local school board shall rule on the application for a charter school in a public meeting within sixty days after receiving the application. If not ruled upon within sixty days, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the local school board may, however, jointly waive the deadlines set forth in this section.

H. If the local school board denies a charter school application or imposes conditions that are unacceptable to the charter school applicant, the charter school applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978.

I. If a local school board denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions. If a local school board grants a charter, it shall send a copy of the approved charter to the department within fifteen days after granting the charter."

Chapter 221 Section 5 Laws 2005

Section 5. Section 22-8B-7 NMSA 1978 (being Laws 1999, Chapter 281, Section 7) is amended to read:

"22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--PROCEDURES.--

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a local school board concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of a local school board concerning the denial, nonrenewal or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the local school board's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal or revocation or the imposition of conditions that were specified by the local school board. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the local school board's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows:

(1) within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the local school board and make findings. If the secretary finds that the local school board's decision was contrary to the best interests of the students, school district or community, the secretary shall remand the decision to the local school board with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter. The decision of the secretary shall be final and not subject to appeal; and

(2) within thirty days following the remand of a decision by the secretary, the local school board, at a public hearing, shall approve the charter.

C. The secretary, on the secretary's own motion, may review a local school board's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

(1) violate any federal or state laws concerning civil rights;

(2) violate any court order;

(3) threaten the health and safety of students within the school district; or

(4) violate the provisions of Section

22-8B-11 NMSA 1978, prescribing the permissible number of charter schools.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall remand the decision back to the local school board with instructions to deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final and not subject to appeal.

E. If a local school board denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the local school board only if the secretary determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law."

Chapter 221 Section 6 Laws 2005

Section 6. Section 22-8B-12 NMSA 1978 (being Laws 1999, Chapter 281, Section 12) is amended to read:

"22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
GROUNDS FOR NONRENEWAL OR REVOCATION.--

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used for planning. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the local school board.

B. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

C. No later than January 1 of the year prior to the year in which the charter expires, the governing body may submit a renewal application to the local school board. The local school board shall rule in a public hearing on the renewal application no later than March 1 of the fiscal year in which the charter expires, or on a mutually agreed-upon date.

D. A charter school renewal application submitted to the local school board shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act;

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) contents of the charter application set forth in Section 22-8B-8 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by a majority of the households whose children are enrolled in the charter school; and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978.

E. A charter may be revoked or not renewed by the local school board if the board determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter;

(2) failed to meet or make substantial progress toward achievement of the state board minimum educational standards or student performance standards identified in the charter application;

(3) failed to meet generally accepted standards of fiscal management; or

(4) violated any provision of law from which the charter school was not specifically exempted.

F. If a local school board revokes or does not renew a charter, the local school board shall state in writing its reasons for the revocation or nonrenewal.

G. A decision to revoke or not to renew a charter may be appealed by the governing body pursuant to Section

22-8B-7 NMSA 1978."

Chapter 221 Section 7 Laws 2005

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 510, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 222

AN ACT

RELATING TO EDUCATIONAL TECHNOLOGY; PROVIDING FOR THE IDENTIFICATION AND CORRECTION OF EDUCATIONAL TECHNOLOGY

DEFICIENCIES; CREATING THE EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION FUND.

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

Chapter 222 Section 1 Laws 2005

Section 1. Section 22-15A-1 NMSA 1978 (being Laws 1994, Chapter 96, Section 1) is amended to read:

"22-15A-1. SHORT TITLE.--Chapter 22, Article 15A NMSA 1978 may be cited as the "Technology for Education Act"."

Chapter 222 Section 2 Laws 2005

Section 2. A new section of the Technology for Education Act, Section 22-15A-11 NMSA 1978, is enacted to read:

"22-15A-11. EDUCATIONAL TECHNOLOGY DEFICIENCIES--CORRECTION.--

A. No later than September 1, 2005, the bureau, with the advice of the council and the office of the chief information officer, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council, for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau 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 educational technology deficiency correction fund, the bureau 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 contracts to correct the deficiencies.

E. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose."

Chapter 222 Section 3 Laws 2005

Section 3. A new section of the Technology for Education Act is enacted to read:

"EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION FUND.--The "educational technology deficiency correction fund" is created in the state treasury. The fund shall consist of money appropriated, distributed or transferred to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the education technology bureau for the purpose of making allocations to correct educational technology deficiencies pursuant to Section 22-15A-11 NMSA 1978. Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chief of the education technology bureau."

Chapter 222 Section 4 Laws 2005

Section 4. TEMPORARY PROVISION--REPORT.--No later than December 1, 2005, the education technology bureau of the public education department shall prepare a report summarizing the educational technology adequacy standards and methodology to prioritize projects, describing the outstanding educational technology deficiencies and estimating the cost of correcting the deficiencies. The report shall be submitted to the governor, the legislature and appropriate interim legislative committees.

HOUSE BILL 511, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 223

AN ACT

RELATING TO HIGHER EDUCATION; AMENDING THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT; PROVIDING FOR LICENSURE AND REGULATION OF NONREGIONALLY ACCREDITED COLLEGES AND UNIVERSITIES; EXEMPTING ORGANIZATIONS THAT OFFER BRIEF COURSES OF INSTRUCTION IN SPECIFIC SKILLS TRAINING; PROVIDING FOR ADMINISTRATIVE FEES; PRESCRIBING PENALTIES.

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

Chapter 223 Section 1 Laws 2005

Section 1. Section 21-23-3 NMSA 1978 (being Laws 1971, Chapter 303, Section 3, as amended) is amended to read:

"21-23-3. DEFINITIONS.--As used in the Post-Secondary Educational Institution Act:

A. "commission" means the commission on higher education;

B. "career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum;

C. "college" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate, master's or doctoral degree or comparable confirmation of completion of the curriculum;

D. "license" means a written acknowledgment by the commission that a career school or nonregionally accredited college or university has met the requirements of the commission for offering a formal educational curriculum within New Mexico;

E. "post-secondary educational institution" includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education from a physical site in New Mexico, through distance education, correspondence or in person; and

F. "registration" means a written acknowledgment by the commission that a regionally accredited college or university has filed pertinent curriculum and enrollment information as required by the commission."

Chapter 223 Section 2 Laws 2005

Section 2. Section 21-23-4 NMSA 1978 (being Laws 1971, Chapter 303, Section 4, as amended) is amended to read:

"21-23-4. EXCEPTIONS.--

A. The Post-Secondary Educational Institution Act does not apply to or affect:

(1) a post-secondary educational institution supported in whole or in part by state or local taxation;

(2) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(3) a course of instruction provided by an employer to its own employees for training purposes;

(4) institutions that exclusively offer education that is solely avocational or recreational in nature;

(5) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(6) a regionally accredited college or university that is a private institution that provides an academic education comparable to that provided by public colleges or universities;

(7) proprietary schools as defined in Section 21-24-2 NMSA 1978;

(8) chartered, nonprofit religious institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

(9) institutions that exclusively offer instruction at any level from pre-school through the twelfth grade;

(10) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; and

(11) an organization that provides only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be a program of training in employment.

B. An institution, school or program described in this section shall not be entitled to an exemption unless it presents satisfactory evidence to the commission that it qualifies."

Chapter 223 Section 3 Laws 2005

Section 3. Section 21-23-5 NMSA 1978 (being Laws 1994, Chapter 108, Section 6) is amended to read:

"21-23-5. DUTIES OF THE COMMISSION.--

A. The commission is charged with oversight of all private post-secondary educational institutions operating within the state.

B. The commission shall provide for the registration of all regionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

C. The commission shall provide for the licensure of all career schools and all nonregionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act."

Chapter 223 Section 4 Laws 2005

Section 4. Section 21-23-6 NMSA 1978 (being Laws 1994, Chapter 108, Section 7) is amended to read:

"21-23-6. REGISTRATION OF COLLEGES AND UNIVERSITIES--SUBMISSION OF MATERIALS.--

A. Every college or university operating in New Mexico that is regionally accredited or seeking regional accreditation by an accrediting agency approved by the commission shall register with the commission.

B. A college or university registering with the commission pursuant to this section shall provide curriculum and enrollment information, financial information and all publication materials requested by the commission."

Chapter 223 Section 5 Laws 2005

Section 5. Section 21-23-6.1 NMSA 1978 (being Laws 1994, Chapter 108, Section 8) is amended to read:

"21-23-6.1. LICENSURE OF CAREER SCHOOLS--LICENSURE OF CERTAIN COLLEGES AND UNIVERSITIES.--

A. A career school or nonregionally accredited college or university operating in New Mexico shall be licensed by the commission. It is unlawful to operate a career school or nonregionally accredited college or university without first obtaining a license from the commission.

B. A college or university operating in New Mexico that is not regionally accredited or seeking regional accreditation by an accrediting agency approved by the commission shall be licensed by the commission in the manner provided for career schools or nonregionally accredited colleges or universities. It is unlawful to operate a college or university that is not accredited or seeking accreditation by an accrediting agency approved by the commission without first obtaining a license from the commission.

C. No person other than an employee of an institution licensed pursuant to this section shall, for a salary or fee, solicit attendance at that institution."

Chapter 223 Section 6 Laws 2005

Section 6. Section 21-23-6.2 NMSA 1978 (being Laws 1994, Chapter 108, Section 9) is amended to read:

"21-23-6.2. LICENSURE STANDARDS--REQUIREMENTS--FEE AUTHORIZATION.--

A. Every career school and nonregionally accredited college and university operating in the state shall annually apply to the commission for licensure. The career school and nonregionally accredited college or university shall apply on forms approved by the commission, shall supply all information requested by the commission and shall pay an annual licensure fee set by the commission.

B. The commission or its designee shall consider information submitted by the career school and nonregionally accredited college or university, information from independent accreditation bodies and information gathered during visits to the career school and nonregionally accredited college or university in determining eligibility for licensure.

C. The commission shall promulgate and file, in accordance with the State Rules Act, rules that:

(1) require each career school and nonregionally accredited college and university to supply annually information regarding enrollment, program completion by students, employment and other educational placements of students and operating revenue budgets;

(2) provide standards and methods for the evaluation and appraisal of career schools and nonregionally accredited colleges and universities;

(3) provide for a tuition refund policy;

(4) require maintenance of adequate records by each career school and nonregionally accredited college and university and provide reasonable availability of records for inspection;

(5) regulate the use of deceptive and misleading advertising and determine what information shall be furnished each student prior to enrollment;

(6) assure that any career school or nonregionally accredited college or university licensed pursuant to the Post-Secondary Educational Institution Act has entered into a teach-out agreement with at least one other private or public

institution operating in the state unless the commission determines that such an agreement is not feasible;

(7) provide standards for the award of associate, baccalaureate, master's and doctoral degrees;

(8) require all degree-granting schools to seek appropriate external accreditation by an agency recognized by the federal department of education as a means of assuring quality instruction;

(9) name an advisory committee of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities;

(10) provide for the maintenance of records for career schools and nonregionally accredited colleges and universities no longer in operation;

(11) provide standards for the evaluation of the financial stability and ability to meet the commitments of career schools and nonregionally accredited colleges and universities;

(12) require each career school and nonregionally accredited college and university to adopt a procedure for the resolution of student complaints; and

(13) establish other requirements necessary to carry out the provisions of the Post-Secondary Educational Institution Act.

D. The commission may solicit information pertaining to the financial history and stability of a career school or nonregionally accredited college or university and its owners, including information pertaining to actions of bankruptcy filed within the immediately preceding five years. The commission may consider such information in determining eligibility for licensure."

Chapter 223 Section 7 Laws 2005

Section 7. Section 21-23-6.3 NMSA 1978 (being Laws 1994, Chapter 108, Section 10) is amended to read:

"21-23-6.3. FEE AUTHORIZATION.--

A. The commission may establish initial application fees for all colleges, universities or career schools seeking to operate in New Mexico. The initial application fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000). In setting the fee, the commission shall consider the projected revenue of the institution and the projected cost of performing the review.

B. The commission may establish an annual licensing fee for all career schools or nonregionally accredited colleges or universities licensed by the commission. The licensing fee shall be proportionate to each school's gross annual tuition revenue; provided the fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000).

C. The commission may charge a reasonable administrative fee not to exceed the actual cost of providing the administrative service.

D. All fees imposed and collected by the commission shall be deposited in the post-secondary educational institution fund."

Chapter 223 Section 8 Laws 2005

Section 8. Section 21-23-10 NMSA 1978 (being Laws 1971, Chapter 303, Section 9, as amended) is amended to read:

"21-23-10. DISCIPLINARY ACTIONS--CIVIL PENALTIES.--

A. A person shall not:

(1) operate a career school or nonregionally accredited college or university within the state until that school has been licensed by the commission;

(2) operate a regionally accredited college or university within the state until that college or university has registered with the commission;

(3) deny enrollment to or make any distinction or classification of pupils in the program or practices of any post-secondary educational institution under the jurisdiction of the commission on account of race, color, culture, ancestry, national origin, sex, age, religion or disability; or

(4) solicit, directly or through an agent or employee, the enrollment of any person in a post-secondary educational institution within the state by the use of fraud, misrepresentation or collusion.

B. Whoever violates any provision of this section may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation. Civil penalties shall be credited to the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

C. After an investigation, the commission may take any one or a combination of the following disciplinary actions against a post-secondary education institution licensed in accordance with the Post-Secondary Educational Institution Act:

(1) revoke a license;

(2) assess a civil penalty as provided in Subsection B of this section; or

(3) impose probation requirements."

HOUSE BILL 541

Approved April 6, 2005

LAWS 2005, CHAPTER 224

AN ACT

RELATING TO QUALIFIED ASSISTANCE ANIMALS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 224 Section 1 Laws 2005

Section 1. A new Section 28-11-1.1 NMSA 1978 is enacted to read:

"28-11-1.1. SHORT TITLE.--Chapter 28, Article 11 NMSA 1978 may be cited as the "Assistance Animal Act"."

Chapter 224 Section 2 Laws 2005

Section 2. Section 28-11-2 NMSA 1978 (being Laws 1989, Chapter 242, Section 1, as amended by Laws 1999, Chapter 262, Section 1 and also by Laws 1999, Chapter 288, Section 1) is amended to read:

"28-11-2. DEFINITIONS.--As used in the Assistance Animal Act, "qualified assistance animal" means any assistance dog or other animal that has been or is being trained to provide assistance to an individual with a disability and includes:

A. an assistance dog that has been or is being trained as a guide dog, hearing dog or service dog;

B. a guide dog that has been or is being trained to aid a blind or visually impaired person;

C. a hearing dog that has been or is being trained to aid a deaf or hearing-impaired person; and

D. a service dog that has been or is being trained to aid a person with a disability other than a sight or hearing impairment."

Chapter 224 Section 3 Laws 2005

Section 3. Section 28-11-3 NMSA 1978 (being Laws 1989, Chapter 242, Section 2, as amended by Laws 1999, Chapter 262, Section 2 and also by Laws 1999, Chapter 288, Section 2) is amended to read:

"28-11-3. ADMITTANCE OF QUALIFIED ASSISTANCE ANIMALS.--
Notwithstanding any other provision of law:

A. A qualified assistance animal shall be admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters; provided that the qualified assistance animal is under the control of an owner or a trainer of the qualified assistance animal. No person shall be required to pay any additional charges for the qualified assistance animal, but shall be liable for any damage done by the qualified assistance animal.

B. In an emergency requiring transportation or relocation of the owner or trainer of the qualified assistance animal, to the extent practicable, accommodations shall be made for the qualified assistance animal to remain or be reunited with the owner or trainer."

Chapter 224 Section 4 Laws 2005

Section 4. Section 28-11-4 NMSA 1978 (being Laws 1989, Chapter 242, Section 3) is amended to read:

"28-11-4. PENALTY.--A person who violates a provision of the Assistance Animal Act shall be guilty of a misdemeanor and, upon conviction, shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 224 Section 5 Laws 2005

Section 5. Section 28-11-5 NMSA 1978 (being Laws 1999, Chapter 113, Section 1) is amended to read:

"28-11-5. FINDINGS AND PURPOSE--INTERFERENCE WITH QUALIFIED ASSISTANCE ANIMALS PROHIBITED--CRIMINAL AND CIVIL PENALTIES.--

A. The legislature finds that unrestrained dogs constitute a danger to qualified assistance animals and public safety. The purpose of this section is to protect persons with disabilities and qualified assistance animals from attack by unrestrained dogs.

B. It is unlawful for any person, with no legal justification, to:

(1) intentionally interfere with the use of a qualified assistance animal by harassing or obstructing the owner or trainer of the qualified assistance animal or the qualified assistance animal; or

(2) intentionally fail or refuse to control the person's unrestrained dog, and that dog interferes with or obstructs the owner or trainer of the qualified assistance animal or the qualified assistance animal.

C. The provisions of this section shall not apply to unrestrained dogs on private property not open to the public.

D. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including the cost of veterinary bills and replacement and training costs of a qualified assistance animal, if such costs are incurred as a result of the violation.

E. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978."

HOUSE BILL 561

Approved April 6, 2005

LAWS 2005, CHAPTER 225

AN ACT

RELATING TO TAXATION; PROVIDING FOR PARTICIPATION IN NEGOTIATIONS ON THE STREAMLINED SALES TAX AGREEMENT; CREATING REQUIREMENTS FOR PARTICIPATION IN THE AGREEMENT.

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

Chapter 225 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Streamlined Sales and Use Tax Administration Act".

Chapter 225 Section 2 Laws 2005

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that a simplified sales tax and use tax system that treats transactions in a competitively neutral manner will strengthen and preserve sales taxes and use taxes as vital revenue sources for this state and its local governments and will help preserve the fiscal sovereignty of this state. The legislature also finds that such a system will substantially reduce the administrative burdens of collection for sellers. While states have the sovereign right to set their own tax policies, states should cooperatively develop a streamlined sales tax and use tax system that is simplified, uniform and fair.

Chapter 225 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Streamlined Sales and Use Tax Administration Act:

A. "agreement" means the streamlined sales and use tax agreement;

B. "certified automated system" means software certified jointly by member states to:

(1) calculate the sales tax imposed by each jurisdiction on a transaction;

(2) determine the amount of tax to remit to the appropriate state;
and

(3) maintain a record of the transaction;

C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;

D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act or a tax imposed by a state on the sale of goods or services;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

Chapter 225 Section 4 Laws 2005

Section 4. AUTHORITY TO ENTER AGREEMENT.--

A. The secretary of taxation and revenue may enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

Chapter 225 Section 5 Laws 2005

Section 5. RELATIONSHIP TO STATE LAW.--A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

Chapter 225 Section 6 Laws 2005

Section 6. AGREEMENT REQUIREMENTS.--The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state tax rates by limiting:

(1) the number of member state tax rates;

(2) the application of maximums on the amount of member state taxes due on transactions; and

(3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

- (1) sourcing transactions to taxing jurisdictions;
- (2) administering exempt sales; and
- (3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of complying with local sales taxes and use taxes by:

- (1) restricting variances between the member state and local tax bases;
- (2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;
- (3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and
- (4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives with which to consult with respect to the administration of the agreement.

Chapter 225 Section 7 Laws 2005

Section 7. MEMBER STATES.--The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

Chapter 225 Section 8 Laws 2005

Section 8. LIMITED BINDING AND BENEFICIAL EFFECT.--

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

(1) have a cause of action or a defense pursuant to the agreement;
and

(2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its application with the agreement.

Chapter 225 Section 9 Laws 2005

Section 9. LIABILITY.--

A. A certified service provider is liable for sales taxes and use taxes due from each member state on each sales transaction that it processes for the seller, except as otherwise provided by this section. A seller that contracts with the certified service provider is not liable to this state for sales tax or use tax due on a transaction processed by the certified service provider unless the seller misrepresents the type of item it sells or commits fraud. In the absence of probable cause that the seller has

committed fraud or made a material misrepresentation, the seller is not subject to audit on transactions processed by the certified service provider. A seller is subject to audit for a transaction not processed by the certified service provider. Member states acting jointly may:

(1) audit data pertaining to the seller that is stored in the certified automated system; and

(2) review procedures of the seller to determine if the certified automated system functions properly and the extent to which the transactions of the seller are processed by this certified service provider.

B. A certified service provider is responsible for the proper functioning of a certified automated system and is liable to this state for underpayments of tax attributable to system errors. A seller that uses a certified automated system is liable to this state for reporting and remitting tax.

C. A seller that has a proprietary system for determining the amount of tax due on a transaction and has agreed to establish a performance standard for the system is liable for failure of the system to meet the standard.

House Bill 575

Approved April 6, 2005

LAWS 2005, CHAPTER 226

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING DISQUALIFYING CONVICTIONS.

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

Chapter 226 Section 1 Laws 2005

Section 1. Section 29-17-4 NMSA 1978 (being Laws 1998, Chapter 68, Section 3, as amended) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers Criminal History Screening Act:

A. "applicant" means a person who seeks and is offered employment or contractual service as a caregiver or hospital caregiver with a care provider;

B. "caregiver" means a person, not otherwise required to undergo a nationwide criminal history screening by the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider;

C. "care provider" or "provider" means a skilled nursing facility; an intermediate care facility; a care facility for the mentally retarded; a general acute care facility; a psychiatric facility; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a guardian service provider; a case management entity that provides services to people with developmental disabilities; a private residence that provides personal care, adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare services. "Care provider" or "provider" does not include resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

E. "conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an Alford plea or any plea or judgment entered in connection with a suspended sentence, in this state or any other state or jurisdiction;

F. "hospital caregiver" means a person who provides direct unsupervised patient care in an inpatient setting and is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

G. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

H. "nationwide criminal history record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision and collected by criminal justice agencies; and

I. "statewide criminal history screening" means a criminal history background investigation of an applicant or caregiver through the comparison of identifying information with the department of public safety's criminal record repository."

Chapter 226 Section 2 Laws 2005

Section 2. Section 29-17-5 NMSA 1978 (being Laws 1998, Chapter 68, Section 4, as amended) is amended to read:

"29-17-5. CRIMINAL HISTORY SCREENING REQUIRED--REGULATORY IMPLEMENTATION--APPEALS.--

A. The department of health is authorized to receive an applicant's, caregiver's or hospital caregiver's nationwide criminal history record obtained by the department of public safety as a result of a nationwide criminal history screening pursuant to an applicant's, caregiver's or hospital caregiver's authorization for such nationwide criminal history screening. Providers shall submit a set of fingerprints of applicants, caregivers and hospital caregivers to the department of health for a nationwide criminal history screening, and the department of public safety shall accept from the department of health such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The department of health is authorized to promulgate rules to implement the Caregivers Criminal History Screening Act, including rules establishing a three-year phased implementation based upon provider type; fingerprint submission procedures; fees; confidentiality; time frames for an applicant's or caregiver's nationwide criminal history screening; procedures for clarifying incomplete or confusing criminal history information; provider sanctions for noncompliance; and employment procedures pending the results of the nationwide criminal history screening relating to applicants and caregivers.

C. No caregiver or hospital caregiver may be employed by a care provider unless the caregiver or hospital caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by rule by the departments of health and public safety. A caregiver or hospital caregiver shall apply for statewide criminal history screening when applying for employment with a care provider within twelve months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening.

D. The following felony convictions disqualify an applicant, caregiver or hospital caregiver from employment as a caregiver:

- (1) homicide;
- (2) trafficking controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect;
- (7) robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud or receiving stolen property; or
- (8) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

E. Upon receipt by the department of health of the results of the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening, the department of health shall give notice to the submitting care provider whether the applicant or caregiver has a disqualifying conviction of a crime specified in Subsection D of this section. No other results of the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening shall be provided to the care provider. Except as provided in Subsection F of this section, a care provider shall not employ an applicant or continue to employ a caregiver or hospital caregiver whose nationwide criminal history screening record reflects a disqualifying conviction. When the department of health provides notice to the care provider of a disqualifying conviction of a crime specified in Subsection D of this section, it shall also notify the applicant, caregiver or hospital caregiver, stating with specificity the convictions on which its decision is based and identifying the agency that provided the records.

F. An applicant, caregiver or hospital caregiver whose nationwide criminal history record, obtained through the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening and other clarifying endeavors of the department of health, reflects a disqualifying conviction of a crime specified in Subsection D of this section may request from the department of health an administrative reconsideration. The care provider may, in its discretion, continue to employ such person during the pendency of the reconsideration. A care provider may employ the applicant or caregiver if the reconsideration proceeding results in a determination by the department of health that the applicant's, caregiver's or hospital caregiver's nationwide criminal history record inaccurately reflects a disqualifying conviction of a crime specified in Subsection D of this section or that the employment presents no risk of harm to a care recipient or that

the conviction does not directly bear upon the applicant's, caregiver's or hospital caregiver's fitness for the employment.

G. The department of health is authorized to adopt rules for the administrative reconsideration proceeding available to an applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction. The rules shall take into account the requirements of the Criminal Offender Employment Act.

H. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after May 20, 1998.

I. All criminal history records obtained pursuant to this section by the department of health are confidential. No criminal history records obtained pursuant to this section shall be used for any purpose other than determining whether an applicant, caregiver or hospital caregiver has a criminal conviction that would disqualify the applicant, caregiver or hospital caregiver from employment as a caregiver or hospital caregiver. Except on court order or with the written consent of the applicant, caregiver or hospital caregiver, criminal records obtained pursuant to this section and the information contained therein shall not be released or otherwise disclosed to any other person or agency. A person who discloses confidential records or information in violation of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

J. The department of health shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers or hospital caregivers. An applicant's arrest record information shall not be released except upon request of the applicant as provided in the Arrest Record Information Act.

K. A care provider, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

L. Failure to comply with the requirements of this section are grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties."

HOUSE CONSUMER AND PUBLIC AFFAIRS

COMMITTEE SUBSTITUTE FOR HOUSE BILL 627

Approved April 6, 2005

LAWS 2005, CHAPTER 227

AN ACT

RELATING TO THE PAROLE BOARD; INCREASING THE NUMBER OF MEMBERS OF THE PAROLE BOARD FROM NINE TO FIFTEEN.

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

Chapter 227 Section 1 Laws 2005

Section 1. Section 31-21-24 NMSA 1978 (being Laws 1975, Chapter 194, Section 3, as amended) is amended to read:

"31-21-24. PAROLE BOARD--MEMBERS--APPOINTMENT--TERMS--QUALIFICATIONS--COMPENSATION--ORGANIZATION.--

A. The "parole board" is created, consisting of fifteen members appointed by the governor with the consent of the senate.

B. The terms of the members of the parole board shall be six years. To provide for staggered terms, five members shall be appointed every two years. Members serve until their successors have been appointed and qualified.

C. Members of the parole board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Members of the parole board shall be persons qualified by such academic training or professional experience as is deemed necessary to render them fit to serve as members of the board. No member of the board shall be an official or employee of any other federal, state or local government entity.

E. Members of the parole 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.

F. The governor shall designate one member of the parole board to serve as chair, who in addition to other duties shall coordinate with the corrections department in the furnishing of services pursuant to Section 9-3-11 NMSA 1978.

G. A parole may be granted, denied or revoked by a quorum of two on a panel consisting of three parole board members appointed on a rotating basis by the chair of the board."

Chapter 227 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION.--

A. Members of the parole board serving on July 1, 2005 may continue to serve until their terms expire and their successors have been appointed and qualified.

B. Of the six additional members of the parole board to be appointed pursuant to the provisions of this act, two shall serve an initial term of two years, two shall serve an initial term of four years and two shall serve an initial term of six years. Thereafter, all members shall serve six-year staggered terms.

Chapter 227 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 695

Approved April 6, 2005

LAWS 2005, CHAPTER 228

AN ACT

RELATING TO STATE PARKS; CHANGING THE NAME OF THE STATE PARK AND RECREATION ADVISORY COMMITTEE TO THE STATE PARKS ADVISORY BOARD.

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

Chapter 228 Section 1 Laws 2005

Section 1. Section 16-2-2 NMSA 1978 (being Laws 1977, Chapter 254, Section 113, as amended) is amended to read:

"16-2-2. STATE PARKS ADVISORY BOARD CREATED-- MEMBERSHIP-- COMPENSATION--DUTIES.--

A. The "advisory board" to the state parks division of the energy, minerals and natural resources department is created. It shall be composed of seven to eleven members appointed by the governor.

B. The advisory board shall provide advice and make recommendations relating to the administration of the state parks division. It shall advise on all matters of policy, regulations, the formulation of a comprehensive statewide recreation plan and such other matters as may be requested by the director of that division.

C. The advisory board shall meet quarterly or at the call of the chairman.

D. Each member of the advisory board shall annually elect a chairman and vice chairman from its membership. The director of the state parks division shall serve as the executive secretary of the board."

House Bill 696

Approved April 6, 2005

LAWS 2005, CHAPTER 229

AN ACT

RELATING TO MOTOR CARRIERS; REQUIRING THE PUBLIC REGULATION COMMISSION TO CONSIDER, WHEN ISSUING PERMITS FOR CERTAIN MOTOR CARRIERS, WHETHER THE NEW PERMITS WOULD ENDANGER OR IMPAIR THE INTERESTS OF ALL MOTOR CARRIERS TO AN EXTENT THAT IS CONTRARY TO THE PUBLIC INTEREST.

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

Chapter 229 Section 1 Laws 2005

Section 1. Section 65-2A-10 NMSA 1978 (being Laws 2003, Chapter 359, Section 10) is amended to read:

"65-2A-10. PERMITS FOR INTRASTATE CONTRACT MOTOR CARRIERS OF PERSONS OR HOUSEHOLD GOODS.--

A. A contract motor carrier shall not provide compensated intrastate transportation of persons or household goods in the state without first having applied for and obtained a permit from the commission.

B. Except as provided in this section, the commission shall issue a permit allowing a person to provide compensated intrastate transportation as a contract motor carrier of persons or household goods after notice and public hearing requirements are met, if:

(1) the person is fit, willing and able to provide the transportation to be authorized by the permit;

(2) the person is in compliance with the safety and financial responsibility requirements of the Motor Carrier Act, the rules of the commission and other applicable federal and state laws and rules; and

(3) the transportation to be provided under the permit is or will be consistent with the public interest.

C. Before granting a permit to an intrastate contract motor carrier of persons, the commission shall consider:

(1) the number of customers to be served by the carrier;

(2) the nature of the transportation proposed to be provided;

(3) whether granting the permit would endanger or impair the operations of motor carriers to an extent contrary to the public interest;

(4) the effect that denying the permit would have on the person applying for the permit and its customers; and

(5) the changing character of the requirements of the applicant's customers.

D. The commission shall not issue a permit to an intrastate contract motor carrier of persons if it finds that the authority sought will impair the provision of transportation services by a certificated intrastate common motor carrier of persons then serving the same territory.

E. Before granting a permit to an intrastate contract motor carrier of household goods, the commission shall consider:

(1) whether granting the permit would endanger or impair the operations of carriers to an extent contrary to the public interest; and

(2) the effect that denying the permit would have on the person applying for the permit and its shippers.

F. A permit issued by the commission shall specify the business of the intrastate contract motor carrier, the scope of the authority granted to it and the terms, conditions and limitations of the authority.

G. An intrastate contract motor carrier of persons or household goods shall file with the commission each contract under which it intends to operate. The

commission shall approve a contract and authorize operations if it finds that the contract is consistent with the public interest and the provisions of this section.

H. The commission shall not limit an intrastate contract motor carrier of persons or household goods to a fixed number of contracts.

I. A motor carrier owning a certificate and a permit for the same type of service may use the same equipment for both common and contract services provided that shared use does not impair the provision of transportation services under the certificate."

House Bill 740

Approved April 6, 2005

LAWS 2005, CHAPTER 230

AN ACT

RELATING TO PROPERTY TAXATION; IMPLEMENTING ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO; EXPANDING THE VETERANS' PROPERTY TAX EXEMPTION TO APPLY TO ALL HONORABLY DISCHARGED VETERANS; PROVIDING FOR THE 2004 REDUCTION IN PROPERTY TAXES DUE FOR ELIGIBLE VETERANS; DECLARING AN EMERGENCY.

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

Chapter 230 Section 1 Laws 2005

Section 1. Section 7-37-5 NMSA 1978 (being Laws 1973, Chapter 258, Section 38, as amended) is amended to read:

"7-37-5. VETERAN EXEMPTION.--

A. Up to four thousand dollars (\$4,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from the taxable value of the property to determine the net taxable value of

the property. The exemption allowed shall be in the following amounts for the specified tax years:

(1) for tax year 2004, the exemption shall be three thousand dollars (\$3,000);

(2) for tax year 2005, the exemption shall be three thousand five hundred dollars (\$3,500); and

(3) for tax year 2006 and each subsequent tax year, the exemption shall be four thousand dollars (\$4,000).

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department. For taxpayers who became eligible for a veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico in November 2004, a county assessor shall, at the time of determining the net taxable value of the taxpayer's property for the 2005 property tax year, in addition to complying with the provisions of Section 7-38-17 NMSA 1978, determine the net taxable value of the taxpayer's property that would result from the application of the veteran exemption for the 2004 property tax year had the deadline for applying for the veteran exemption in 2004 occurred after the amendment was certified. The veteran exemption for 2004 shall not be credited against the 2005 property value of a taxpayer until the taxpayer has paid in full the taxpayer's property tax liability for the 2004 property tax year.

C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States; and

(2) except as provided in this section, served in the armed forces of the United States on active duty continuously for ninety days.

D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if the person served for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

E. For the purposes of Subsection C of this section, a person has been "honorably discharged" unless the person received either a dishonorable discharge or a discharge for misconduct.

F. For the purposes of this section, a person whose civilian service has been recognized as service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the

United States shall be considered to have served in the armed forces of the United States."

Chapter 230 Section 2 Laws 2005

Section 2. Section 7-38-17 NMSA 1978 (being Laws 1973, Chapter 258, Section 57, as amended) is amended to read:

"7-38-17. CLAIMING EXEMPTIONS--REQUIREMENTS--PENALTIES.--

A. Subject to the requirements of Subsection E of this section, head-of-family exemptions, veteran exemptions or disabled veteran exemptions claimed and allowed in a tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family and veteran exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. Except as set forth in Subsection H of this section, an exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessor's notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the veterans' services department to issue certificates of eligibility for veteran exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the veterans' services department in the development, adoption and promulgation of regulations under Subsection E of this section. The veterans' services department shall comply with the promulgated regulations. The veterans' services department shall collect a fee of five dollars (\$5.00) for the issuance of a duplicate certificate of eligibility to a veteran.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000). A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

H. A veteran or the veteran's unmarried surviving spouse who became eligible to receive a property tax exemption due to the expansion of the class of eligible veterans resulting from approval by the electorate in November 2004 of an amendment to Article 8, Section 5 of the constitution of New Mexico shall apply at the time the veteran or the veteran's unmarried surviving spouse applies for the 2005 veteran exemption, to the county assessor of the county in which the property of the veteran or the veteran's unmarried surviving spouse is located to have the veteran exemptions for the 2004 and 2005 property tax years applied to the 2005 taxable value of the property. The same form of documentation required for a veteran's property exemption for property tax year 2005 is required to be presented to the county assessor for property tax year 2004."

Chapter 230 Section 3 Laws 2005

Section 3. TEMPORARY PROVISION--ADDITIONAL INSTRUCTIONS TO ASSESSORS AND TREASURERS--SPECIAL REQUIREMENTS FOR 2004 VETERAN EXEMPTION--NEWLY ELIGIBLE VETERANS.--

A. A county assessor shall include with the notice of valuation distributed to property owners for the 2005 property tax year, a notice to taxpayers informing them that:

(1) a taxpayer who is a veteran or the unmarried surviving spouse of a veteran who was not previously eligible for a veteran property tax exemption may be eligible for that exemption due to the change in Article 8, Section 5 of the constitution of New Mexico adopted in November 2004; and

(2) a taxpayer who is eligible for the veteran tax exemption for the 2005 property tax year may also be eligible for the veteran tax exemption for the 2004 property tax year.

B. The taxpayer shall obtain certification from the veterans' services department verifying that the veteran upon whose service the exemption is claimed is eligible for a tax exemption pursuant to Article 8, Section 5 of the constitution of New Mexico for the 2005 property tax year to present to the county assessor. The veterans' services department shall certify the date on which the veteran became honorably discharged from the armed forces of the United States.

C. The county assessor shall determine from the date of discharge from the armed forces of the United States certified by the veterans' services department if the veteran would have been eligible to receive a tax exemption for the 2004 property tax year based on the veteran's date of discharge from the armed forces of the United States and the dates on which the taxpayer took title to the property. A veteran would be eligible if the veteran were discharged on a date prior to the thirtieth day following the date on which the county assessor mailed the notice of valuation in 2004 and had title to the property to which the veteran tax exemption is applied at that time.

D. If a taxpayer, who became eligible for the veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico, qualifies for the 2004 and 2005 veteran exemptions and has paid in full the taxpayer's property tax liability for the 2004 property tax year, for the 2005 property tax year only the county assessor shall combine the total of the veteran exemptions for those two property tax years and deduct the combined total from the taxable value of the taxpayer's property to obtain the net taxable value for the 2005 property tax year.

Chapter 230 Section 4 Laws 2005

Section 4. APPLICABILITY.--The provisions of Section 3 of this act apply only to the veteran exemptions claimed in a timely manner in the 2005 property tax year.

Chapter 230 Section 5 Laws 2005

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 743, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 231

AN ACT

RELATING TO TAXATION; CLARIFYING PROVISIONS OF THE PROPERTY TAX CODE RELATING TO AGRICULTURAL LANDS; IMPOSING PROPERTY TAX ON CAPTIVE DEER AND ELK; DECLARING AN EMERGENCY.

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

Chapter 231 Section 1 Laws 2005

Section 1. Section 7-36-20 NMSA 1978 (being Laws 1973, Chapter 258, Section 21, as amended) is amended to read:

"7-36-20. SPECIAL METHOD OF VALUATION--LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES.--

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

C. The department shall adopt rules for determining whether land is used primarily for agricultural purposes. The rules shall provide that the use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

D. The department shall adopt rules for determining the value of land used primarily for agricultural purposes. The rules shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide that land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land, and that captive deer shall be valued and taxed as sheep and captive elk shall be valued and taxed as cattle;

(4) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(5) assure that land determined under the rules to have the same or similar production capacity shall be valued uniformly throughout the state; and

(6) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land must make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department rules and must be made no later than the last day of February of the tax year. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for agricultural purposes. This report shall be made on a form prescribed by department rules and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars (\$25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax years for which the person failed to make the required report."

Chapter 231 Section 2 Laws 2005

Section 2. SAVING CLAUSE.--Nothing in this 2005 act shall affect the authority of the state game commission or the director of the department of game and fish.

Chapter 231 Section 3 Laws 2005

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

HOUSE BILL 867, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 232

AN ACT

RELATING TO TAXATION; PROVIDING FOR A DEDUCTION FROM THE SPECIAL FUEL EXCISE TAX FOR NUMBER 2 DIESEL FUEL SOLD FOR THE GENERATION OF POWER TO PROPEL A SCHOOL BUS; PROVIDING FOR A REFUND OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL USED TO PROPEL A SCHOOL BUS.

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

Chapter 232 Section 1 Laws 2005

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;

F. special fuel dyed in accordance with federal regulations; and

G. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point."

Chapter 232 Section 2 Laws 2005

Section 2. Section 7-16A-13.1 NMSA 1978 (being Laws 2001, Chapter 43, Section 2) is amended to read:

"7-16A-13.1. CLAIM FOR REFUND OF SPECIAL FUEL EXCISE TAX PAID ON SPECIAL FUEL.--

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 authorized by contract with the public education department as a school bus, 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, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005."

Chapter 232 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 997, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 233

AN ACT

RELATING TO LIVESTOCK; INCREASING THE SPECIAL LEVY TO ONE DOLLAR (\$1.00) PER HEAD ON ALL ANIMALS IN A COUNTY PROTECTED UNDER THE COUNTY PREDATOR CONTROL PROGRAM.

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

Chapter 233 Section 1 Laws 2005

Section 1. Section 77-15-11 NMSA 1978 (being Laws 1965, Chapter 92, Section 6) is amended to read:

"77-15-11. SPECIAL LEVY.--

A. Upon the establishment of a county predator control program, the board of county commissioners shall order a special levy of a tax in the form of a mill levy that will produce not more than the rate limitation set on the petition and not more than one dollar (\$1.00) per head on all animals in the county to be protected under the county predator control program. This special levy shall be over and above any other special levies and shall not be construed to be within the constitutional twenty-mill limitation. The proceeds of this special levy shall be deposited with the county treasurer for expenditure upon order of the county predator control board and shall be spent, during the existence of the program, solely for predator control.

B. The amount of the levy shall be stated on the petition, and the county predator control board shall certify it to the board of county commissioners on or before the first Monday in August following its appointment. The special levy shall be assessed, levied and collected as other taxes in the county and at the expense of the county.

C. The owners of fifty-one percent of the animals assessed under the County Predator Control Act may require a change in the amount of the levy within the statutory limit by petitioning the county predator control board on or before the first Monday of July of any year.

D. Any owner of dairy animals or of feedlot animals being fattened on full feed for slaughter and which animals are included in the animals on the tax rolls for this special assessment may have these animals excluded from the special assessment by filing a certified statement containing the description and count of the animals with the board of county commissioners prior to September 1 of the year in which the tax is assessed."

HOUSE BILL 1021

Approved April 6, 2005

LAWS 2005, CHAPTER 234

AN ACT

RELATING TO CORRECTIONS; ELIMINATING THE REVIEW PANEL FOR THE JUVENILE COMMUNITY CORRECTIONS GRANT FUND.

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

Chapter 234 Section 1 Laws 2005

Section 1. Section 33-9A-4 NMSA 1978 (being Laws 1988, Chapter 101, Section 42, as amended) is amended to read:

"33-9A-4. APPLICATIONS--CRITERIA.--

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

(1) the application is for funding a program with priority use being for delinquents selected pursuant to the provisions of Section 33-9A-5 NMSA 1978;

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

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

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

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

(6) no class A county alone or in conjunction with any municipality within a class A county shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section, the department may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The juvenile parole board may, in its discretion, require participation by a delinquent in a program as a condition of parole pursuant to the provisions of Section 32A-7-6 NMSA 1978.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for community corrections programs or to establish programs operated by the department; provided, however, that the department may utilize up to

an additional ten percent of the fund to operate juvenile community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

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

HOUSE BILL 1028

Approved April 6, 2005

LAWS 2005, CHAPTER 235

AN ACT

RELATING TO BOARDS; ELIMINATING THE PESTICIDE ADVISORY REVIEW BOARD; REPEALING A SECTION OF THE NMSA 1978.

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

Chapter 235 Section 1 Laws 2005

Section 1. REPEAL.--Section 76-4-36 NMSA 1978 (being Laws 1973, Chapter 366, Section 36, as amended) is repealed.

HOUSE BILL 1035

Approved April 6, 2005

LAWS 2005, CHAPTER 236

AN ACT

RELATING TO HORSES; PROVIDING FOR THE REGISTRATION OF AND SETTING STANDARDS FOR HORSE RESCUE AND RETIREMENT FACILITIES; MAKING AN APPROPRIATION.

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

Chapter 236 Section 1 Laws 2005

Section 1. A new section of The Livestock Code is enacted to read:

"HORSE RESCUE OR RETIREMENT FACILITY--REGISTRATION--BOARD POWERS AND DUTIES--FEES.--

A. As used in this section, "facility" means a horse rescue or retirement facility, including a private reserve or private preserve, that advertises or solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range.

B. A facility shall not operate in New Mexico unless registered by the board.

C. The board shall:

(1) register facilities that meet the requirements of this section;

(2) annually consult with representatives from the equine industry, equine rescue organizations and veterinarians on facility standards; and

(3) after consideration of recommendations by national organizations for the care of unwanted horses and equine rescue and retirement facilities, promulgate rules for facilities, including:

(a) health and sanitary requirements;

(b) standards for barns, paddocks, pastures and ranges;

(c) qualifications of the facility staff;

(d) provision of veterinary care;

(e) feeding and watering requirements;

(f) transportation; and

(g) other requirements necessary to ensure the humane care of horses.

D. The board may charge the following fees:

(1) an initial inspection and registration fee of not more than two hundred fifty dollars (\$250);

(2) an annual inspection and registration fee of not more than one hundred dollars (\$100); and

(3) reinspection fees of not more than one hundred dollars (\$100).

E. Fees collected pursuant to this section shall be deposited in the New Mexico livestock board general fund and may be used to carry out the provisions of Sections 1 and 2 of this act."

Chapter 236 Section 2 Laws 2005

Section 2. A new section of The Livestock Code is enacted to read:

"HORSE RESCUE OR RETIREMENT FACILITIES--INSPECTIONS--REINSPECTION.--

A. Prior to annual registration, each facility shall be inspected in accordance with board rules.

B. The board or its agents may enter the premises of a facility to conduct unannounced inspections.

C. If, following an inspection, the board determines that the facility does not meet the board's minimum facility requirements, it shall give the registrant written notice of the deficiencies and schedule a reinspection, allowing a reasonable time for the registrant to correct the deficiencies.

D. The registrant shall remedy the deficiencies and submit evidence to the board demonstrating compliance with board rules for the facility.

E. If on reinspection the board determines that the facility is still deficient in those areas for which it has been given written notice, the horses may be impounded in accordance with the provisions of Section 77-18-2 NMSA 1978 and the board shall hold a hearing as provided in the Uniform Licensing Act to determine if the registration should be suspended or revoked.

F. If a facility's registration is suspended or revoked, the board shall place the horses in another facility.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1043, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 237

AN ACT

RELATING TO PUBLIC PROPERTY; RAISING THE VALUE OF STATE PROPERTY THAT MUST BE INVENTORIED.

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

Chapter 237 Section 1 Laws 2005

Section 1. Section 12-6-10 NMSA 1978 (being Laws 1969, Chapter 68, Section 10, as amended) is amended to read:

"12-6-10. ANNUAL INVENTORY.--

A. The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing more than five thousand dollars (\$5,000) and under the control of the governing authority. This inventory shall include all movable chattels and equipment procured through the capital program fund under Section 15-3B-16 NMSA 1978, which are assigned to the agency designated by the director of the property control division of the general services department as the user agency. The inventory shall list the chattels and equipment and the date and cost of acquisition. No agency shall be required to list any item costing five thousand dollars (\$5,000) or less. Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files. At the time of the annual audit, the state auditor shall satisfy himself as to the correctness of the inventory by generally accepted auditing procedures.

B. The official or governing authority of each agency is chargeable on his official bond for the chattels and equipment shown in the inventory.

C. The general services department shall establish standards, including a uniform classification system of inventory items, and promulgate rules concerning the system of inventory accounting for chattels and equipment required to be inventoried, and the governing authority of each agency shall install the system. A museum collection list or catalogue record and a library accession record or shelf list shall constitute the inventories of museum collections and library collections maintained by state agencies and local public bodies.

D. No surety upon the official bond of any officer or employee of any agency shall be released from liability until a complete accounting has been had. All official bonds shall provide coverage of, or be written in a manner to include, inventories."

HOUSE BILL 1074

Approved April 6, 2005

LAWS 2005, CHAPTER 238

AN ACT

RELATING TO PUBLIC MONEY; ALLOWING COUNTIES AND MUNICIPALITIES TO INVEST IN FEDERAL HOME LOAN BANKS.

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

Chapter 238 Section 1 Laws 2005

Section 1. Section 6-10-10 NMSA 1978 (being Laws 1933, Chapter 175, Section 4, as amended) is amended to read:

"6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

A. Upon the certification or designation of a bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and county or municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks and savings and loan associations, and may make deposit of that money in credit unions whose deposits are insured by an agency of the United States, designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers.

B. County or municipal treasurers may deposit money in one or more accounts with any such bank, savings and loan association or credit union located in their respective counties, subject to limitation on credit union accounts.

C. The state treasurer may deposit money in one or more accounts with any such bank, savings and loan association or credit union, subject to the limitation on credit union accounts.

D. Duplicate receipts or deposit slips shall be taken for each deposit made pursuant to Subsection A, B or C of this section. When deposits are made by the state treasurer, one copy of the receipt or deposit slip shall be retained by the state treasurer and the other copy shall be filed monthly on the first day of each month with the financial control division of the department of finance and administration. When deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of a public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person making the deposit and the other copy shall be filed monthly on the first day of each month with that board of

finance. When deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer making the deposit and the other copy shall be filed monthly on the first day of each month with the secretary of the board of finance of the county or municipality for which that treasurer is acting.

E. "Deposit", as used in this section, means either investment or deposit and includes share, share certificate and share draft.

F. County or municipal treasurers, with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, have the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or a county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars (\$1,000,000) and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; or

(2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or are backed by the full faith and credit of the United States government.

G. The treasurer of a class A county or the treasurer of a municipality having a population of more than sixty-five thousand according to the most recent federal decennial census and located within a class A county, with the advice and consent of the boards of finance charged with the supervision and control of the funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the county or municipality that is entrusted to the treasurer's care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and

provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(2) individual, common or collective trust funds of banks or trust companies that invest in fixed-income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(3) shares of pooled investment funds managed by the state investment officer, as provided in Subsection G of Section 6-8-7 NMSA 1978; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments.

H. A local public body, with the advice and consent of the body charged with the supervision and control of the local public body's respective funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or credit unions in contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the contract. The collateral required for investment in the contracts provided for in this subsection shall be shown on the books of the financial institution as being the property of the investor and the designation shall be contemporaneous with the investment. As used in this subsection, "local public body" includes all political subdivisions of the state and agencies, instrumentalities and institutions thereof; provided that home rule municipalities that prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

I. The state treasurer, with the advice and consent of the state board of finance, has the power to invest money held in demand deposits and not immediately needed for the operation of state government and money held in the short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments shall be made only in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are

backed by the full faith and credit of the United States government or agencies sponsored by the United States government.

J. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the present purchase and resale at a specified time in the future, not to exceed one year or, in the case of bond proceeds, not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the amount of the contract.

K. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged.

L. The collateral required for either of the forms of investment in Subsection J or K of this section shall be delivered to the fiscal agent of New Mexico or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis.

M. Neither of the contracts in Subsection J or K of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000).

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

O. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment company has total assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the investment company; or

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment manager has assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund.

P. No public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable third-party safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser."

Chapter 238 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 380

Approved April 6, 2005

LAWS 2005, CHAPTER 239

AN ACT

RELATING TO PUBLIC FINANCES; BROADENING THE SCOPE OF FINANCIAL INSTITUTIONS THAT MAY SERVE AS SECURITIES LENDERS.

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

Chapter 239 Section 1 Laws 2005

Section 1. Section 6-10-10 NMSA 1978 (being Laws 1933, Chapter 175, Section 4, as amended) is amended to read:

"6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

A. Upon the certification or designation of a bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and county or municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks and savings and loan associations, and may make deposit of that money in credit unions whose deposits are insured by an agency of the United States, designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers.

B. County or municipal treasurers may deposit money in one or more accounts with any such bank, savings and loan association or credit union located in their respective counties, subject to limitation on credit union accounts.

C. The state treasurer may deposit money in one or more accounts with any such bank, savings and loan association or credit union, subject to the limitation on credit union accounts.

D. Duplicate receipts or deposit slips shall be taken for each deposit made pursuant to Subsection A, B or C of this section. When deposits are made by the state treasurer, one copy of the receipt or deposit slip shall be retained by the state treasurer and the other copy shall be filed monthly on the first day of each month with the financial control division of the department of finance and administration. When deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of a public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person making the deposit and the other copy shall be filed monthly on the first day of each month with that board of finance. When deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer making the deposit and the other copy shall be filed monthly on the first day of each month with the secretary of the board of finance of the county or municipality for which that treasurer is acting.

E. "Deposit", as used in this section, means either investment or deposit and includes share, share certificate and share draft.

F. County or municipal treasurers, with the advice and consent of their respective boards of finance charged with the supervision and control of the respective

funds, have the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or a county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars (\$1,000,000) and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; or

(2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank or the student loan marketing association or are backed by the full faith and credit of the United States government.

G. The treasurer of a class A county or the treasurer of a municipality having a population of more than sixty-five thousand according to the most recent federal decennial census and located within a class A county, with the advice and consent of the boards of finance charged with the supervision and control of the funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the county or municipality that is entrusted to the treasurer's care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(2) individual, common or collective trust funds of banks or trust companies that invest in fixed income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars (\$100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(3) shares of pooled investment funds managed by the state investment officer, as provided in Subsection G of Section 6-8-7 NMSA 1978; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments.

H. A local public body, with the advice and consent of the body charged with the supervision and control of the local public body's respective funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or credit unions in contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the contract. The collateral required for investment in the contracts provided for in this subsection shall be shown on the books of the financial institution as being the property of the investor and the designation shall be contemporaneous with the investment. As used in this subsection, "local public body" includes all political subdivisions of the state and agencies, instrumentalities and institutions thereof; provided that home rule municipalities that prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

I. The state treasurer, with the advice and consent of the state board of finance, has the power to invest money held in demand deposits and not immediately needed for the operation of state government and money held in the short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments shall be made only in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies sponsored by the United States government.

J. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the present purchase and resale at a specified time in the future, not to exceed one year or, in the case of bond proceeds, not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. Such contract shall not be invested in unless the contract is fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the amount of the contract.

K. The state treasurer, with the advice and consent of the state board of finance, may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. Such contract shall not be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged.

L. The collateral required for either of the forms of investment in Subsection J or K of this section shall be delivered to the fiscal agent of New Mexico or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis.

M. Neither of the contracts in Subsection J or K of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000).

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

O. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment company has total assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the investment company; or

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment manager has assets under management of at least one billion dollars (\$1,000,000,000) and the investments made by the state treasurer pursuant to this paragraph are less than five percent of the assets of the individual, common or collective trust fund.

P. Public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall not be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser."

HOUSE BILL 388, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 240

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS AND ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF THE LAND GRANT PERMANENT FUNDS, THE SEVERANCE TAX PERMANENT FUND, THE EDUCATIONAL RETIREMENT FUND AND OF FUNDS ADMINISTERED PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 240 Section 1 Laws 2005

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 in accordance with the Uniform Prudent Investor Act. The state investment officer shall see that money invested is at all times handled in the best interests of the state.

B. 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.

C. 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.

D. All funds managed by the state investment officer shall be managed in accordance with 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.

E. 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.

F. The state investment officer shall provide quarterly performance reports to the legislative finance committee. Annually, the state investment officer shall ratify and provide written investment policies, including any amendments, to the legislative finance committee."

Chapter 240 Section 2 Laws 2005

Section 2. 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--
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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 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other private equity investments 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. A person shall not 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 that person's 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 7-27-5.15 and 7-27-5.26 NMSA 1978 and all other private equity investments and may pay budgeted expenses for the advisors from the assets of any fund administered under the supervision of the council, as applicable.

I. As used in this section, "private equity investments" means any legal entity that 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 startup, expansion, new product development, recapitalization or a similar business purpose."

Chapter 240 Section 3 Laws 2005

Section 3. Section 7-27-5 NMSA 1978 (being Laws 1983, Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes. "Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978 and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act and shall be accounted for in accordance with generally accepted accounting principles."

Chapter 240 Section 4 Laws 2005

Section 4. Section 10-11-132 NMSA 1978 (being Laws 1987, Chapter 253, Section 132, as amended) is amended to read:

"10-11-132. INVESTMENT OF FUNDS--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified by the state from the funds administered by the retirement board from all claims, demands, suits, actions, damages,

judgments, costs, charges and expenses, including court costs and attorney fees and against all liability losses and damages of any nature that members shall or may sustain by reason of any decision made in the performance of their duties pursuant to the state retirement system acts. The retirement board shall invest and reinvest the funds in accordance with the Uniform Prudent Investor Act."

Chapter 240 Section 5 Laws 2005

Section 5. Section 10-11-133 NMSA 1978 (being Laws 1987, Chapter 253, Section 133, as amended) is amended to read:

"10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR STANDARD--CONDITIONS.--

A. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by stock exchanges that have been approved by or are under the control of the United States securities and exchange commission or by industry practice.

B. The retirement board shall invest and manage the funds administered by the retirement board in accordance with the Uniform Prudent Investor Act.

C. The retirement board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the retirement board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

D. Securities purchased with money from or held for any fund administered by the retirement board and for which the retirement board is trustee shall be in the custody of the state treasurer who shall, at the direction of the retirement board, deposit with a bank or trust company the securities for safekeeping or servicing.

E. The retirement board may consult with the state investment council or state investment officer and request information or advice with respect to the retirement board's overall investment plan, may utilize the services of the state investment council and state investment officer and may act on their advice concerning the plan. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transition services and may pay reasonable compensation for such services from funds administered by the retirement board. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the retirement board's jurisdiction.

F. Except as provided in the Public Employees Retirement Act, a member of the retirement board, employee of the retirement board or any person connected with the retirement board in any manner shall not:

(1) have any direct or indirect interest in the gains or profits of any investment made by the retirement board;

(2) receive any direct or indirect pay or emolument for services provided to the retirement board or the association;

(3) directly or indirectly, for the member, employee or person, for themselves or as agent or partner of others, borrow any of the funds or deposits of the association or in any manner use them except to make current and necessary payments authorized by the retirement board; or

(4) become an endorser or surety or become in any manner an obligor for money of the retirement board loaned or borrowed."

Chapter 240 Section 6 Laws 2005

Section 6. Section 22-11-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act.

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. 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. Such a contract shall not 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.

D. 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.

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 also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

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 attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section."

Chapter 240 Section 7 Laws 2005

Section 7. REPEAL.--

A. Sections 6-8-9, 6-8-17 through 6-8-19 and 6-8-21 NMSA 1978 (being Laws 1957, Chapter 179, Section 9, Laws 1970, Chapter 2, Sections 1 and 2, Laws 1987, Chapter 126, Section 1 and Laws 1997, Chapter 183, Section 5, as amended) are repealed.

B. Sections 7-27-5.1, 7-27-5.6, 7-27-5.16, 7-27-5.23 and 7-27-5.25 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, Laws 1987, Chapter 219, Section 2, Laws 1990, Chapter 127, Section 10, Laws 1997, Chapter 45, Section 3 and Laws 2000, Chapter 5, Section 4, as amended) are repealed.

Chapter 240 Section 8 Laws 2005

Section 8. ACT NOT SEVERABLE.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall likewise be invalid. The provisions of this act are not severable.

Chapter 240 Section 9 Laws 2005

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 389, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 241

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING ALL OFFENDERS TO OBTAIN AN IGNITION INTERLOCK LICENSE AND HAVE AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING FOR INCREASING PERIODS OF LICENSE REVOCATION FOR REPEAT OFFENDERS.

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

Chapter 241 Section 1 Laws 2005

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a provisional license to any person fifteen years and six months of age or older:

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months; and

(b) who has successfully completed a practice driving component;

(3) a driver's license to any person sixteen years and six months of age or older:

(a) who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(b) who has complied with restrictions on that license;

(c) who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and

(d) who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

(4) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motorcycle is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by rule provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act;

C. who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree that renders the person incapable of safely driving a motor vehicle;

D. who is four times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Five years from the date of the fourth conviction and every five years thereafter, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the four previous convictions shall not prohibit issuance of the license;

E. who has previously been afflicted with or who is suffering from any mental disability or disease that would render him unable to drive a motor vehicle with safety upon the highways and who has not, at the time of application, been restored to health;

F. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

G. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau."

Chapter 241 Section 2 Laws 2005

Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the instruction permit, driver's license or provisional license of a driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehicle is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Except as provided in the Ignition Interlock Licensing Act and in Subsection C, D or E of this section, a person whose license has been revoked under this section shall not be entitled to apply for or receive a new license until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

C. A person who upon adjudication as a delinquent for driving while under the influence of intoxicating liquor or drugs or conviction pursuant to Section 66-8-102 NMSA 1978 is subject to license revocation under this section for an offense pursuant to which the person was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to:

(1) one year for a first offender; or

(2) for a subsequent offender:

(a) two years for a second conviction;

(b) three years for a third conviction; or

(c) the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

D. Upon receipt of an order from a court pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's license or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until one year from the date that the conviction is final and all rights to an appeal have been exhausted."

Chapter 241 Section 3 Laws 2005

Section 3. Section 66-5-32 NMSA 1978 (being Laws 1978, Chapter 35, Section 254, as amended) is amended to read:

"66-5-32. PERIOD OF SUSPENSION OR REVOCATION.--

A. The division shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year except as permitted under Subsection C of this section and Sections 66-5-5 and 66-5-39 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act, a person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of the periods specified in Subsections B and C of Section 66-5-29 NMSA 1978 from the date on which the revoked license was surrendered to and received by the division, the person may make application for a new license as provided by law.

C. The suspension period for failure to appear or failure to remit the penalty assessment shall, at the discretion of the director, be extended indefinitely subject to the provisions of Subsection B of Section 66-5-30 NMSA 1978."

Chapter 241 Section 4 Laws 2005

Section 4. 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 the person to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

(1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;

(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act, except as provided in the Ignition Interlock Licensing Act;

(3) for a limited license when the person's driver's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;

(4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or

(5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the department of transportation. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The department of transportation 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.

C. 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.

D. 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 the person 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."

Chapter 241 Section 5 Laws 2005

Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; or

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part,

the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

(1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court;

(2) not less than a ninety-day outpatient treatment program approved by the court;

(3) a drug court program approved by the court; or

(4) any other substance abuse treatment program approved by the court.

The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

N. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

(1) a period of one year, for a first offender;

(2) a period of two years, for a second conviction pursuant to this section;

(3) a period of three years, for a third conviction pursuant to this section; or

(4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

O. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

P. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

Q. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

R. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

S. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

T. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILLS 282, 494 AND 506

Approved April 6, 2005

LAWS 2005, CHAPTER 242

AN ACT

RELATING TO CONCEALED HANDGUNS; PROVIDING FOR A FOUR-YEAR LICENSE; LOWERING THE AGE FOR OBTAINING A LICENSE; ALLOWING A LICENSEE TO CARRY SMALLER CALIBER HANDGUNS UNDER ONE LICENSE; PROVIDING FOR RECIPROCAL AGREEMENTS WITH OTHER STATES; MAKING EXCEPTIONS FOR LAW ENFORCEMENT OFFICERS.

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

Chapter 242 Section 1 Laws 2005

Section 1. Section 29-19-1 NMSA 1978 (being Laws 2003, Chapter 255, Section 1) is amended to read:

"29-19-1. SHORT TITLE.--Chapter 29, Article 19 NMSA 1978 may be cited as the "Concealed Handgun Carry Act"."

Chapter 242 Section 2 Laws 2005

Section 2. Section 29-19-3 NMSA 1978 (being Laws 2003, Chapter 255, Section 3) is amended to read:

"29-19-3. DATE OF LICENSURE--PERIOD OF LICENSURE.--Effective January 1, 2004, the department is authorized to issue concealed handgun licenses to qualified applicants. Original and renewed concealed handgun licenses shall be valid for a period of four years from the date of issuance, unless the license is suspended or revoked."

Chapter 242 Section 3 Laws 2005

Section 3. Section 29-19-4 NMSA 1978 (being Laws 2003, Chapter 255, Section 4) is amended to read:

"29-19-4. APPLICANT QUALIFICATIONS.--

A. The department shall issue a concealed handgun license to an applicant who:

- (1) is a citizen of the United States;
- (2) is a resident of New Mexico or is a member of the armed forces whose permanent duty station is located in New Mexico or is a dependent of such a member;
- (3) is twenty-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 the largest caliber of handgun that the applicant wants to be licensed to carry as a concealed handgun.

B. The department shall deny a concealed handgun license to an applicant who has:

(1) received a conditional discharge, a diversion or a deferment or has been convicted of, pled guilty to or entered a plea of nolo contendere to a misdemeanor offense involving a crime of violence within ten years immediately preceding the application;

(2) been convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license;

(3) been convicted of a misdemeanor offense involving the possession or abuse of a controlled substance within ten years immediately preceding the application; or

(4) been convicted of a misdemeanor offense involving assault, battery or battery against a household member.

C. Firearms training course instructors who are approved by the department shall not be required to complete a firearms training course pursuant to Paragraph (10) of Subsection A of this section."

Chapter 242 Section 4 Laws 2005

Section 4. Section 29-19-5 NMSA 1978 (being Laws 2003, Chapter 255, Section 5) is amended to read:

"29-19-5. APPLICATION FORM--SCREENING OF APPLICANTS--FEE--LIMITATIONS ON LIABILITY.--

A. Effective July 1, 2003, applications for concealed handgun licenses shall be made readily available at locations designated by the department. Applications for concealed handgun licenses shall be completed, under penalty of perjury, on a form designed and provided by the department and shall include:

(1) the applicant's name, current address, date of birth, place of birth, social security number, height, weight, gender, hair color, eye color and driver's license number or other state-issued identification number;

(2) a statement that the applicant is aware of, understands and is in compliance with the requirements for licensure set forth in the Concealed Handgun Carry Act;

(3) a statement that the applicant has been furnished a copy of the Concealed Handgun Carry Act and is knowledgeable of its provisions; and

(4) a conspicuous warning that the application form is executed under penalty of perjury and that a materially false answer or the submission of a materially false document to the department may result in denial or revocation of a concealed handgun license and may subject the applicant to criminal prosecution for perjury as provided in Section 30-25-1 NMSA 1978.

B. The applicant shall submit to the department:

(1) a completed application form;

(2) a nonrefundable application fee in an amount not to exceed one hundred dollars (\$100);

(3) two full sets of fingerprints;

(4) a certified copy of a certificate of completion for a firearms training course approved by the department;

(5) two color photographs of the applicant;

(6) a certified copy of a birth certificate or proof of United States citizenship, if the applicant was not born in the United States; and

(7) proof of residency in New Mexico.

C. A law enforcement agency may fingerprint an applicant and may charge a reasonable fee.

D. Upon receipt of the items listed in Subsection B of this section, the department shall make a reasonable effort to determine if an applicant is qualified to receive a concealed handgun license. The department shall conduct an appropriate check of available records and shall forward the applicant's fingerprints to the federal bureau of investigation for a national criminal background check. The department shall comply with the license-issuing requirements set forth in Section 29-19-7 NMSA 1978. However, the department shall suspend or revoke a license if the department receives information that would disqualify an applicant from receiving a concealed handgun license after the thirty-day time period has elapsed.

E. A state or local government agency shall comply with a request from the department pursuant to the Concealed Handgun Carry Act within thirty days of the request."

Chapter 242 Section 5 Laws 2005

Section 5. Section 29-19-6 NMSA 1978 (being Laws 2003, Chapter 255, Section 6) is amended to read:

"29-19-6. APPEAL--LICENSE RENEWAL--REFRESHER FIREARMS TRAINING COURSE--SUSPENSION OR REVOCATION OF LICENSE.--

A. Pursuant to rules adopted by the department, the department, within thirty days after receiving a completed application for a concealed handgun license and the results of a national criminal background check on the applicant, shall:

(1) issue a concealed handgun license to an applicant; or

(2) deny the application on the grounds that the applicant failed to qualify for a concealed handgun license pursuant to the provisions of the Concealed Handgun Carry Act.

B. Information relating to an applicant or to a licensee received by the department or any other law enforcement agency is confidential and exempt from public disclosure unless an order to disclose information is issued by a court of competent jurisdiction. The information shall be made available by the department to a state or local law enforcement agency upon request by the agency.

C. A concealed handgun license issued by the department shall include:

(1) a color photograph of the licensee;

(2) the licensee's name, address and date

of birth;

(3) the expiration date of the concealed handgun license; and

(4) the category and the largest caliber of handgun that the licensee is licensed to carry, with a statement that the licensee is licensed to carry smaller caliber handguns but shall carry only one concealed handgun at any given time.

D. A licensee shall notify the department within thirty days regarding a change of the licensee's name or permanent address. A licensee shall notify the department within ten days if the licensee's concealed handgun license is lost, stolen or destroyed.

E. If a concealed handgun license is 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. If the license is lost or stolen, the licensee shall file a police report with a local law enforcement agency and include the police case number in the notarized statement.

F. A licensee may renew a concealed handgun license by submitting to the department:

(1) a completed renewal form, under penalty of perjury, designed and provided by the department;

(2) a payment of a seventy-five-dollar (\$75.00) renewal fee; and

(3) a certificate of completion of a four-hour refresher firearms training course approved by the department.

G. The department shall conduct a national criminal records check of a licensee seeking to renew a license. A concealed handgun license shall not be renewed more than sixty days after it has expired. A licensee who fails to renew a 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.

H. A licensee shall complete a two-hour refresher firearms training course two years after the issuance of an original or renewed license. The refresher course shall be approved by the department and shall be taken twenty-two to twenty-six months after the issuance of an original or renewed license. A certificate of completion shall be submitted to the department no later than thirty days after completion of the course.

I. The department shall suspend or revoke a concealed handgun license if:

(1) the licensee provided the department with false information on the 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; or

(3) subsequent to receiving a concealed handgun license, the licensee violated a provision of the Concealed Handgun Carry Act."

Chapter 242 Section 6 Laws 2005

Section 6. Section 29-19-12 NMSA 1978 (being Laws 2003, Chapter 255, Section 12) is amended to read:

"29-19-12. RULES--DEPARTMENT TO ADMINISTER--RECIPROCAL AGREEMENTS WITH OTHER STATES.--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 the owner's property;

D. creation of a sequential numbering system for all concealed handgun licenses issued by the department and display of numbers on issued concealed handgun licenses; and

E. provision of discretionary state authority for the transfer, recognition or reciprocity of a concealed handgun license issued by another state if the issuing authority for the other state:

(1) includes provisions at least as stringent as or substantially similar to the Concealed Handgun Carry Act;

(2) issues a license or permit with an expiration date printed on the license or permit;

(3) is available to verify the license or permit status for law enforcement purposes within three business days of a request for verification;

(4) has disqualification, suspension and revocation requirements for a concealed handgun license or permit; and

(5) requires that an applicant for a concealed handgun license or permit:

(a) submit to a national criminal history record check;

(b) not be prohibited from possessing firearms pursuant to federal or state law; and

(c) satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship."

Chapter 242 Section 7 Laws 2005

Section 7. A new section of the Concealed Handgun Carry Act is enacted to read:

"CURRENT AND RETIRED LAW ENFORCEMENT OFFICERS.--

A. An application fee, a renewal fee and a firearms training course are not required for an applicant or licensee who is a certified law enforcement officer pursuant to the Law Enforcement Training Act.

B. A retired law enforcement officer is not required to submit an application fee or a renewal fee if:

(1) the officer was a certified law enforcement officer pursuant to the Law Enforcement Training Act for at least fifteen years prior to retirement; and

(2) the retirement is in good standing as shown by a letter from the agency from which the officer retired.

C. A retired law enforcement officer who has been retired ten years or less is not required to complete a firearms training course.

D. A retired law enforcement officer who has been retired for more than ten years shall be required to complete a firearms training course. The officer shall be allowed to attend any local law enforcement agency's firearms qualification course; provided that the officer supplies the officer's own ammunition, handgun, targets and range equipment. A local law enforcement agency shall not be liable under the Tort Claims Act for providing a firearms training course to a retired law enforcement officer pursuant to this subsection.

E. A retired law enforcement officer's concealed handgun license shall have printed on the license "retired police officer" and shall be valid for a period of five years."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 641, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 243

AN ACT

RELATING TO MEDICAID; AUTHORIZING SERVICES TO SUPPORT INDIVIDUALS WITH BRAIN INJURIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 243 Section 1 Laws 2005

Section 1. A new section of the Public Assistance Act is enacted to read:

"BRAIN INJURY--SERVICES AUTHORIZED.--Subject to the availability of state funds and consistent with Title 19 of the federal Social Security Act, the department shall provide services to persons with brain injuries, with emphasis on long-term disability services provided through home- and community-based programs."

Chapter 243 Section 2 Laws 2005

Section 2. APPROPRIATION.--Two million dollars (\$2,000,000) is appropriated from the general fund to the aging and long-term services department for expenditure in fiscal years 2005 and 2006, in cooperation with the human services department, to provide services to persons with brain injuries with emphasis on long-term disability services provided through home- and community-based programs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

Chapter 243 Section 3 Laws 2005

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

HOUSE BILL 318, WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 244

AN ACT

RELATING TO BUSINESS; ENACTING THE SMALL BUSINESS REGULATORY RELIEF ACT; REQUIRING PERIODIC REVIEW; CREATING AN ADVISORY COMMISSION; PROVIDING POWERS AND DUTIES.

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

Chapter 244 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Small Business Regulatory Relief Act".

Chapter 244 Section 2 Laws 2005

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

B. small businesses bear a disproportionate share of regulatory costs and burdens;

C. fundamental changes that are needed in the regulatory culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

D. when adopting rules to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small businesses;

E. uniform regulatory reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs, upon small businesses with limited resources;

F. the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;

G. unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

H. the practice of treating all regulated businesses as equivalent may lead to inefficient use of agency resources, enforcement problems and, in some cases, to actions inconsistent with stated legislative intent of health, safety, environmental, economic welfare and other legislation;

I. alternative regulatory approaches that do not conflict with applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

J. the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the effect of proposed and existing rules on such businesses and to review the continued need for existing rules.

Chapter 244 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Small Business Regulatory Relief Act:

A. "agency" means every department, agency, board, commission, committee or institution of the executive branch of state government;

B. "commission" means the small business regulatory advisory commission;

C. "proposed rule" means a proposal by an agency for a new rule or for a change in, addition to or repeal of an existing rule;

D. "rule" means any rule, regulation, order, standard or statement of policy, including amendments to or repeals of any of those, issued or promulgated by an agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed a rule nor shall it constitute specific adoption of a rule by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or a public hospital; or rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from an educational institution; and

E. "small business" means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees.

Chapter 244 Section 4 Laws 2005

Section 4. RULES AFFECTING SMALL BUSINESS.--

A. Prior to the adoption of a proposed rule that may have an adverse effect on small business, an agency shall provide a copy of the proposed rule to the

commission at the same time as persons who have requested advance notice of rulemaking.

B. Prior to the adoption of a proposed rule that the agency deems to have an adverse effect on small business, the agency shall consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business.

Chapter 244 Section 5 Laws 2005

Section 5. SMALL BUSINESS REGULATORY ADVISORY COMMISSION CREATED--MEMBERSHIP--POWERS AND DUTIES.--

A. The "small business regulatory advisory commission" is created. The commission shall consist of nine members who are current or former small business owners, five appointed by the governor and two each appointed by the speaker of the house of representatives and the president pro tempore of the senate. Each member shall be from a different geographic region of the state. Members shall serve two-year terms. A member shall not serve more than three consecutive terms. Members shall name the chairperson of the commission. The commission shall meet at the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

B. The commission is administratively attached to the economic development department, and staff for the commission shall be provided by the department.

C. The commission may:

(1) provide state agencies with input regarding proposed rules that may adversely affect small business;

(2) consider requests from small business owners to review rules adopted by an agency;

(3) review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects; and

(4) provide an annual evaluation report to the governor and the legislature, including recommendations and evaluations of agencies regarding regulatory fairness for small businesses.

D. The commission does not have authority to:

(1) interfere with, modify, prevent or delay an agency or administrative enforcement action;

(2) intervene in legal actions; or

(3) subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

Chapter 244 Section 6 Laws 2005

Section 6. PERIODIC REVIEW OF RULES.--

A. By July 1, 2010, each agency shall have reviewed all of its rules that existed on the effective date of the Small Business Regulatory Relief Act to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses, subject to compliance with the stated objectives of the laws pursuant to which the rules were adopted.

B. Rules adopted and promulgated after the effective date of the Small Business Regulatory Relief Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses while implementing the state objectives of the laws pursuant to which the rules were adopted.

C. In reviewing its rules to minimize economic impacts on small businesses, an agency shall consider the following factors:

(1) continued need for the rule;

(2) the nature of complaints or comments received from the public concerning the rule;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.

Chapter 244 Section 7 Laws 2005

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 869, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 245

AN ACT

RELATING TO INSURANCE FRAUD; PROVIDING FOR INVESTIGATORS' POWERS;
AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 245 Section 1 Laws 2005

Section 1. Section 59A-16C-11 NMSA 1978 (being Laws 1998, Chapter 115, Section 11) is amended to read:

"59A-16C-11. INVESTIGATORS' POWERS.--

A. The superintendent's investigators shall be peace officers pursuant to the provisions of Chapter 29, Article 1 NMSA 1978.

B. An investigator who meets the requirements for certification for law enforcement training pursuant to Section 29-7-6 NMSA 1978 shall be authorized to carry a firearm."

HOUSE BILL 76

Approved April 6, 2005

LAWS 2005, CHAPTER 246

AN ACT

RELATING TO JUDICIAL RETIREMENT; INCREASING RATES FOR MEMBER AND
EMPLOYER CONTRIBUTIONS; CHANGING THE REQUIREMENTS FOR
RETIREMENT AND PENSIONS FOR NEW MEMBERS.

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

Chapter 246 Section 1 Laws 2005

Section 1. Section 10-12B-8 NMSA 1978 (being Laws 1992, Chapter 111, Section 8) is amended to read:

"10-12B-8. AGE AND SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT.--

A. For an individual who initially became a member prior to July 1, 2005, the age and service credit requirements for retirement provided for in the Judicial Retirement Act are:

(1) age sixty-four or older and five or more years of service credit;
or

(2) age sixty or older and fifteen or more years of service credit.

B. For an individual who initially became a member on or after July 1, 2005, the age and service credit requirements for retirement provided for in the Judicial Retirement Act are:

(1) age sixty-four or older and five or more years of service credit;
or

(2) age fifty-five or older and sixteen or more years of service credit.

C. If a member leaves office for any reason, other than removal pursuant to Article 6, Section 32 of the constitution of New Mexico, before meeting the age and service credit requirements for retirement pursuant to the provisions of this section and if that member leaves his member contributions on deposit in the fund, that member may apply for retirement when that member meets the age and service credit requirements for retirement pursuant to the provisions of the Judicial Retirement Act or provisions of the Public Employees Retirement Reciprocity Act.

D. No member shall be eligible to receive a pension pursuant to the provisions of the Judicial Retirement Act while still in office."

Chapter 246 Section 2 Laws 2005

Section 2. Section 10-12B-9 NMSA 1978 (being Laws 1992, Chapter 111, Section 9) is amended to read:

"10-12B-9. AMOUNT OF PENSION.--The amount of monthly pension is equal to:

A. In the case of a former or current judge or justice, an amount equal to one-twelfth of:

pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Judicial Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member."

Chapter 246 Section 4 Laws 2005

Section 4. Section 10-12B-11 NMSA 1978 (being Laws 1992, Chapter 111, Section 11, as amended) is amended to read:

"10-12B-11. EMPLOYER CONTRIBUTIONS.--

A. The member's court shall contribute the following amounts to the fund:

(1) prior to July 1, 2005, nine percent of salary for each member in office;

(2) from July 1, 2005 through June 30, 2006, ten and one-half percent of salary for each member in office; and

(3) on and after July 1, 2006, twelve percent of salary for each member in office.

B. Thirty-eight dollars (\$38.00) from each civil case docket fee paid in the district court, twenty-five dollars (\$25.00) from each civil docket fee paid in metropolitan court and ten dollars (\$10.00) from each jury fee paid in metropolitan court shall be paid by the court clerk to the employer's accumulation fund."

Chapter 246 Section 5 Laws 2005

Section 5. Section 10-12B-12 NMSA 1978 (being Laws 1992, Chapter 111, Section 12) is amended to read:

"10-12B-12. EARLY RETIREMENT.--

A. Any member who initially became a member prior to July 1, 2005 and has not less than eighteen years of service credit may elect to retire at any time

between age fifty and age sixty and receive a monthly pension that is one-twelfth of the following formula:

Salary received X .7 + (.005 X Number of years
during the last between age fifty
full year in office and the age at
prior to retirement retirement).

B. The provisions of the Public Employees Retirement Reciprocity Act and the provisions of the Judicial Retirement Act regarding cost-of-living adjustments shall apply to the provisions of this section."

HOUSE BILL 205

Approved April 6, 2005

LAWS 2005, CHAPTER 247

AN ACT

RELATING TO MAGISTRATE RETIREMENT; INCREASING MEMBER AND EMPLOYER CONTRIBUTIONS.

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

Chapter 247 Section 1 Laws 2005

Section 1. Section 10-12C-10 NMSA 1978 (being Laws 1992, Chapter 118, Section 10, as amended) is amended to read:

"10-12C-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

A. Members, while in office, shall contribute the following amounts to the member contribution fund:

- (1) through June 30, 2006, six and one-half percent of salary; and
- (2) on and after July 1, 2006, seven and one-half percent of salary.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Magistrate Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up for the purposes specified in that section member contributions required by this section for all annual salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Magistrate Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member."

Chapter 247 Section 2 Laws 2005

Section 2. Section 10-12C-11 NMSA 1978 (being Laws 1992, Chapter 118, Section 11, as amended) is amended to read:

"10-12C-11. EMPLOYER CONTRIBUTIONS.--

A. The state, through the administrative office of the courts, shall contribute the following amounts to the fund:

(1) through June 30, 2006, ten percent of salary for each member in office; and

(2) on and after July 1, 2006, eleven percent of salary for each member in office.

B. Twenty-five dollars (\$25.00) from each civil case docket fee paid in magistrate court and ten dollars (\$10.00) from each civil jury fee paid in magistrate court shall be paid by the court clerk to the employer's accumulation fund."

Chapter 247 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 216

Approved April 6, 2005

LAWS 2005, CHAPTER 248

AN ACT

RELATING TO CRIMINAL OFFENSES; CHANGING THE THRESHOLD FOR VIOLATIONS OF THE UNAUTHORIZED RECORDING ACT RELATED TO UNAUTHORIZED SOUND AND AUDIOVISUAL RECORDINGS.

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

Chapter 248 Section 1 Laws 2005

Section 1. Section 30-16B-3 NMSA 1978 (being Laws 1991, Chapter 112, Section 3) is amended to read:

"30-16B-3. UNAUTHORIZED RECORDING--PROHIBITED ACT--PENALTIES.--

A. It is unlawful for any person to:

(1) knowingly transfer for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(2) transport within this state for commercial advantage or private financial gain a recording with the knowledge that the sounds have been transferred without the consent of the owner; or

(3) advertise or offer for sale, sell, rent or cause the sale, resale or rental of or possess for one or more of these purposes any recording that the person knows has been transferred without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 248 Section 2 Laws 2005

Section 2. Section 30-16B-4 NMSA 1978 (being Laws 1991, Chapter 112, Section 4) is amended to read:

"30-16B-4. REQUIRED LABELING--PENALTIES.--

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale or resale, sell, resell, lease or possess for any of these purposes any recording that the person knows does not contain the true name of the manufacturer in a prominent place on the cover, jacket or label of the recording.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 248 Section 3 Laws 2005

Section 3. Section 30-16B-5 NMSA 1978 (being Laws 1991, Chapter 112, Section 5) is amended to read:

"30-16B-5. UNAUTHORIZED RECORDING OF LIVE PERFORMANCES--PENALTIES.--

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance that has been recorded or fixed without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one

time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. In the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix those sounds.

D. For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent."

Chapter 248 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 250, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 249

AN ACT

RELATING TO SCHOOLS; PROHIBITING ALCOHOL POSSESSION OR CONSUMPTION ON PUBLIC SCHOOL PREMISES; ESTABLISHING PENALTIES.

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

Chapter 249 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "School Alcohol-Free Zone Act".

Chapter 249 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the School Alcohol-Free Zone Act:

A. "alcoholic beverage" means a beverage with no less than one-half percent alcohol and includes wine, beer, fermented, distilled, rectified and fortified beverages; and

B. "school grounds" means public elementary and secondary schools, including charter schools and facilities owned or leased by the school district in or on which public school-related and sanctioned activities are performed, but does not include other commercial properties owned by a school district but not related to the functions of a public school. "School grounds" includes the buildings, playing fields, parking lots and other facilities located on a school's premises.

Chapter 249 Section 3 Laws 2005

Section 3. ALCOHOLIC BEVERAGES PROHIBITED ON PUBLIC SCHOOL GROUNDS.--It is unlawful to possess or consume alcoholic beverages on public school grounds.

Chapter 249 Section 4 Laws 2005

Section 4. NOTICES REQUIRED.--A school shall conspicuously post notices on school grounds stating that possession and consumption of alcoholic beverages is prohibited on school grounds.

Chapter 249 Section 5 Laws 2005

Section 5. PENALTIES.--

A. A person convicted of consumption or possession of an alcoholic beverage on school property for the first offense is guilty of a petty misdemeanor and subject to a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) and may be ordered to perform community service.

B. A person convicted of consumption or possession of an alcoholic beverage on school property for the second or a subsequent offense is guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months, or both.

HOUSE BILL 275, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 250

AN ACT

RELATING TO LICENSURE; CHANGING THE SCOPE OF PRACTICE FOR SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING; PROVIDING SEPARATE LICENSURE REQUIREMENTS.

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

Chapter 250 Section 1 Laws 2005

Section 1. Section 61-14B-3.1 NMSA 1978 (being Laws 1999, Chapter 128, Section 3) is amended to read:

"61-14B-3.1. SCOPE OF PRACTICE--APPRENTICE IN SPEECH AND LANGUAGE.--The scope of practice for an apprentice in speech and language is to provide adjunct services that are planned, selected or designed by the supervising speech-language pathologist. These services may include:

- A. conducting speech-language or hearing screenings;
- B. following documented intervention plans or protocols;
- C. preparing written daily plans based on the overall intervention plan;
- D. recording, charting, graphing or otherwise displaying data relative to client performance and reporting performance changes to the supervisor;
- E. maintaining daily service notes and completing daily charges as requested;
- F. reporting but not interpreting data relative to client performance to teacher, family or other professionals;
- G. performing clerical duties, including maintenance of therapy and diagnostic materials, equipment and client files as directed by the supervisor;
- H. assisting the speech-language pathologist during client treatment and assessment; and
- I. assisting the speech-language pathologist in research, in-service, training and public relations programs."

Chapter 250 Section 2 Laws 2005

Section 2. Section 61-14B-12 NMSA 1978 (being Laws 1996, Chapter 57, Section 12, as amended) is amended to read:

"61-14B-12. REQUIREMENTS FOR LICENSURE--SPEECH-LANGUAGE PATHOLOGIST.--A license to practice as a speech-language pathologist shall be issued to a person who files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or equivalent degree regardless of degree name and meets the academic requirements for certification by a nationally recognized speech-language association; and

B. currently holds a certificate of clinical competence from a nationally recognized speech-language association in the area for which the applicant is seeking licensure; or

C. has completed the current academic, practicum and employment experience requirements for a certificate of clinical competence from a nationally recognized speech-language association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology."

Chapter 250 Section 3 Laws 2005

Section 3. A new section of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Section 61-14B-12.1 NMSA 1978, is enacted to read:

"61-14B-12.1. REQUIREMENTS FOR LICENSURE--AUDIOLOGIST.--A license to practice as an audiologist shall be issued to any person who:

A. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

(1) holds a master's degree in audiology or communication disorders; or an equivalent degree awarded prior to January 1, 2007; meets the academic requirements for certification by a nationally recognized speech-language or hearing association; and currently holds a certificate of clinical competence from a nationally recognized speech-language or hearing association in the area that the applicant is seeking licensure; or

(2) has completed the current academic, practicum and employment experience requirements for a certificate of clinical competence in audiology from a nationally recognized speech-language or hearing association and has passed a nationally recognized standard examination; or

B. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

(1) holds a doctoral degree in audiology or equivalent degree regardless of degree name and meets academic requirements for certification by a nationally recognized speech-language or hearing association; and

(2) has completed the current academic, practicum and employment requirements of a nationally recognized speech-language or hearing association; and has passed a nationally recognized standard examination in audiology."

Chapter 250 Section 4 Laws 2005

Section 4. Section 61-14B-15.1 NMSA 1978 (being Laws 1999, Chapter 128, Section 8) is amended to read:

"61-14B-15.1. REQUIREMENTS FOR LICENSURE--APPRENTICE IN SPEECH AND LANGUAGE.--A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant:

A. is working toward full licensure pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. has a baccalaureate degree in speech-language pathology or communicative disorders or an equivalent degree or a baccalaureate degree in another field with thirty semester hours of credit in speech-language pathology or communicative disorder;

C. is enrolled in and successfully completes graduate classes in speech-language pathology or communicative disorders at a minimum rate of nine semester hours per year and is accepted into a master's level program in speech-language pathology or communicative disorders within two years of initial licensing;

D. maintains a minimum of a 3.0 grade point average in the master's degree course and other work;

E. is supervised by a person licensed as a speech-language pathologist who has a minimum of two years experience as a speech-language pathologist; and

F. receives a minimum of ten percent direct supervision and ten percent indirect supervision."

HOUSE BILL 308, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 251

AN ACT

RELATING TO PUBLIC PROPERTY; GRANTING COMMUNITY LAND GRANTS THE RIGHT OF FIRST REFUSAL FOR THE PURCHASE OF SURPLUS STATE LANDS THAT WERE FORMER GRANT LANDS.

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

Chapter 251 Section 1 Laws 2005

Section 1. A new section of Chapter 13, Article 6 NMSA 1978 is enacted to read:

"SALE OF REAL PROPERTY BY STATE AGENCIES--LAND GRANT RIGHT OF FIRST REFUSAL.--

A. Notwithstanding the provisions of Section 13-6-2 or 67-3-8.2 NMSA 1978, a state agency shall give the board of trustees of a community land grant governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant the right of first refusal when selling real property belonging to the state agency if the property is land that is located within the boundaries of that community land grant as shown in the United States patent to the grant.

B. If the board of trustees of the community land grant elects not to purchase the land offered for sale or does not respond to the notice of sale within forty-five days of receipt of the notice, the state agency may otherwise dispose of the property in accordance with applicable law.

C. The provisions of this section do not apply to lands held in trust pursuant to the Enabling Act and for which that act prescribes how that land may be disposed of.

D. The provisions of this section do not apply to the conveyance or transfer of state highways to local government entities."

HOUSE BILL 331, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 252

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS; ESTABLISHING PROCEDURES FOR ELECTRONIC RECORDINGS.

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

Chapter 252 Section 1 Laws 2005

Section 1. ELECTRONIC RECORDINGS OF CUSTODIAL INTERROGATIONS.-

A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:

(1) the custodial interrogation shall be electronically recorded in its entirety;

(2) if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and

(3) the electronic recording shall include the advice of constitutional rights required by law.

B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:

(1) the electronic recording equipment was not reasonably available;

(2) the electronic recording equipment failed and obtaining replacement equipment was not feasible;

(3) the individual refused to be recorded; or

(4) the statement was made in a court proceeding or a grand jury proceeding.

C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.

D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.

E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.

F. The provisions of this section do not apply to statements used for impeachment purposes.

G. The provisions of this section do not apply within a correctional facility.

H. As used in this section:

(1) "custodial interrogation" means questioning by law enforcement officers that requires the advice of constitutional rights; and

(2) "electronic recording" means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.

I. This section shall not be construed to exclude otherwise admissible evidence in any judicial proceeding.

Chapter 252 Section 2 Laws 2005

Section 2. SEVERABILITY.--If any part of Section 1 of this act is held invalid, the remainder shall not be affected.

Chapter 252 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE
FOR HOUSE BILL 382, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 253

AN ACT

RELATING TO PUBLIC WORKS; INCREASING THE MINIMUM CONTRACT VALUE FOR THE MINIMUM WAGE ON PUBLIC WORKS; REVISING THE DUTIES AND AUTHORITY OF THE DIRECTOR OF THE LABOR AND INDUSTRIAL DIVISION OF THE LABOR DEPARTMENT; CLARIFYING THE DEFINITION OF WAGES; INCREASING LIABILITY AND REMEDIES; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 253 Section 1 Laws 2005

Section 1. Section 13-4-11 NMSA 1978 (being Laws 1965, Chapter 35, Section 1, as amended) is amended to read:

"13-4-11. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--POSTING WAGE SCALE--WITHHOLDING FUNDS.--

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics, which shall be based upon the wages that will be determined by the director of the labor and industrial division of the labor department to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the minimum wage rates issued for the project.

B. For the purpose of making wage determinations, the director of the labor and industrial division of the labor department shall conduct a continuing program for the obtaining and compiling of wage-rate information and shall encourage the voluntary submission of wage-rate data by contractors, contractors' associations, labor organizations, interested persons and public officers. Before making a determination of wage rates for any project, the director shall give due regard to the information thus obtained. Whenever the director deems that the data at hand are insufficient to make a wage determination, the director may have a field survey conducted for the purpose of obtaining sufficient information upon which to make determination of wage rates. Any

interested person shall have the right to submit to the director written data, views and arguments why the wage determination should be changed.

C. The scale of wages to be paid shall be posted by the contractor or person acting as a contractor in a prominent and easily accessible place at the site of the work; and it is further provided that there may be withheld from the contractor, subcontractor, employer or a person acting as a contractor so much of accrued payments as may be considered necessary by the contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the rates of wages required by the director of the labor and industrial division of the labor department to be paid to laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or their agents.

D. Notwithstanding any other provision of law applicable to public works contracts or agreements, the director of the labor and industrial division of the labor department may, with cause:

(1) issue investigative or hearing subpoenas for the production of documents or witnesses pertaining to public works prevailing wage projects; and

(2) attach and prohibit the release of any assurance of payment required under Section 13-4-18 NMSA 1978 for a reasonable period of time beyond the time limits specified in that section until the director satisfactorily resolves any probable cause to believe a violation of the Public Works Minimum Wage Act or its implementing rules has taken place.

E. The director of the labor and industrial division of the labor department shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act."

Chapter 253 Section 2 Laws 2005

Section 2. Section 13-4-12 NMSA 1978 (being Laws 1965, Chapter 35, Section 2, as amended) is amended to read:

"13-4-12. DEFINITION OF THE TERM "WAGES".--

A. As used in Section 13-4-11 NMSA 1978, "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages" include:

(1) the basic hourly rate of pay; and

(2) the amount of:

(a) the rate of contribution irrevocably made by a contractor, subcontractor, employer or any person acting as a contractor to a trustee or a third person pursuant to a fund, plan or program; and

(b) the rate of costs to a contractor, subcontractor, employer or a person acting as a contractor that reasonably may be anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program that was communicated in writing to the laborers and mechanics affected for: 1) medical or hospital care; 2) pensions on retirement or death; 3) compensation for injuries or illness resulting from occupational activity; or 4) insurance to provide for any of the foregoing; and for: 5) unemployment benefits; 6) life insurance; 7) disability and sickness insurance; 8) accident insurance; 9) vacation and holiday pay; 10) costs of apprenticeship or other similar programs; or for 11) other bona fide fringe benefits; but only where the contractor, subcontractor, employer or a person acting as a contractor is not required by other federal, state or local law to provide any of the foregoing or similar benefits.

B. The obligation of a contractor, subcontractor, employer or person acting as a contractor to make payment in accordance with the prevailing wage determinations of the director of the labor and industrial division of the labor department, insofar as Section 13-4-11 NMSA 1978 or other sections of legislative acts incorporating Section 13-4-11 NMSA 1978 are concerned, may be discharged by the making of payments consistent with Subsection B of Section 50-4-2 NMSA 1978, except that the frequency of payments shall comply with Subsection A of Section 13-4-11 NMSA 1978. The payments shall include:

(1) payment of the base wage rate as the director of the labor and industrial division of the labor department has determined to be prevailing for the appropriate class of laborers or mechanics; and

(2) the making of contributions of a type referred to in Subparagraph (a) of Paragraph (2) of Subsection A of this section; or

(3) the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in Subparagraph (b) of Paragraph (2) of Subsection A of this section; or

(4) any combination of Paragraphs (2) and (3) of this subsection where the aggregate of any payments or contributions and costs therefor is not less than the rate of pay described in Section 13-4-11 NMSA 1978 plus the amount referred to in this section.

C. The provisions of this section shall not affect existing contracts or contracts resulting from bids outstanding on July 15, 1965."

Chapter 253 Section 3 Laws 2005

Section 3. Section 13-4-14 NMSA 1978 (being Laws 1965, Chapter 35, Section 4, as amended) is amended to read:

"13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.

--

A. The director of the labor and industrial division of the labor department shall certify to the contracting agency the names of persons or firms the director has found to have disregarded their obligations to employees under the Public Works Minimum Wage Act and the amount of arrears. The contracting agency shall pay or cause to be paid to the affected laborers and mechanics, from any accrued payments withheld under the terms of the contract or designated for the project, any wages found due such workers pursuant to the Public Works Minimum Wage Act. The director shall, after notice to the affected persons, distribute a list to all departments of the state giving the names of persons or firms the director has found to have willfully violated the Public Works Minimum Wage Act. No contract or project shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership or association in which the persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of the persons or firms. A person to be included on the list to be distributed may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

B. If the accrued payments withheld under the terms of the contract, as mentioned in Subsection A of this section, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to the Public Works Minimum Wage Act, the laborers and mechanics shall have the right of action or intervention or both against the contractor or person acting as a contractor and his sureties, conferred by law upon such persons furnishing labor and materials, and, in such proceeding, it shall be no defense that the laborers and mechanics accepted or agreed to less than the required rate of wages or voluntarily made refunds. The director of the labor and industrial division of the labor department shall refer such matters to the district attorney in the appropriate county, and it is the duty and responsibility of the district attorney to bring civil suit for wages due and liquidated damages provided for in Subsection C of this section.

C. In the event of any violation of the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or a person acting as a contractor responsible for the violation shall be liable to any affected employee for the employee's unpaid wages. In addition, the contractor, subcontractor, employer or a person acting as a contractor shall be liable to any affected employee for liquidated damages beginning with the first day of covered employment in the sum of one hundred dollars (\$100.00) for each calendar day on which a contractor, subcontractor, employer or person acting as a contractor has willfully required or permitted an individual laborer

or mechanic to work in violation of the provisions of the Public Works Minimum Wage Act.

D. In an action brought pursuant to Subsection C of this section, the court may award, in addition to all other remedies, attorney fees and costs to an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employee or a person acting as a contractor."

Chapter 253 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 442, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 254

AN ACT

RELATING TO STATE SYMBOLS; NAMING THE CUMBRES AND TOLTEC SCENIC RAILROAD THE OFFICIAL HISTORIC RAILROAD OF NEW MEXICO.

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

Chapter 254 Section 1 Laws 2005

Section 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended) is amended to read:

"12-3-4. STATE FLOWER--STATE BIRD--STATE TREE--STATE FISH--STATE ANIMAL--STATE VEGETABLES--STATE GEM--STATE GRASS--STATE FOSSIL--STATE COOKIE--STATE INSECT--STATE QUESTION--STATE NICKNAME--STATE BUTTERFLY--STATE REPTILE--STATE AMPHIBIAN--STATE HISTORIC RAILROAD.-

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A. The yucca flower is adopted as the official flower of New Mexico.

B. The chaparral bird, commonly called roadrunner, is adopted as the official bird of New Mexico.

C. The nut pine or pinon tree, scientifically known as *Pinus edulis*, is adopted as the official tree of New Mexico.

D. The native New Mexico cutthroat trout is adopted as the official fish of New Mexico.

E. The native New Mexico black bear is adopted as the official animal of New Mexico.

F. The chile, the Spanish adaptation of the chilli, and the pinto bean, commonly known as the frijol, are adopted as the official vegetables of New Mexico.

G. The turquoise is adopted as the official gem of New Mexico.

H. The blue grama grass, scientifically known as *Bouteloua gracillis*, is adopted as the official grass of New Mexico.

I. The *Coelophysis* is adopted as the official fossil of New Mexico.

J. The bizcochito is adopted as the official cookie of New Mexico.

K. The tarantula hawk wasp, scientifically known as *Pepsis formosa*, is adopted as the official insect of New Mexico.

L. "Red or green?" is adopted as the official question of New Mexico.

M. "The Land of Enchantment" is adopted as the official nickname of New Mexico.

N. The Sandia hairstreak is adopted as the official butterfly of New Mexico.

O. The New Mexico whiptail lizard, scientifically known as *Cnemidophorus neomexicanus*, is adopted as the official reptile of New Mexico.

P. The New Mexico spadefoot toad, scientifically known as *Spea multiplicata*, is adopted as the official amphibian of New Mexico.

Q. The Cumbres and Toltec scenic railroad is adopted as the official historic railroad of New Mexico."

HOUSE BILL 447

Approved April 6, 2005

LAWS 2005, CHAPTER 255

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING THAT AN INDIVIDUAL SHALL NOT BE DISQUALIFIED FROM BENEFITS FOR LEAVING EMPLOYMENT BECAUSE OF A SPOUSE'S RELOCATION DUE TO MILITARY SERVICE; AMENDING THE UNEMPLOYMENT COMPENSATION LAW TO PROVIDE ADDITIONAL CRITERIA FOR THE TRANSFER OF EXPERIENCE HISTORY WITH THE TRANSFER OF AN EMPLOYING ENTERPRISE; PROVIDING CIVIL AND CRIMINAL PENALTIES.

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

Chapter 255 Section 1 Laws 2005

Section 1. Section 51-1-7 NMSA 1978 (being Laws 2003, Chapter 47, Section 10, as amended by Laws 2005, Chapter 3, Section 3) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for and shall not be eligible to receive benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment. No individual shall receive benefits until the division has contacted the former employer and determined whether the individual left the employment voluntarily; provided, however, that a person shall not be denied benefits under this paragraph:

(a) solely on the basis of pregnancy or the termination of pregnancy;

(b) because of domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant; or

(c) if the person voluntarily left work to relocate because of a spouse, who is in the military service of the United States or the New Mexico national guard, receiving permanent change of station orders, activation orders or unit deployment orders;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, approved training or full-time school attendance, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual

has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section:

(1) "domestic abuse" means that term as defined in Section 40-13-2 NMSA 1978; and

(2) "employment" means employment by the individual's last employer as defined by rules of the secretary."

Chapter 255 Section 2 Laws 2005

Section 2. Section 51-1-11 NMSA 1978 (being Laws 2003, Chapter 47, Section 11, as amended by Laws 2005, Chapter 3, Section 4) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48

NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training or school on a full-time basis under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. The division shall not charge a contributing base-period employer's account with any portion of benefits paid to an individual for dependent allowance or because the individual to whom benefits are paid:

(1) separated from employment due to domestic abuse; or

(2) is enrolled in approved training or is attending school on a full-time basis.

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

F. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) beginning January 1, 2005, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two percent through December 31, 2004, shall be subject to the payment of contributions at the reduced rate of two percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months;

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection H of this section;

(4) an employer that, at the time of establishing an account, is in business in another state or states and that is not currently doing business in New Mexico may elect, pursuant to Paragraph (5) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

(a) the employer has been in operation in the other state or states for at least three years immediately preceding the date of becoming a liable employer in New Mexico, throughout which an individual in the employer's employ could have received benefits if eligible; and

(b) the employer provides the authenticated account history as defined by rule of the secretary from information accumulated from operations in the other state or all the other states to compute a current New Mexico rate; and

(5) the election authorized in Paragraph (4) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the New Mexico liable date, or the reduced rate of two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

G. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

H. In the case of a transfer of an employing enterprise, notwithstanding any other provision of law, the experience history of the transferred enterprise as provided in Subsection G of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) as used in this subsection:

(a) "employing enterprise" means a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters. An "employing enterprise" includes the employer's workforce;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any person that acquires an employing enterprise and continues to operate such business entity;

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise;

(e) "common ownership" means that two or more businesses are substantially owned, managed or controlled by the same person or persons;

(f) "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

(g) "violates or attempts to violate" includes an intent to evade, a misrepresentation or a willful nondisclosure;

(2) except as otherwise provided in this subsection, for the purpose of this subsection, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary during the calendar year of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) the successor shall notify the division of the acquisition on or before the due date of the successor's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this subparagraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization;

(3) the applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if the successor:

(a) notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages

paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection I of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll;

(4) if, at the time of a transfer of an employing enterprise in whole or in part, both the predecessor and the successor are under common ownership, then the experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer;

(5) whenever a person, who is not currently an employer, acquires the trade or business of an employing enterprise, the experience history of the acquired business shall not be transferred to the successor if the secretary or the secretary's designee finds that the successor acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the successor shall be assigned the applicable new employer rate pursuant to this section. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contribution, the secretary or the secretary's designee shall consider:

- (a) the cost of acquiring the business;
- (b) whether the person continued the business enterprise of the acquired business;
- (c) how long such business enterprise was continued; and
- (d) whether a substantial number of new employees were hired for performance of duties unrelated to those that the business activity conducted prior to acquisition;

(6) if, following a transfer of experience history pursuant to this subsection, the department determines that a substantial purpose of the transfer of the employing enterprise was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to the combined account;

(7) the secretary shall adopt such rules as are necessary to interpret and carry out the provisions of this subsection, including rules that:

(a) describe how experience history is to be transferred; and

(b) establish procedures to identify the type of transfer or acquisition of an employing enterprise; and

(8) a person who knowingly violates or attempts to violate a rule adopted pursuant to Paragraph (7) of this subsection, who transfers or acquires, or attempts to transfer or acquire, an employing enterprise for the sole or primary purpose of obtaining a reduced liability for contributions or who knowingly advises another person to violate a rule adopted pursuant to Paragraph (7) of this subsection or to transfer or acquire an employing enterprise for the sole or primary purpose of obtaining a reduced liability for contributions is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand five hundred dollars (\$1,500) or more than three thousand dollars (\$3,000) or, if an individual, by imprisonment for a definite term not to exceed ninety days or both. In addition, such a person shall be subject to the following civil penalty imposed by the secretary:

(a) if the person is an employer, the person shall be assigned the highest contribution rate established by the provisions of this section for the calendar year in which the violation occurs and the three subsequent calendar years; provided that, if the difference between the increased penalty rate and the rate otherwise applicable would be less than two percent of the employer's payroll, the contribution rate shall be increased by two percent of the employer's payroll for the calendar year in which the violation occurs and the three subsequent calendar years; or

(b) if the person is not an employer, the secretary may impose a civil penalty not to exceed three thousand dollars (\$3,000).

I. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection:

(1) the total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection F of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection;

(2) except as otherwise provided, each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be the corresponding rate in:

(a) Schedule 0 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and seven-tenths percent of the total payrolls;

(b) Schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals less than three and seven-tenths percent and not less than three and four-tenths percent of the total payrolls;

(c) Schedule 2 of the table provided in Paragraph (4) of this subsection if the fund equals less than three and four-tenths percent but not less than two and seven-tenths percent of the total payrolls;

(d) Schedule 3 of the table provided in Paragraph (4) of this subsection if the fund equals less than two and seven-tenths percent and not less than two percent of the total payrolls;

(e) Schedule 4 of the table provided in Paragraph (4) of this subsection if the fund equals less than two percent and not less than one and one-half percent of the total payrolls;

(f) Schedule 5 of the table provided in Paragraph (4) of this subsection if the fund equals less than one and one-half percent and not less than one percent of the total payrolls; or

(g) Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund equals one percent of the total payrolls;

(3) as used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year; and

(4) table of employer reserves and contribution rate schedules:

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%

8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(0.5%)	4.2%	4.5%	4.8%
(-0.5%)(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%

J. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of

the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

L. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

M. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have

been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection J of this section.

N. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 520, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 256

AN ACT

RELATING TO HEALTH; ENACTING THE EMPLOYEE ABUSE REGISTRY ACT;
ESTABLISHING A REGISTRY OF PROVIDER EMPLOYEES WITH SUBSTANTIATED
ABUSE, NEGLECT OR EXPLOITATION CHARGES.

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

Chapter 256 Section 1 Laws 2005

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

Chapter 256 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Employee Abuse Registry Act:

A. "abuse" means:

(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;

B. "department" means the department of health;

C. "direct care" means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of services;

D. "employee" means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional practicing within the scope of the profession's license or a certified nurse aide;

E. "exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise;

F. "neglect" means, subject to a person's right to refuse treatment and subject to a provider's right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm;

G. "provider" means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly;

H. "registry" means an electronic database that provides information on substantiated employee abuse, neglect or exploitation; and

I. "secretary" means the secretary of health.

Chapter 256 Section 3 Laws 2005

Section 3. EMPLOYEE ABUSE REGISTRY.--

A. The department shall establish an "employee abuse registry" of employees and enter into the registry names of employees with substantiated abuse, neglect or exploitation charges as determined by the department pursuant to the Employee Abuse Registry Act.

B. Before a provider hires or contracts with an employee, the provider shall inquire of the department's registry as to whether the employee is included in the registry.

C. When the department's registry receives an inquiry, the department shall inform the provider whether an employee is included in the employee abuse registry.

D. Providers that hire employees shall document that they have checked the abuse registry for each applicant being considered for employment or contract.

E. A provider shall not hire or contract with an employee in a direct care setting who is included in the employee abuse registry.

F. The department or other governmental agency may, at its discretion, terminate or not enter into or renew a contract with a provider that fails to comply with the provisions of Subsection E of this section.

G. A provider, including its administrators and employees, is not civilly liable to an applicant or an employee for a good faith decision to employ, not employ or terminate employment pursuant to the Employee Abuse Registry Act.

H. After a period of three years, an employee placed on the employee abuse registry may petition the department for removal of the employee's name from the employee abuse registry. Petitions for removal shall be in writing and mailed or hand delivered to the department. Within thirty days of the department's receipt of a petition, the secretary shall issue a written decision on the petition and provide that decision to the employee in person or by certified mail. If the secretary denies the petition, the employee may, within ten days of receipt of that decision, request a hearing. If an employee requests a hearing, that hearing shall be conducted by an independent hearing officer. An employee aggrieved by the final decision following a hearing shall have the right to judicial review pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Chapter 256 Section 4 Laws 2005

Section 4. INVESTIGATION AND SUBSTANTIATION OF ABUSE, NEGLECT OR EXPLOITATION BY THE DEPARTMENT.--

A. In addition to other actions required by law, the department shall review all reports of abuse, neglect or exploitation against employees of providers that are

licensed by or under contract with the department and shall investigate such reports as necessary to determine whether there is a reasonable basis to believe that an employee committed abuse, neglect or exploitation.

B. If the department determines that abuse, neglect or exploitation has occurred, the department shall notify the employee and the provider of that determination, and such determination shall include a determination of whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both.

Chapter 256 Section 5 Laws 2005

Section 5. ADULT PROTECTIVE SERVICES DIVISION REPORT OF ABUSE, NEGLECT OR EXPLOITATION.--

A. The adult protective services division of the aging and long-term services department shall investigate allegations of abuse, neglect and exploitation consistent with its statutory responsibilities.

B. If the adult protective services division determines that abuse, neglect or exploitation has occurred, it shall notify the employee and the provider of that determination, and such determination shall include a determination of whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both.

C. The adult protective services division shall report to the department of health any substantiated finding of abuse, neglect or exploitation made against an employee of a provider under waiver or other programs administered by the aging and long-term services department and not otherwise licensed by or under contract with the department.

Chapter 256 Section 6 Laws 2005

Section 6. PLACEMENT ON REGISTRY AND HEARING PROCESS.--

A. If the department or the adult protective services division of the aging and long-term services department determines that abuse, neglect or exploitation by an employee has occurred, the department making that determination shall notify the employee and the provider, in person or by certified mail, of the following:

(1) the nature of the determination of the abuse, neglect or exploitation;

(2) the date and time of the occurrence;

(3) the employee's right to a hearing;

(4) the department's intent to report the substantiated findings, once the employee has had the opportunity for a hearing, to the registry; and

(5) that the employee's failure to request a hearing in writing within thirty days from the date of the notice shall result in the department reporting substantiated findings to the registry and the provider.

B. If an employee requests a hearing, that hearing shall be conducted by an independent hearing officer of the department that made the determination of abuse, neglect or exploitation.

C. After expiration of the time period for requesting a hearing, or if a determination of abuse, neglect or exploitation is substantiated through the hearing process, the substantiated finding of abuse, neglect or exploitation shall be placed on the registry through a report of the appropriate department.

D. An employee aggrieved by the final decision following a hearing shall have the right to judicial review pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Chapter 256 Section 7 Laws 2005

Section 7. ADOPTION OF RULES.--By January 1, 2006, the department of health and the aging and long-term services department shall jointly establish and adopt rules necessary to carry out the provisions of the Employee Abuse Registry Act, including procedures for determining abuse, neglect and exploitation that consider the severity of the alleged abuse, neglect and exploitation and procedures for reporting for the administrative hearing process and for sanctions for failure to comply with the Employee Abuse Registry Act.

Chapter 256 Section 8 Laws 2005

Section 8. PENALTIES.--The department shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, including a directed plan of correction or civil monetary penalty not to exceed five thousand dollars (\$5,000) per instance.

HOUSE LABOR COMMITTEE SUBSTITUTE

FOR HOUSE BILL 626, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 257

AN ACT

RELATING TO LABOR; ENACTING THE DAY LABORER ACT; STRENGTHENING PROTECTION FOR DAY LABORERS; ESTABLISHING AND AMENDING PENALTIES FOR FAILURE TO PAY WAGES.

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

Chapter 257 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Day Laborer Act".

Chapter 257 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the Day Laborer Act:

A. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;

B. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;

C. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer;

D. "day laborer" means a person who contracts for day labor employment with a day labor service agency;

E. "department" means the labor department;

F. "office worker" means a person employed to perform clerical, secretarial or other semiskilled or skilled work that is predominantly performed in an office setting;

G. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and

H. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers.

Chapter 257 Section 3 Laws 2005

Section 3. EXEMPTIONS.--The following agencies that provide employees on a short-term or otherwise temporary basis are exempted from complying with the provisions of the Day Laborer Act:

- A. business entities registered as farm labor contractors;
- B. temporary services employment agencies where advanced applications, a screening process and job interviews are required;
- C. a labor union hiring hall; and
- D. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.

Chapter 257 Section 4 Laws 2005

Section 4. DAY LABOR SERVICE AGENCY--THIRD-PARTY EMPLOYER--DUTIES.--

- A. A day labor service agency shall compensate day laborers for work performed by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution.
- B. At the time of payment of wages, a day labor service agency shall provide each day laborer with an itemized statement showing in detail each deduction made from wages.
- C. In no event shall deductions made by a day labor service agency, other than those required by federal or state law, reduce a day laborer's wages below federal minimum wage for the hours worked.
- D. A day labor service agency shall not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or restrict the right of a third-party employer to offer employment to a day laborer.
- E. A day labor service agency may collect a reasonable placement fee from a third-party employer.

Chapter 257 Section 5 Laws 2005

Section 5. CHECK CASHING--NOTICE OF FEES.--

A. A check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall not charge a day laborer an amount in excess of two dollars (\$2.00) for cashing a check or payment instrument that is issued by the agency.

B. No fees may be charged for cashing a check or payment instrument unless the day laborer:

(1) is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution; and

(2) voluntarily elects to cash the check or payment instrument at the day labor service agency or at a check cashing service operating within the office of the day labor service agency.

C. A day labor service agency or a check cashing service that is a day labor service agency or is operating within the office of a day labor service agency shall post notices in the area where cashing of checks or payment instruments occurs. The notices shall be clearly visible and easily readable and shall state the fee for cashing a check or payment instrument. Notices shall be posted in English, Spanish and any other written language where a high percentage of the workers speak that language. In areas where the day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notice shall be posted in Navajo.

Chapter 257 Section 6 Laws 2005

Section 6. PAYMENT FOR ALL WORK REQUIRED--RECORDS--ENFORCEMENT.--

A. A day labor service agency shall pay a day laborer for all hours worked or otherwise due and owed to the day laborer. Failure to pay for each day and all hours worked is a violation of the Day Laborer Act. A person who fails to pay a day laborer for work performed or time due is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs and attorney fees and costs.

B. A day labor service agency shall maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record.

C. The department shall investigate complaints and enforce the provisions of the Day Laborer Act.

D. The department shall adopt rules necessary to implement the Day Laborer Act.

Chapter 257 Section 7 Laws 2005

Section 7. VIOLATIONS--MISDEMEANOR--PENALTIES.--

A. A person who violates the provisions of the Day Laborer Act:

(1) on a first offense, is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

(2) for a second and subsequent offense, is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement.

B. In addition to any other fees or fines that may be imposed on an offender convicted pursuant to this section, the court may order the offender to pay restitution pursuant to Section 31-17-1 NMSA 1978.

C. Each occurrence of a violation for which a person is convicted is a separate offense. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

Chapter 257 Section 8 Laws 2005

Section 8. Section 50-4-10 NMSA 1978 (being Laws 1937, Chapter 109, Section 11) is amended to read:

"50-4-10. FORFEITURE AND PENALTIES.--

A. An employer who violates or fails to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon conviction for a first offense shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

B. A person who is convicted of a second or subsequent offense of violating or failing to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement.

C. Each occurrence of a violation for which a person is convicted is a separate offense. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

D. In case the employer is a corporation, the fine provided in this section shall be assessed against the corporation as a penalty."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 672, WITH

CERTIFICATE OF CORRECTION

Approved April 6, 2005

LAWS 2005, CHAPTER 258

AN ACT

RELATING TO MOTOR VEHICLES; MAKING ADJUSTMENTS TO THE TRIP TAX; MAKING ADJUSTMENTS TO CERTAIN SPECIAL PERMIT FEES AND DESIGNATING THE FEES AS "CARAVAN FEES"; MAKING ADJUSTMENTS TO FEES FOR DRIVE-OUT PERMITS; CHANGING REQUIREMENTS FOR VEHICLES THAT MAY OBTAIN SPECIAL PERMITS FOR EXCESSIVE WEIGHT; DECLARING AN EMERGENCY.

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

Chapter 258 Section 1 Laws 2005

Section 1. Section 7-15-3.1 NMSA 1978 (being Laws 1943, Chapter 125, Section 12, as amended) is amended to read:

"7-15-3.1. TRIP TAX--COMPUTATION.--

A. For the purpose of providing funds for the construction, maintenance, repair and reconstruction of this state's public highways, a use fee, to be known as the "trip tax", is imposed in lieu of registration fees and the weight distance tax on the registrant, owner or operator of any foreign-based commercial motor carrier vehicle that is:

- (1) not registered in this state under interstate registration;
- (2) not registered in this state under proportional registration;

(3) not subject to a valid reciprocity agreement;

(4) not registered as a foreign commercial motor carrier vehicle under short-term registration;

(5) not registered under an allocation of one-way rental fleet vehicles; and

(6) not exempted from registration and the payment of any registration fees and not exempted from the payment of the trip tax under Section 65-5-3 NMSA 1978.

B. Except as provided otherwise in Subsections C and D of this section, the trip tax shall be computed as follows:

(1) when the gross vehicle weight or combination gross vehicle weight exceeds twelve thousand pounds but does not exceed twenty-six thousand pounds, seven cents (\$.07) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(2) when the gross vehicle weight or combination gross vehicle weight exceeds twenty-six thousand pounds and does not exceed fifty-four thousand pounds, twelve cents (\$.12) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(3) when the gross vehicle weight or combination gross vehicle weight exceeds fifty-four thousand pounds and does not exceed seventy-two thousand pounds, fifteen cents (\$.15) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state; and

(4) when the gross vehicle weight or combination gross vehicle weight exceeds seventy-two thousand pounds, sixteen cents (\$.16) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state.

C. The department, by regulation, shall establish a procedure for the issuance of prepaid trip permits for:

(1) trips by a single vehicle or a fleet of vehicles for the purpose of:

(a) custom harvesting operations; or

(b) the transportation of goods or passengers between the state and Mexico; or

(2) any vehicle that is unable to declare at the time of entering the state the point of destination or place of leaving the state.

D. Prepaid trip permits established pursuant to Subsection C of this section shall be sold in increments of no less than fifty dollars (\$50.00). Any portion not used prior to one year from the date of issuance shall not be refundable. Prepaid trip permits shall not be transferable between a registrant, owner or operator and another registrant, owner or operator. Charges against the prepaid trip permit shall be based on the computations specified in Subsection B of this section."

Chapter 258 Section 2 Laws 2005

Section 2. Section 66-3-302 NMSA 1978 (being Laws 1978, Chapter 35, Section 78, as amended) is amended to read:

"66-3-302. CARAVAN FEE.--

A. A person or an employee, agent or representative of that person shall not use the highways of New Mexico for the transportation of any vehicle, regardless of whether the vehicle is registered in another state or whether the vehicle is transported on its own wheels or on another vehicle or by being drawn or towed behind another, if the vehicle is transported by any person or the agents or employees of that person engaged in the business of transporting vehicles or if the vehicle is being transported for the purpose of delivery to any purchaser of the vehicle on a sale or contract of sale previously made, unless the vehicle carries:

(1) a valid New Mexico registration plate;

(2) a valid dealer's plate issued by the department;

(3) a special permit for the use of the highways of this state for the transportation of the vehicle in the manner in which the vehicle is being transported, which has first been obtained and the fee paid as specified in this section; or

(4) a valid temporary transportation permit issued under Subsection B of Section 66-3-6 NMSA 1978.

B. Special permits for the use of the highways of this state for the transportation of such vehicles shall be issued by the department upon application on the form prescribed by the department and upon payment of a fee of ten dollars (\$10.00) for each vehicle transported by use of its own power and a fee of seven dollars (\$7.00) for each vehicle carried in or on another vehicle or towed or drawn by another vehicle and not transported in whole or in part by the use of its own power. A fee

imposed pursuant to this section may be referred to as a "caravan fee". Every permit shall show upon its face the registration number assigned to each vehicle, the name and address of the owner, the manner of transportation authorized and a description of the vehicle registered, including the engine number. The permit shall be carried at all times by the person in charge of the vehicle. A suitable tag or placard for each vehicle may be issued by the department and, if issued, shall be at all times displayed on each vehicle being transported. The permit, tag or placard shall not be used upon or in connection with the transportation of any vehicle other than the one for which the permit, tag or placard is issued.

C. A caravan fee shall not apply to the transportation of vehicles carried on another vehicle for the operation of which a weight distance tax is paid, nor shall the vehicle transported be required to carry a registration plate or temporary transportation permits. The motor transportation division of the department and the New Mexico state police are authorized to impound any vehicle transported in violation of the Motor Transportation Act until a proper permit has been secured and any fine levied has been paid."

Chapter 258 Section 3 Laws 2005

Section 3. Section 66-6-13 NMSA 1978 (being Laws 1978, Chapter 35, Section 348) is amended to read:

"66-6-13. REDUCED FEES FOR PORTION OF YEAR--TEMPORARY PERMITS--
DRIVE-OUT PERMIT--FEE.--

A. Upon a showing satisfactory to the division that a vehicle has not been operated on the highways of this state:

(1) prior to April 1 of the year in which registration is sought, the registration fee shall be three-fourths of the annual fee;

(2) prior to July 1 of the year in which registration is sought, the registration fee shall be one-half of the annual fee; and

(3) prior to October 1 of the year in which registration is sought, the registration fee shall be one-fourth of the annual fee.

B. Upon a showing satisfactory to the division that a nonresident who is the owner of a foreign vehicle is engaged in seasonal agricultural employment in the state, the division may issue a permit valid for thirty days upon payment of a temporary permit fee of one-tenth of the annual registration fee. This fee shall be in lieu of all other fees or taxes on the vehicle.

C. Upon a showing satisfactory to the division that an unlicensed vehicle has been purchased by a nonresident for transportation out of the state, the division may issue a two-day drive-out permit for a fee of seven dollars (\$7.00).

D. The provisions of this section shall not apply to house trailers, and the registration fees for house trailers shall be as provided in Sections 66-6-3 and 66-6-10 NMSA 1978 regardless of date of registration."

Chapter 258 Section 4 Laws 2005

Section 4. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department of public safety and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on a highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for a person to violate a condition or term of the special permit.

B. The department of public safety shall charge and collect, when the movement consists of a load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department of public safety shall promulgate rules in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier and for escort vehicles provided by a private business in this state.

(1) The department of public safety shall provide the escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the

safety equipment required by the rules. If the escort vehicles and personnel meet the requirements set forth in the rules, the department of public safety shall issue the special permit.

(2) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to department of public safety authority and inspection at all times.

(3) The department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt rules designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If a portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its rules.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of public safety for a period not to exceed one year for a fee of two hundred fifty dollars (\$250). The special permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the weight of the vehicle or combination of vehicles is not greater than one hundred forty thousand pounds. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued by the department of public safety for a single vehicle for a fee of twenty-five dollars (\$25.00) plus the product of two and one-half cents (\$.025) for each two thousand pounds in excess of eighty-six thousand four hundred pounds or major fraction thereof multiplied by the number of miles to be traveled by the vehicle or combination of vehicles on the highways of this state.

F. If a vehicle for which a permit is issued pursuant to this section is a manufactured home, the department of public safety or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall forward the information:

(1) to the county assessor of a county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the

manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, a permit shall not be issued pursuant to Subsection F of this section until the owner of the manufactured home or the authorized agent of the owner obtains and presents to the department of public safety proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) liability for property taxes on the manufactured home does not exist for the current tax year or a past tax year, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of the dealer's inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or the dealer's authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. A permit shall not be issued pursuant to this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary of public safety may by rule provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes. The cost of a permit shall not be less than twenty-five dollars (\$25.00).

K. The secretary of public safety may provide by rule for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department of public safety shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. A private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. A motor carrier requesting an oversize permit shall produce a copy of a warrant or a single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the public regulation commission.

N. The department of public safety may provide by rule the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities.

O. Revenue from fees for special permits authorizing vehicles and loads of excessive size or weight to operate or move upon a highway under the jurisdiction of the state transportation commission or local authorities shall be collected for the department of transportation and transferred to the state road fund."

Chapter 258 Section 5 Laws 2005

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 3 of this act is July 1, 2005.

Chapter 258 Section 6 Laws 2005

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

HOUSE BILL 806, AS AMENDED,

WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 259

AN ACT

RELATING TO INSURANCE; REVISING REQUIREMENTS FOR BAIL BONDSMAN LICENSE, PROHIBITED PRACTICES OF BAIL BONDSMEN AND GROUNDS FOR DENIAL, SUSPENSION, REVOCATION AND REFUSAL TO CONTINUE BAIL BONDSMAN LICENSE; AMENDING THE BAIL BONDSMEN LICENSING LAW; DECLARING AN EMERGENCY.

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

Chapter 259 Section 1 Laws 2005

Section 1. Section 59A-51-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 928) is amended to read:

"59A-51-1. SHORT TITLE.--Chapter 59A, Article 51 NMSA 1978 may be cited as the "Bail Bondsmen Licensing Law"."

Chapter 259 Section 2 Laws 2005

Section 2. Section 59A-51-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 931, as amended by Laws 1999, Chapter 272, Section 25 and also by Laws 1999, Chapter 289, Section 38) is amended to read:

"59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for license as bail bondsman or solicitor pursuant to the provisions of the Bail Bondsmen Licensing Law shall be qualified as follows:

- A. be an individual not less than eighteen years of age;
- B. be a citizen of the United States;

C. not have been convicted of a felony, with the exception of a conditional discharge of a felony conviction, or anyone properly licensed as of January 1, 2005;

D. not be a law enforcement, adjudication, jail, court or prosecution official or an employee thereof or an attorney, official authorized to admit to bail, or state or county officer;

E. if for license as bondsman, pass a written examination testing the applicant's knowledge and competence to engage in the bail bondsman business;

F. be of good personal and business reputation;

G. if to act as a property bondsman, be financially responsible and provide the surety bond or deposit in lieu thereof as required in accordance with Section 59A-51-8 NMSA 1978;

H. if to act as a limited surety agent, be appointed by an authorized surety insurer; and

I. if for license as a solicitor, have been so appointed by a licensed bail bondsman subject to issuance of the solicitor license."

Chapter 259 Section 3 Laws 2005

Section 3. Section 59A-51-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 940, as amended) is amended to read:

"59A-51-13. PRACTICES.--

A. A bail bondsman or solicitor shall not:

(1) suggest or advise the employment of or name for employment any particular attorney to represent his principal;

(2) pay a fee or rebate or give or promise anything of value to a jailer, policeman, peace officer, committing magistrate or any other person who has power to arrest or to hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof or to secure delay or other advantage;

(3) pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(4) pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf;

(5) participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety;

(6) except for the premium received for the bond, fail to return any collateral security within a reasonable time after the termination of liability on the bond; or

(7) charge or accept anything of value except the premium on the bond and any extraterritorial recovery expenses, but the bondsman may accept collateral security or other indemnity if:

(a) such collateral security or other indemnity is reasonable in relation to the amount of the bond;

(b) no collateral or security in tangible property is taken by pledge or debt instrument that allows retention, sale or other disposition of such property upon default of premium payment;

(c) no collateral or security interest in real property is taken by deed or any other instrument unless the bail bondsman's interest in the property is limited to one hundred percent of the amount of the bond;

(d) the collateral or security taken by the bondsman is not pledged directly to any court as security for an appearance bond; and

(e) the person from whom the collateral or security is taken is given a receipt describing the condition of the collateral or security at the time it is taken into the custody of the bondsman.

B. When a bail bondsman accepts cash as collateral, the bondsman shall deposit the cash in the bondsman's trust account and give a written receipt for same, and this receipt shall give in detail a full account of the collateral received.

C. Law enforcement, adjudication and prosecution officials and their employees, attorneys-at-law, officials authorized to admit to bail and state and county officers shall not directly or indirectly receive any benefits from the execution of any bail bond.

D. A bail bondsman shall not sign nor countersign in blank any bond, nor shall the bondsman give a power of attorney to or otherwise authorize anyone to countersign the bondsman's name to bonds unless the person so authorized is a licensed bondsman directly employed by the bondsman giving such power of attorney.

E. No bail bond agency shall advertise as or hold itself out to be a surety insurer.

F. Every bail bondsman shall have a permanent street address and all bail bond business shall be conducted from that address.

G. Every bail bondsman shall transact all bail bond business, surety or property, in the bondsman's proper individual name or one agency name as stated on the application for license and on the license as issued by the superintendent."

Chapter 259 Section 4 Laws 2005

Section 4. Section 59A-51-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 941, as amended) is amended to read:

"59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO CONTINUE LICENSE.--

A. The superintendent may deny, suspend, revoke or refuse to continue any license issued under the Bail Bondsmen Licensing Law for any of the following reasons:

(1) any cause for which issuance of the license could have been refused had it then existed and been known to the superintendent;

(2) a material misstatement, misrepresentation or fraud in obtaining the license;

(3) any violation of the laws of this state relating to bail or the bail bond business;

(4) conviction of any felony, regardless of whether the conviction resulted from conduct related to the bail bond business with the exception of a conditional discharge of a felony conviction;

(5) misappropriation, conversion or unlawful withholding of money belonging to insurers or others and received in the conduct of business under the license;

(6) fraudulent or dishonest practices in the conduct of business under the license;

(7) failure to comply with, or willful violation of any provision of the Bail Bondsmen Licensing Law or proper order, rule or regulation of the superintendent or any court of this state;

(8) any activity prohibited in Section 59A-51-13 NMSA 1978;

(9) failure or refusal, upon demand, to pay over to any insurer he represented, any money coming into his hands belonging to the insurer;

(10) failure to preserve without use and retain separately or to return collateral taken as security on any bond to the principal, indemnitor or depositor of collateral when the principal, indemnitor or depositor is entitled to such collateral;

(11) for knowingly having in the bail bondsman's employ a person whose bail bond business license has been revoked, suspended or denied in this or any other state; or

(12) failure, neglect or refusal to supervise a solicitor's activities on the bail bondsman's behalf.

B. When, in the judgment of the superintendent, the licensee in the conduct of affairs under the license has demonstrated incompetency, untrustworthiness, conduct or practices rendering him unfit to engage in the bail bond business, or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith engaged in the bail bond business, or that he is guilty of rebating, or offering to rebate his commissions in the case of limited surety agents or premiums in the case of professional bondsmen, and for such reasons is found by the superintendent to be a source of detriment, injury or loss to the public, he shall revoke or suspend the license.

C. In case of the suspension or revocation of license of any bail bondsman, the license of any or all other bail bondsmen who are members of the same agency and any or all solicitors employed by such agency, who knowingly were parties to the act that formed the ground for the suspension or revocation shall likewise be suspended or revoked, except for the purpose of completing pending matters, and those persons who knowingly were parties to the act are prohibited from being licensed as a member of or bail bondsman or solicitor for some other agency.

D. No license under the Bail Bondsmen Licensing Law shall be issued, renewed or permitted to exist when the same is used directly or indirectly to circumvent the provisions of the Bail Bondsmen Licensing Law."

Chapter 259 Section 5 Laws 2005

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SUBSTITUTE FOR HOUSE BILL 835, AS AMENDED,

WITH EMERGENCY CLAUSE,

WITH CERTIFICATE OF CORRECTION,

Approved April 6, 2005

LAWS 2005, CHAPTER 260

AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; REQUIRING THAT SCHOOL DISTRICT ATTENDANCE POLICIES USE WITHDRAWAL OF STUDENTS PURSUANT TO THE DEFINITION OF MEMBERSHIP IN THE PUBLIC SCHOOL FINANCE ACT ONLY AFTER EXHAUSTING EFFORTS TO KEEP STUDENTS IN EDUCATIONAL SETTINGS.

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

Chapter 260 Section 1 Laws 2005

Section 1. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include truants and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time-equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan required to be submitted by a local school board;

I. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "public money" or "public funds" means all money from public or private sources received by a local school board or officer or employee of a local school board for public use;

M. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(4) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or

(5) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department; and

N. "state superintendent" means the secretary of public education or the secretary's designee."

Chapter 260 Section 2 Laws 2005

Section 2. Section 22-12-9 NMSA 1978 (being Laws 2004, Chapter 28, Section 1) is amended to read:

"22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE POLICIES.--

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "truant" means a student who has accumulated five unexcused absences within any twenty-day period; and

(3) "unexcused absence" means an absence from school or a class for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law or rules of the local school board or governing authority of a private school.

B. Each school district shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, truants and habitual truants and provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings; and

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district.

C. School districts shall report truancy and habitual truancy rates to the department in a form and at such times as the department determines and shall document efforts made to keep truants and habitual truants in educational settings."

HOUSE BILL 955

Approved April 6, 2005

LAWS 2005, CHAPTER 261

AN ACT

RELATING TO PUBLIC HOLIDAYS; CHANGING THE DAY ON WHICH AMERICAN INDIAN DAY IS OBSERVED.

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

Chapter 261 Section 1 Laws 2005

Section 1. Section 12-5-9 NMSA 1978 (being Laws 1987, Chapter 24, Section 1) is amended to read:

"12-5-9. AMERICAN INDIAN DAY.--The first Friday of February of each year shall be set apart and be known as "American Indian day", in recognition of the many contributions of the American Indians to the economic and cultural heritage of all the citizens of the United States. This day shall be observed by the people of New Mexico in such efforts and undertakings as shall be in harmony with the general character of the day so established."

HOUSE BILL 977

Approved April 6, 2005

LAWS 2005, CHAPTER 262

AN ACT

RELATING TO TRANSPORTATION; CREATING THE LOCAL TRANSPORTATION INFRASTRUCTURE FUND WITHIN THE NEW MEXICO FINANCE AUTHORITY; PROVIDING FOR MATCHING GRANTS AND OTHER FUNDING SUPPORT TO QUALIFIED ENTITIES FOR LOCAL TRANSPORTATION PROJECTS; AUTHORIZING THE ISSUANCE OF REVENUE BONDS PAYABLE FROM THE LOCAL TRANSPORTATION INFRASTRUCTURE FUND BY THE NEW MEXICO FINANCE AUTHORITY; MAKING AN APPROPRIATION.

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

Chapter 262 Section 1 Laws 2005

Section 1. A new Section 6-21-6.8 NMSA 1978 is enacted to read:

"6-21-6.8. LOCAL TRANSPORTATION INFRASTRUCTURE FUND--
CREATION--PURPOSE--ADMINISTRATION.--

A. The "local transportation infrastructure fund" is created within the authority. For the purposes of this section, "fund" means the local transportation infrastructure fund. The fund shall be administered by the authority as a separate account, but may consist of subaccounts if the authority deems them necessary to carry out the purposes of the fund. The authority shall adopt rules in accordance with the New Mexico Finance Authority Act necessary to administer the fund.

B. The following shall be deposited directly into the fund:

(1) beginning July 1, 2005, one-half of the annual administrative fee received by the authority for issuing state transportation bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978;

(2) money from the payment of principal and interest on loans and payments of principal and interest on securities held by the authority for local transportation projects;

(3) money appropriated by the legislature to implement the provisions of this section; and

(4) other public or private money appropriated, dedicated or allocated to the fund for the purpose of financing local transportation projects.

C. For the purposes of this section, "local transportation projects" means local transportation projects of qualified entities submitted to the authority by the secretary of transportation as provided in Subsection F of this section. The authority may provide grants or other funding support to qualified entities' local transportation projects pursuant to this section without the specific authorization by law for each project otherwise required by the New Mexico Finance Authority Act.

D. Money in the fund is appropriated to the authority to pay the reasonable and necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing local transportation projects in accordance with the New Mexico Finance Authority Act.

E. The authority may make grants from the fund to qualified entities for local transportation projects when:

(1) a grant is not more than twenty-five percent of the total project cost; and

(2) a qualified entity demonstrates that it has available or a binding commitment from another person to make available for a project the portion of the total project cost not provided by the grant. The qualified entity may enter into a loan agreement or an agreement to sell the qualified entity's securities with the authority, or the qualified entity may use another source of money available for the project, to provide the costs not covered by the grant.

F. Each May, the secretary of transportation, using the department of transportation's metropolitan planning organization and regional planning organization planning process, shall submit a prioritized list of local transportation projects to the authority that the metropolitan planning organizations and regional planning organizations have determined are appropriate for grants or other funding support pursuant to this section. The authority shall act on local transportation projects in the priority presented by the secretary of transportation; provided that the authority, based on the availability of money in the fund, may determine that a qualified entity shall receive a grant or other funding support for a project out of the order of priority it would otherwise have had or that no grant or other funding support be provided for the project. The rules of the authority for administration of the fund may set a maximum amount of grant or other funding support for a local transportation project.

G. Money in the local transportation infrastructure fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

H. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for local transportation infrastructure fund payments, disbursements and balances."

Chapter 262 Section 2 Laws 2005

Section 2. A new Section 6-21-6.9 NMSA 1978 is enacted to read:

"6-21-6.9. LOCAL TRANSPORTATION PROJECT REVENUE BONDS--
ISSUANCE.--

A. The authority may issue and sell local transportation project revenue bonds in compliance with the New Mexico Finance Authority Act in an amount outstanding at any one time of not more than twenty million dollars (\$20,000,000)

payable from the local transportation infrastructure fund. The bonds may be issued at times and on terms established by the authority.

B. The net proceeds from the sale of local transportation project revenue bonds are appropriated to the local transportation infrastructure fund for local transportation projects described in Section 6-21-6.8 NMSA 1978.

C. As security for the payment of the principal, interest or premium, if any, on local transportation project revenue bonds issued by the authority, the authority is authorized to pledge, transfer and assign:

(1) any obligation that is payable to the authority for deposit into the local transportation infrastructure fund;

(2) money in the local transportation infrastructure fund or a subaccount of that fund; and

(3) one-half of the annual administrative fee received by the authority for issuing state transportation bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978.

D. All local transportation project revenue bonds issued by the authority shall be obligations of the authority payable solely from the revenues, income and money of the authority deposited into the local transportation infrastructure fund. The bonds shall not create an obligation, debt or liability of the state and no breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or charge upon the general credit or taxing power of the state or any political subdivision of the state.

E. Any law authorizing or affecting the imposition or distribution of the annual administrative fee received by the authority for issuing state transportation revenue bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978 or that affects the annual administrative fee shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding local transportation project revenue bonds that may be secured by a pledge of those annual administrative fee revenues, unless the local transportation project revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The authority may purchase local transportation project revenue bonds with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978."

SUBSTITUTE FOR HOUSE BILL 979

Approved April 6, 2005

LAWS 2005, CHAPTER 263

AN ACT

RELATING TO HEALTH AND SAFETY; REQUIRING THE STATE MEDICAL INVESTIGATOR TO CONSULT WITH RELATIVES OF THE DECEASED REGARDING DISPOSITION OF REMAINS OF NATIVE AMERICANS.

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

Chapter 263 Section 1 Laws 2005

Section 1. Section 24-11-6.1 NMSA 1978 (being Laws 2003, Chapter 191, Section 2) is amended to read:

"24-11-6.1. DECEASED MEMBERS OF INDIAN NATIONS, TRIBES OR PUEBLOS--CONSULTATION AND CERTIFICATION REQUIRED.--

A. The state medical investigator shall make reasonable efforts to determine if a deceased person is a member of a federally recognized Indian nation, tribe or pueblo. If a deceased person has been determined to be a member of a federally recognized Indian nation, tribe or pueblo, the state medical investigator shall use all due diligence to avoid an autopsy except when legally required due to possible criminal acts or omissions, an obscure cause of death or other reasons or pursuant to consent given according to the provisions of Section 24-12-4 NMSA 1978. The state medical investigator shall use the least invasive means possible to satisfy the investigator's legal duties in conducting an autopsy.

B. If the state medical investigator determines that an autopsy cannot be avoided, the investigator shall attempt to provide advance notice of the autopsy to the surviving spouse or next of kin, or to the Indian nation, tribe or pueblo of the deceased. The state medical investigator shall provide documentation concerning the autopsy upon request of the surviving spouse or next of kin, or if none is identified, to the Indian nation, tribe or pueblo of which the deceased was a member.

C. If requested by the surviving spouse or the next of kin, or if none is identified, by the Indian nation, tribe or pueblo through an official representative designated pursuant to Subsection E of this section, the state medical investigator shall permit a law enforcement officer of the Indian nation, tribe or pueblo of the deceased to be present during the autopsy. The law enforcement officer attending the autopsy may not interfere with the autopsy procedure and shall follow the health regulations governing autopsy procedures.

D. After any legally required autopsy or postmortem examination has been conducted, the state medical investigator shall use all due diligence to consult with the surviving spouse or next of kin of the deceased regarding the disposition of all of the deceased's remains. Unless other treatment of the remains is required by law, the state medical investigator shall replace all body parts and, if requested, shall provide written certification to the surviving spouse or next of kin of the deceased that the investigator has replaced all body parts.

E. The state medical investigator shall request that each Indian nation, tribe and pueblo located in New Mexico designate, and keep current the designation of, an official representative that the state medical investigator shall contact when it is necessary to contact a tribal representative regarding an autopsy or the disposition of the remains of a deceased member of the Indian nation, tribe or pueblo."

HJC/House Bill 987
Approved April 6, 2005

LAWS 2005, CHAPTER 264

AN ACT

RELATING TO CONTRACTOR LICENSING; REVISING PROCEDURES FOR THE ISSUANCE, RENEWAL OR REISSUANCE OF A LICENSE OR CERTIFICATE FOLLOWING REVOCATION.

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

Chapter 264 Section 1 Laws 2005

Section 1. Section 60-13-29 NMSA 1978 (being Laws 1967, Chapter 199, Section 32, as amended) is amended to read:

"60-13-29. APPLICATION FOLLOWING REVOKED LICENSE OR CERTIFICATE.--

A. After revocation of any license or certificate issued pursuant to the Construction Industries Licensing Act, no person shall be eligible to apply for a new license or certificate until a period of one year after the date of the original order of revocation by the commission has expired.

B. Following the revocation of a contractor's license or a qualifying party's certificate pursuant to the Construction Industries Licensing Act, no license or certificate may be issued to that contractor or qualifying party by the division if the director finds that the contractor or qualifying party has, during the period of revocation, engaged in

activity that constitutes a violation of any provision of the Construction Industries Licensing Act."

Chapter 264 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

House Bill 993

Approved April 6, 2005

LAWS 2005, CHAPTER 265

AN ACT

RELATING TO PUBLIC ASSISTANCE; ALLOWING THE DIRECTOR OF THE INCOME SUPPORT DIVISION OF THE HUMAN SERVICES DEPARTMENT TO APPROVE A SECOND ADDITIONAL SEMESTER FOR PARTICIPANTS IN THE EDUCATION WORKS PROGRAM.

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

Chapter 265 Section 1 Laws 2005

Section 1. Section 27-2D-4 NMSA 1978 (being Laws 2003, Chapter 317, Section 4) is amended to read:

"27-2D-4. EDUCATION WORKS PROGRAM--ELIGIBILITY--RESTRICTIONS--REQUIREMENTS.--

A. A person is eligible to receive education works services or cash assistance if the person demonstrates that:

(1) at the time of the application, the person does not have a bachelor's degree;

(2) the person has been accepted or has been determined to be eligible to enroll in a two- or four-year post-secondary degree program; and

(3) the degree the person will receive will increase his ability to engage in full-time paid employment.

B. A recipient shall not receive cash assistance funded by the temporary assistance for needy families block grant during the period in which the recipient is receiving cash assistance pursuant to the Education Works Act.

C. A recipient shall apply for all financial aid available from the post-secondary educational institution that the recipient attends.

D. During the twenty-four months of participation in the education works program, a recipient shall engage in at least twenty hours per week of class time, studying, work, work study or volunteering. The department shall assume that a recipient spends one and one-half hours studying for every hour of class time.

E. A recipient may participate in the education works program for no more than twenty-four months, except that a recipient may participate in the education works program for one additional academic term following the twenty-four month participation limit, or for two additional academic terms following the twenty-four month participation limit at the discretion of the director, if doing so will result in the recipient earning a degree.

F. The number of recipients enrolled in the education works program is limited to the number of recipients who can be served by the funds available.

G. A recipient may earn only one degree through the education works program.

H. For purposes of this section, "work" means work study, training-related practicums, internships, paid employment, volunteering or any other activity approved by the department."

HOUSE BILL 1007

Approved April 6, 2005

LAWS 2005, CHAPTER 266

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
VALIDATING, RATIFYING, APPROVING AND CONFIRMING PUBLIC SECURITIES
HERETOFORE ISSUED BY THE STATE OR ANY BOARD, INSTITUTION,
COMMISSION, DEPARTMENT, CORPORATION, INSTRUMENTALITY OR AGENCY
THEREOF, OR BY ANY COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT,
IRRIGATION, CONSERVANCY, DRAINAGE, SANITATION OR WATER DISTRICT,

COMMISSION OR OTHER POLITICAL SUBDIVISION OF THE STATE
CONSTITUTING A BODY CORPORATE; DECLARING AN EMERGENCY.

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

Chapter 266 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "2005 Public Securities Validation Act".

Chapter 266 Section 2 Laws 2005

Section 2. DEFINITIONS.--As used in the 2005 Public Securities Validation Act:

A. "public body" of the state means any state educational institution or other state institution, its board of regents or other governing body thereof constituting a body corporate, any county, city, town, village, school district, irrigation district, drainage district, conservancy district, sanitation district, water district, commission, authority or other political subdivision of the state constituting a body corporate;

B. "public security" means a bond, note certificate of indebtedness or other obligation for the payment of money, issued by this state or by any public body thereof; and

C. "state" means the state of New Mexico and any board, commission, department, corporation, instrumentality or agency thereof.

Chapter 266 Section 3 Laws 2005

Section 3. VALIDATION.--All outstanding public securities of the state and of all public bodies thereof, and all acts and proceedings heretofore had or taken, or purportedly had or taken, by or on behalf of the state or any public body thereof under law or color of law preliminary to and in the authorization, execution, sale, issuance and payment, or any combination thereof, of all such public securities are hereby validated, ratified, approved and confirmed, including but not necessarily limited to, the terms, provisions, conditions and covenants of any resolution or ordinance appertaining thereto, the redemption or refunding of public securities before maturity and provisions therefor, including defeasance and discharge of liens arising from or existing by virtue of public securities redeemed or refunded, the levy and collection of rates, tolls and charges, special assessments, and general and other taxes, and the acquisition and application of other revenues, the pledge and use of the proceeds thereof, and the establishment of liens thereon and funds therefore, appertaining to such public securities, except as hereinafter provided, notwithstanding any lack of power, authority or otherwise, and notwithstanding any defects and irregularities in such public securities, acts and proceedings, and in such authorization, execution, sale, issuance and payment, including, without limiting the generality of the foregoing, such acts and

proceedings appertaining to such public securities all or any part of which have heretofore not been issued nor purportedly issued. Such outstanding public securities are and shall be, and such public securities heretofore not issued nor purportedly issued shall be, after their issuance, binding, legal, valid and enforceable obligations of the state or the public body issuing them in accordance with their terms and their authorizing proceedings, subject to the taking or adoption of acts and proceedings heretofore not had nor taken, nor purportedly had nor taken, but required by and in substantial and due compliance with laws appertaining to any such public securities heretofore not issued nor purportedly issued.

Chapter 266 Section 4 Laws 2005

Section 4. EFFECT AND LIMITATIONS.--The 2005 Public Securities Validation Act shall operate to supply such legislative authority as may be necessary to validate any public securities heretofore issued and any such acts and proceedings heretofore taken that the legislature could have supplied or provided for or can now supply or provide for in the law under which such public securities were issued and such acts or proceedings were taken. The 2005 Public Securities Validation Act, however, shall be limited to the validation of public securities, acts and proceedings to the extent to which the same can be effectuated under the state and federal constitutions.

Chapter 266 Section 5 Laws 2005

Section 5. CONSTRUCTION.--This act being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

Chapter 266 Section 6 Laws 2005

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

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1097

WITH EMERGENCY CLAUSE

Approved April 6, 2005

LAWS 2005, CHAPTER 267

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING AN INCOME TAX CREDIT FOR CERTAIN MEDICAL CARE EXPENSES.

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

Chapter 267 Section 1 Laws 2005

Section 1. A new section of the Income Tax Act is enacted to read:

"CREDIT--UNREIMBURSED OR UNCOMPENSATED MEDICAL CARE
EXPENSES OF INDIVIDUALS SIXTY-FIVE YEARS OF AGE OR OLDER.--

A. A taxpayer who files an individual New Mexico income tax return, who is sixty-five years of age or older and who is not a dependent of another taxpayer may claim a credit in an amount equal to two thousand eight hundred dollars (\$2,800) for medical care expenses paid by the taxpayer for that taxpayer or for the taxpayer's spouse or dependent if those expenses equal twenty-eight thousand dollars (\$28,000) or more within a taxable year and if those expenses are not reimbursed or compensated for by insurance or otherwise.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

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

D. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means the amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual."

Chapter 267 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of Section 1 of this act apply to taxable years beginning on or after January 1, 2005.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1102, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 268

AN ACT

RELATING TO IGNITION INTERLOCKS; MODIFYING THE DEFINITION OF AN IGNITION INTERLOCK DEVICE TO INCLUDE EMERGING TECHNOLOGIES.

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

Chapter 268 Section 1 Laws 2005

Section 1. Section 66-5-502 NMSA 1978 (being Laws 2003, Chapter 239, Section 2) is amended to read:

"66-5-502. DEFINITIONS.--As used in the Ignition Interlock Licensing Act:

A. "denied" means having an instructor's permit, driver's license or provisional license denied for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person;

C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's instructor's permit, driver's license or provisional license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and

D. "revoked" means having an instructor's permit, driver's license or provisional license revoked for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Section 66-8-102 or 66-8-111 NMSA 1978."

SENATE BILL 516

Approved April 6, 2005

LAWS 2005, CHAPTER 269

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING ALL OFFENDERS TO OBTAIN AN IGNITION INTERLOCK LICENSE AND HAVE AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING FOR INCREASING PERIODS OF LICENSE REVOCATION UPON CONVICTION FOR REPEAT OFFENDERS; INCREASING THE PERIODS OF ADMINISTRATIVE REVOCATION; ALLOWING ASSISTANCE TO JUVENILES FROM

THE INTERLOCK DEVICE FUND; REVISING PROCEDURES FOR COLLECTION OF FEES FOR THE INTERLOCK DEVICE FUND; LIMITING ADMINISTRATIVE COSTS; REQUIRING MANDATORY HOURS OF COMMUNITY SERVICE BY DWI OFFENDERS; ALLOWING ELECTRONIC SUBMISSION OF STATEMENTS BY LAW ENFORCEMENT OFFICERS UNDER THE IMPLIED CONSENT ACT; ESTABLISHING STANDARD DWI ARREST REPORTS AND PROCEDURES.

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

Chapter 269 Section 1 Laws 2005

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a provisional license to any person fifteen years and six months of age or older:

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months; and

(b) who has successfully completed a practice driving component;

(3) a driver's license to any person sixteen years and six months of age or older:

(a) who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(b) who has complied with restrictions on that license;

(c) who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and

(d) who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

(4) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motorcycle is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by rule provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act;

C. who is an habitual user of narcotic drugs or alcohol or an habitual user of any drug to a degree that renders the person incapable of safely driving a motor vehicle;

D. who is four or more times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Five years from the date of the fourth conviction and every five years thereafter, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the four previous convictions shall not prohibit issuance of the license;

E. who has previously been afflicted with or who is suffering from any mental disability or disease that would render him unable to drive a motor vehicle with safety upon the highways and who has not, at the time of application, been restored to health;

F. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

G. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau."

Chapter 269 Section 2 Laws 2005

Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the instruction permit, driver's license or provisional license of a driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehicle is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Except as provided in the Ignition Interlock Licensing Act and in Subsection C, D or E of this section, a person whose license has been revoked under this section shall not be entitled to apply for or receive a new license until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

C. A person who upon adjudication as a delinquent for driving while under the influence of intoxicating liquor or drugs or conviction pursuant to Section 66-8-102 NMSA 1978 is subject to license revocation under this section for an offense pursuant to which the person was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to:

(1) one year for a first offender; or

(2) for a subsequent offender:

(a) two years for a second conviction;

(b) three years for a third conviction; or

(c) the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

D. Upon receipt of an order from a court pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's license or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until one year from the date that the conviction is final and all rights to an appeal have been exhausted."

Chapter 269 Section 3 Laws 2005

Section 3. Section 66-5-32 NMSA 1978 (being Laws 1978, Chapter 35, Section 254, as amended) is amended to read:

"66-5-32. PERIOD OF SUSPENSION OR REVOCATION.--

A. The division shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year except as permitted under Subsection C of this section and Sections 66-5-5 and 66-5-39 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act, a person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of the periods specified in Subsections B and C of Section 66-5-29 NMSA 1978 from the date on which the revoked license was surrendered to and received by the division, the person may make application for a new license as provided by law.

C. The suspension period for failure to appear or failure to remit the penalty assessment shall, at the discretion of the director, be extended indefinitely subject to the provisions of Subsection B of Section 66-5-30 NMSA 1978."

Chapter 269 Section 4 Laws 2005

Section 4. 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 the person to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

(1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;

(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act, except as provided in the Ignition Interlock Licensing Act;

(3) for a limited license when the person's driver's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;

(4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or

(5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the department of transportation. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The department of transportation 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.

C. 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.

D. 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 the person 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."

Chapter 269 Section 5 Laws 2005

Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; or

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours and not more than forty-eight hours of community service. In addition, the offender may be required to pay a fine of three

hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, ninety-six hours of community service and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the

offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

(1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court;

(2) not less than a ninety-day outpatient treatment program approved by the court;

(3) a drug court program approved by the court; or

(4) any other substance abuse treatment program approved by the court.

The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

N. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

(1) a period of one year, for a first offender;

(2) a period of two years, for a second conviction pursuant to this section;

(3) a period of three years, for a third conviction pursuant to this section; or

(4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

O. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

P. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

Q. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a

conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

R. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

S. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

T. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

(2) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law; and

(3) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Chapter 269 Section 6 Laws 2005

Section 6. Section 66-8-102.3 NMSA 1978 (being Laws 2002, Chapter 82, Section 2, as amended) is amended to read:

"66-8-102.3. IMPOSING A FEE--CREATING A FUND.--

A. A fee is imposed on a person convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or adjudicated as a delinquent on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act, in an amount determined by rule of the department of finance and administration not to exceed one hundred dollars (\$100) but not less than fifty dollars (\$50.00) for each year the person is required to operate only vehicles equipped with an ignition interlock device in order to ensure the solvency of the interlock device fund. The fee imposed by this subsection shall be collected by the vendor who provides an ignition interlock device to the person and the vendor shall remit the fees collected on a monthly basis to the local government division of the department of finance and administration.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be distributed to the fund by the local government division of the department of finance and administration.

C. All money in the interlock device fund is appropriated to the local government division of the department of finance and administration to cover the costs of installing and removing and one-half of the cost of leasing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or adjudications on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act, to install those devices in their vehicles. Indigency shall be determined by the sentencing court.

D. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

E. The interlock device fund shall be administered by the local government division of the department of finance and administration. No more than five percent of the money in the interlock device fund in any fiscal year shall be expended by the local government division of the department of finance and administration for the purpose of administering the fund."

Chapter 269 Section 7 Laws 2005

Section 7. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended by Laws 2003, Chapter 51, Section 13 and by Laws 2003, Chapter 90, Section 6) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of the person's privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) six months or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." The statement may be signed and submitted electronically in a manner and form approved by the department. A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

Chapter 269 Section 8 Laws 2005

Section 8. UNIFORM POLICE REPORTS AND PROCEDURES FOR DWI ARRESTS.--

A. The department of public safety, in collaboration with the motor vehicle division of the taxation and revenue department and the traffic safety bureau of the department of transportation, shall develop and periodically review and update standard arrest reports and procedures to be used by law enforcement officers when making an arrest for a violation of the provisions of Section 66-8-102 NMSA 1978 or similar municipal or county ordinances.

B. A law enforcement officer making an arrest for a violation of the provisions of Section 66-8-102 NMSA 1978 or of similar municipal or county ordinances shall use the standard arrest reports and procedures developed and approved by the department of public safety in accordance with the provisions of Subsection A of this section.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILLS 109, 187 AND 603, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 270

AN ACT

RELATING TO ELECTIONS; PROVIDING DEFINITIONS; PRESCRIBING DUTIES AND TRAINING PROCEDURES; UPDATING LANGUAGE IN ARTICLES 4, 5 AND 12 OF THE ELECTION CODE; REQUIRING CERTIFICATION OF PRESIDING JUDGES; SPECIFYING HOW PRECINCTS MAY BE FORMED AND DESIGNATED; PROVIDING FOR COUNTY CANVASS OBSERVERS; CHANGING FILING DATES FOR INDEPENDENT AND WRITE-IN CANDIDATES; CHANGING REGISTRATION PROCEDURES; REQUIRING REGISTRATION OF THIRD-PARTY REGISTRATION ORGANIZATIONS; PROVIDING FOR EARLY PROCESSING OF ABSENTEE BALLOTS; PROVIDING FOR ABSENTEE VOTING PROCEDURES; REQUIRING A PAPER RECORD OF VOTES; REQUIRING VOTER IDENTIFICATION FOR IN-PERSON AND ABSENTEE VOTING; PRESCRIBING POLL WORKER DUTIES ON ELECTION DAY; REQUIRING STANDARDS FOR COUNTING PROVISIONAL BALLOTS; CHANGING PROVISIONS FOR POLLWATCHERS; PROVIDING FOR DEPOSITS ON RECOUNTS AND RECHECKS; PROVIDING FOR AUTOMATIC AUDITS AND RECOUNTS; PROVIDING PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Chapter 270 Section 1 Laws 2005

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

"COMPUTATION OF TIME--DEADLINES.--For the purpose of the Election Code, time periods of less than eleven days shall be computed as calendar days; provided, however, that if an actual deadline falls on a weekend or state-recognized holiday, the next business day shall be the deadline."

Chapter 270 Section 2 Laws 2005

Section 2. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"NEW REGISTRANT.--As used in the Election Code, "new registrant" means a person who was not registered to vote in the state at the time the person registered to vote."

Chapter 270 Section 3 Laws 2005

Section 3. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"REGISTRATION AGENT.--As used in the Election Code, "registration agent" means a state or federal employee who provides voter registration at a state agency, or

a tribal registration agent office, or any other individual who assists another person in completion of a voter registration application."

Chapter 270 Section 4 Laws 2005

Section 4. Section 1-1-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 16, as amended) is amended to read:

"1-1-16. REGISTRATION OFFICER.--As used in the Election Code, "registration officer" means the secretary of state, a county clerk or a clerk's authorized deputy, a member of the board of registration or a state employee performing registration duties in accordance with the federal National Voter Registration Act of 1993 or Section 1-4-5.2 NMSA 1978."

Chapter 270 Section 5 Laws 2005

Section 5. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"UNIQUE IDENTIFIER.--As used in the Election Code, "unique identifier" means the last four digits of a voter's social security number."

Chapter 270 Section 6 Laws 2005

Section 6. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"REQUIRED VOTER IDENTIFICATION.--As used in the Election Code, "required voter identification" means any of the following forms of identification as chosen by the voter:

A. a physical form of identification, which may be:

(1) an original or copy of a current and valid photo identification with or without an address, which address is not required to match the voter's certificate of registration or a voter identification card; or

(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or

B. a verbal or written statement by the voter of the voter's name, year of birth and unique identifier; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix."

Chapter 270 Section 7 Laws 2005

Section 7. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"VOTER IDENTIFICATION CARD.--As used in the Election Code, "voter identification card" means a document containing the person's name, address and precinct number that is issued by the county clerk or the voter's copy of the voter's certificate of registration."

Chapter 270 Section 8 Laws 2005

Section 8. Section 1-1-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 1) is amended to read:

"1-1-6. RECHECK AND RECOUNT.--As used in the Election Code:

A. "recheck" pertains to electronic voting systems and means a verification procedure where a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic voting system and the results are compared with the results shown on the official returns; and

B. "recount" pertains to emergency paper ballots, absentee ballots, provisional paper ballots, optical scan paper ballots, voter verifiable and auditable paper ballots printed by electronic voting systems and any other paper ballot and means a verification procedure whereby the voters' selections on the paper ballots may be counted by hand and the results compared with the results shown on the official returns."

Chapter 270 Section 9 Laws 2005

Section 9. A new section of the Election Code is enacted to read:

"VOTER IDENTIFICATION CARDS--DISTRIBUTION.--

A. Between sixty and forty days before each primary election, the county clerk shall send to each registered voter in the county a voter identification card indicating the voter's name, address and voting precinct; provided, however, that a registrant shall still be sent a voter identification card upon filing of the registrant's certificate of registration with the county clerk as provided in Section 1-4-12 NMSA 1978.

B. The county clerk may apply to the office of the secretary of state for reimbursement of costs related to supplying voter identification cards.

C. The secretary of state shall promulgate rules to ensure that all registered voters receive a voter identification card before each primary election and reimburse the county for the costs of supplying and distributing the cards."

Chapter 270 Section 10 Laws 2005

Section 10. Section 1-2-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 23, as amended) is amended to read:

"1-2-2. SECRETARY OF STATE--GENERAL DUTIES.--The secretary of state shall:

- A. generally supervise all elections;
- B. administer the Election Code in its statewide application especially as it relates to federal and state elective offices;
- C. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;
- D. advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code;
- E. report possible violations of the Election Code of which the secretary of state has knowledge to the district attorney or the attorney general for prosecution;
- F. cause to be published in pamphlet form and distributed to the county clerk of each county for use by precinct boards a sufficient number of copies of the Election Code as it is from time to time amended and supplemented;
- G. be responsible for the education and training of county clerks regarding elections;
- H. be responsible for the education and training of voting machine technicians; and
- I. assist the county clerks in the education and training of registration officers, in the recruitment and training of poll workers and other election workers and in the certification of the presiding judges of the precinct boards."

Chapter 270 Section 11 Laws 2005

Section 11. Section 1-2-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 25, as amended) is amended to read:

"1-2-4. SECRETARY OF STATE--TRAINING AND INSTRUCTIONS TO
PRECINCT BOARDS--TRAINING MANUAL.--

A. The secretary of state shall provide:

(1) instructions for the precinct board, which shall include a brief nontechnical explanation of their duties as required by the Election Code; and

(2) a single training manual containing standard guidelines for the operations and processes of statewide elections, including pre-election day activities, election-day activities and post-election-day activities and county and state canvassing processes.

B. When any specific duty is imposed by the instructions issued under the Election Code, the duty shall be deemed to be a requirement of the law."

Chapter 270 Section 12 Laws 2005

Section 12. Section 1-2-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 29, as amended) is amended to read:

"1-2-7. PRECINCT BOARD--QUALIFICATION OF MEMBERS--
QUALIFICATION OF PRESIDING JUDGES.--

A. In order to qualify as a member of the precinct board, a person shall:

(1) be a resident of the representative district and county in which the precinct where he is a voter is located;

(2) be able to read and write;

(3) have the necessary capacity to carry out his functions with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. Before serving as a presiding judge of a precinct board, a person shall receive training in the duties of that position and be certified for the position by the county clerk.

C. No person shall be qualified for appointment or service on a precinct board:

(1) who is a candidate for any federal, state, district or county office;

(2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election; or

(3) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman."

Chapter 270 Section 13 Laws 2005

Section 13. Section 1-2-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 37, as amended) is amended to read:

"1-2-17. PRECINCT BOARD--SCHOOLS OF INSTRUCTION.--

A. The secretary of state may supervise and the county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections.

B. The schools for instruction provided for in this section shall be as follows:

(1) one school not less than seven days before the primary election;

(2) one school not less than seven days before the general election; and

(3) one school not less than seven days before any other statewide election.

C. All major details of the conduct of elections shall be covered by the secretary of state or the secretary's authorized representative or the county clerk or the clerk's authorized representative at such school, with special emphasis being given to recent changes in the Election Code.

D. The school of instruction shall be open to any interested person, and notice of the school shall be given to the public press at least four days before the school is to be held. Each member of the precinct board shall be notified by mail at least seven days prior to commencement of the school.

E. A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person is appointed to serve or has been certified by the county clerk with respect to the person's completion of the school of instruction. This subsection shall not apply to filling of vacancies on election day as provided in Subsection B of Section 1-2-15 NMSA 1978."

Chapter 270 Section 14 Laws 2005

Section 14. Section 1-2-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 46, as amended) is amended to read:

"1-2-27. WATCHERS--APPOINTMENT.--

A. The county chairman of each political party represented on the ballot may appoint in writing two watchers for each precinct. If any county chairman fails to make the appointments, the precinct chairman of the political party may appoint in writing two watchers for the precinct. If any precinct chairman fails to make the appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint in writing two watchers.

B. In a general election, a candidate for elected office and an election-related organization may appoint one watcher per polling place if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date and specifies the polling place to be watched and the name of the qualified appointee. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election. For the purposes of this section, "election-related organization" means an organization involved in voter turnout activities.

C. In a primary election any group of six candidates for county office for each political party participating in the election may appoint in writing an additional watcher for each precinct. No candidate, however, shall join in more than one request for an additional watcher.

D. In a primary election any group of three candidates seeking nomination for statewide or district office may appoint in writing one watcher for each of those precincts as they may desire. No candidate, however, shall join in more than one request for an additional watcher at any precinct."

Chapter 270 Section 15 Laws 2005

Section 15. A new section of Chapter 1, Article 2 NMSA 1978 is enacted to read:

"COUNTY CANVASS OBSERVERS.--

A. A candidate for elected office and an election-related organization may each appoint one county canvass observer per county if the candidate or organization makes a written request to the secretary of state or county clerk at least ten days prior to the election date and specifies the county canvass to be watched and the name of the qualified appointee. A county chair of a qualified political party may appoint as many observers as the chief election officer for that county determines is functional; provided

that the state or county chair may appoint at least three observers and that the number of observers for each major political party is identical.

B. County canvass observers shall be voters of a precinct located in that county to which they are appointed. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or person who is a spouse, parent or child of a candidate being voted on at the election shall serve as a county canvass observer.

C. The county canvass observer, upon presentation of the observer's written appointment to the county clerk, shall be permitted to be present from the time the county canvassing begins until the completion of the canvass.

D. Only one county canvass observer for each candidate and each election-related organization in each county shall be permitted at one time in the room in which the canvass is being conducted. An observer is strictly limited to observing and documenting the canvassing process, and may not interrupt the canvassing process.

E. County canvass observers shall not interfere with the orderly conduct of the canvass, and may be removed by the chief election officer if the observer does not comply with the law.

F. As used in this section:

(1) "county canvass" means the process of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board; and

(2) "election-related organization" means an organization involved in voter turnout activities."

Chapter 270 Section 16 Laws 2005

Section 16. Section 1-3-12 NMSA 1978 (being Laws 1984 (1st S.S.), Chapter 3, Section 4, as amended) is amended to read:

"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

A. Before each federal decennial census, every precinct boundary shall be adjusted to coincide with a numbered or named street or road or with a visible terrain feature that is:

(1) shown on the standard base maps developed pursuant to Subsection B of this section;

(2) a designated census block boundary on the federal PL 94-171 2000 census block maps; or

(3) approved by the secretary of state and the bureau of the census.

B. Prior to commencement of the federal decennial census, the secretary of state shall have prepared and furnish to each county clerk standard base maps of the county. The standard base map for nonurban areas of the county shall, as nearly as practical, show:

(1) all state and federal highways;

(2) all numbered and named county roads that have been certified to the department of transportation;

(3) all military installation boundaries and federal and state prison boundaries;

(4) all major railroad lines; and

(5) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines and ridgelines and other acceptable census block boundaries.

C. The board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:

(1) adjust all urban precinct boundaries to coincide with numbered or named street boundaries;

(2) adjust all nonurban precinct boundaries to coincide with suitable visible terrain features shown on the standard base map; provided that in order to make an adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that the precincts shall be composed of contiguous and compact areas, and state, county and municipal boundary lines may serve as precinct boundaries; and

(3) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send four copies of the precinct maps to the secretary of state for approval.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the official precincts of

each county for the 2001 redistricting. For the 2002 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. A county commission shall not split a precinct into two or more districts for any elected office.

F. Precincts shall be designated solely by whole numbers."

Chapter 270 Section 17 Laws 2005

Section 17. A new section of Chapter 1, Article 4 NMSA 1978 is enacted to read:

"THIRD-PARTY REGISTRATION AGENTS--REGISTRATION REQUIRED--
PROCEDURES--REPORTS--PENALTY.--

A. Registration agents who either register or assist persons to register to vote on behalf of an organization that is not a state or federal agency shall register with the secretary of state and the organization shall provide the secretary of state with:

(1) the name and permanent address of the organization;

(2) the names, permanent addresses, temporary addresses, if any, dates of birth and social security numbers of each person registering persons to vote in the state on behalf of the organization; and

(3) a sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters on a form that gives notice of the criminal penalties for false registration.

B. Organizations employing registration agents or using volunteer registration agents shall deliver a certificate of registration to the secretary of state or county clerk within forty-eight hours of its completion by the person registering to vote or the next business day if the appropriate office is closed for that forty-eight-hour period.

C. The secretary of state may issue rules to ensure the integrity of the registration process, including rules requiring that organizations account for all registration forms used by their registration agents.

D. A person who willfully violates the provisions of this section is guilty of a petty misdemeanor and shall have his third-party registration agent status revoked."

Chapter 270 Section 18 Laws 2005

Section 18. A new section of Chapter 1, Article 4 NMSA 1978 is enacted to read:

"REGISTRATION--LACK OF PHYSICAL ADDRESS.--If a qualified elector resides in an area lacking a specific physical address, the qualified elector shall be allowed to substitute a map or give a description and, if available, a mailing address, indicating where the qualified elector resides for a physical address and register to vote. The voter shall be assigned to a precinct based on the geographic description of where the voter resides."

Chapter 270 Section 19 Laws 2005

Section 19. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended) is amended to read:

"1-4-5. METHOD OF REGISTRATION--UNLAWFUL USE OF INFORMATION--PENALTY.--

A. A qualified elector may apply to a registration officer or agent for registration.

B. The registration officer or agent or qualified elector shall fill out each of the blanks on the certificate of registration by typing or printing in ink. The voter shall be given a receipt for the original, and the registration agent shall receive a copy that omits the voter's social security number and date of birth and which shall contain a number traceable to the registration agent or officer.

C. The qualified elector shall subscribe a certificate of registration as follows:

(1) by signing the certificate of registration using the qualified elector's given name, middle name or initial and last name; or

(2) if any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of some physical disability, the certificate of such person shall be filled out by a registration officer or agent and the name of the qualified elector so registering shall be subscribed by the making of the qualified elector's mark.

D. When properly executed by the registration agent or officer, or qualified elector, the original of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration agent or officer, to the county clerk of the county in which the qualified elector resides.

E. Only when the certificate of registration is properly filled out, subscribed by the qualified elector and accepted for filing by the county clerk as evidenced by the county clerk's signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector. It is unlawful for the voter's date of birth or any portion of the voter's social security number required on the

certificate of registration to be copied, conveyed or used by anyone other than the person registering to vote, either before or after it is filed with the county clerk, except by elections administrators for purposes of the registration and voting process.

F. A person who unlawfully copies, conveys or uses information from a certificate of registration is guilty of a fourth degree felony."

Chapter 270 Section 20 Laws 2005

Section 20. Section 1-4-5.1 NMSA 1978 (being Laws 1993, Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7, as amended) is amended to read:

"1-4-5.1. METHOD OF REGISTRATION--FORM.--

A. A qualified elector may apply for registration by mail, in the office of the secretary of state or county clerk or with a registration agent or officer.

B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person by telephone or by mail for oneself or for others.

C. Except as provided in Subsection D of this section, a qualified elector who wishes to register to vote shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. A qualified elector who has filed for an order of protection pursuant to the provisions of the Family Violence Protection Act and who presents a copy of that order from a state or tribal court to the registration officer shall not be required to provide address information on the certificate of registration.

E. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state or presented in person by the registrant or any other person to the county clerk of the county in which the registrant resides.

F. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked at least twenty-eight days before the election.

G. Upon receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides.

H. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by the county clerk's signature or stamp and the date of acceptance thereon and when notice

has been received by the registrant shall it constitute an official public record of the registration of the qualified elector.

I. The secretary of state shall prescribe the form of the certificate of registration, which form shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance. The form shall also include:

(1) the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen;

(2) the question "Will you be at least eighteen years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be eighteen years of age or older on election day;

(3) the statement "If you checked 'no' in response to either of these questions, do not complete this form.";

(4) a statement informing the applicant that:

(a) if the form is submitted by mail by the applicant and the applicant is registering for the first time in New Mexico, the applicant must submit with the form a copy of: 1) a current and valid photo identification or voter identification card; or 2) a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the applicant; and

(b) if the applicant does not submit the required identification, he will be required to do so when voting in person or absentee; and

(5) a statement requiring the applicant to swear or affirm that the information supplied by the applicant is true."

Chapter 270 Section 21 Laws 2005

Section 21. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--LATE REGISTRATION.--

A. For qualified electors other than federal qualified electors or overseas voters, the following provisions shall apply:

(1) the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk shall close registration at 5:00p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board;

(2) registration shall be reopened on the Monday following the election;

(3) for purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election;

(4) during the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election, at which time a voter identification card shall be mailed to the registrant at the address shown on the certificate of registration;

(5) when the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk; and

(6) the county clerk shall accept for filing any certificate of registration that is subscribed and dated on or before the twenty-eighth day preceding the election and received by the county clerk before 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any mailed certificate of registration postmarked not less than twenty-eight days prior to any election referred to in this section and received by 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any certificate of registration accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978 not later than twenty-eight days prior to any election.

B. For federal qualified electors and overseas voters, the county clerk shall accept a certificate of registration by electronic transmission from a voter qualified to apply for and vote by absentee ballot in the county if the transmission is received before 5:00 p.m. on the Friday immediately preceding the election."

Chapter 270 Section 22 Laws 2005

Section 22. Section 1-4-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 79, as amended) is amended to read:

"1-4-23. REVIEW OF REGISTRATION--BOARD OF REGISTRATION--INACTIVE VOTER LIST CREATION.--Beginning on the third Monday of March of each odd-numbered year, the board of registration shall review all certificates of registration and, based on that review, shall establish a list of inactive voters in accordance with the provisions of the federal National Voter Registration Act of 1993. The secretary of state shall issue rules on list maintenance in accordance with the provisions of the federal National Voter Registration Act of 1993."

Chapter 270 Section 23 Laws 2005

Section 23. Section 1-5-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 103, as amended) is amended to read:

"1-5-1. SHORT TITLE.--Sections 1-5-1 through 1-5-29 NMSA 1978 may be cited as the "Voter Records System Act"."

Chapter 270 Section 24 Laws 2005

Section 24. 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 of its precincts;
- C. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;
- D. "data processor" means a data processing facility and its associated employees and agents contracted to provide data processing services required by the Voter Records System Act;
- E. "data recording media" means a manual, electronic or other device containing data capable of being read and processed by any means for the eventual preparation of voter lists;
- F. "election campaign purposes" means relating in any way to a campaign in an election conducted by a federal, state or local government;
- G. "file maintenance list" means any prepared listing that reflects additions, deletions or changes to the voter file;

H. "governmental purposes" means noncommercial purposes relating in any way to the structure, operation or decision-making of a federal, state or local government;

I. "mailing labels" mean prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

K. "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;

L. "special voter list" means a prepared list of selected voters arranged in the order in which requested;

M. "voter data" means selected information derived from the voter file;

N. "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 data recording media and certified by the county clerk as the source of all information required by the Voter Records System Act; and

O. "voter list" means any prepared list of voters."

Chapter 270 Section 25 Laws 2005

Section 25. Section 1-5-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 105, as amended by Laws 1993, Chapter 314, Section 33 and also by Laws 1993, Chapter 316, Section 33) is amended to read:

"1-5-3. ACT IS MANDATORY AND SUPPLEMENTAL TO ELECTION CODE.--

A. The Voter Records System Act is mandatory and supplemental to the provisions of the Election Code. The provisions of that act shall be implemented in all counties by order of the secretary of state in accordance with the provisions of the federal Help America Vote Act of 2002.

B. The secretary of state shall maintain the official state voter file based on county registers and shall provide access to the file to the county clerks. The secretary of state shall prescribe any rules, forms and instructions necessary to implement procedures required by the Voter Records System Act and federal law. The secretary of state shall maintain a log, which shall be public, containing all transactions regarding requests for current registration lists of state voters. The log shall indicate the requesting party, the date of the request, the date of fulfilling the request, charges made

and any other information deemed advisable by the secretary of state. Requests for registration lists in printed or electronic form shall be fulfilled within a period of ten working days.

C. All registration records required by the Election Code shall be maintained for each of the precincts in addition to those records required by the Voter Records System Act and federal law."

Chapter 270 Section 26 Laws 2005

Section 26. Section 1-5-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 108, as amended) is amended to read:

"1-5-6. PRECINCT VOTER LISTS--SIGNATURE ROSTER PREPARATION.--
The county clerk shall provide for preparation of precinct voter lists and signature rosters generated from the official state voter file for any precincts. The precinct 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."

Chapter 270 Section 27 Laws 2005

Section 27. Section 1-5-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 109, as amended) is amended to read:

"1-5-7. PRECINCT VOTER LISTS--SIGNATURE ROSTERS-- CONTENTS.--

A. The precinct voter lists and signature rosters for any precinct shall contain for each voter, as shown in the county register, the voter's:

- (1) name;
- (2) gender;
- (3) place of residence;
- (4) last four digits of the voter's social security number;
- (5) year of birth;
- (6) party affiliation, if any; and
- (7) precinct of residence.

B. In addition, the names on each precinct voter list and signature roster shall be numbered consecutively beginning with the number "1".

C. On each page of each precinct voter list and on each signature roster there shall be printed the page number and the date and name of the election for which they are to be used."

Chapter 270 Section 28 Laws 2005

Section 28. Section 1-5-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 110, as amended) is amended to read:

"1-5-8. PRECINCT VOTER LISTS--SIGNATURE ROSTERS--NUMBER--DISTRIBUTION.--

A. One copy of the signature roster shall be prepared for each precinct. On the cover of the signature roster shall be printed the words, "Copy for the County Clerk". Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board.

B. The county clerk shall prepare three copies of the precinct voter list for each precinct. Of the three copies prepared, one copy shall not include voter social security numbers. The other two shall contain only the last four digits of the voter's social security number. The county clerk shall deliver two of the copies to each precinct board. One copy of the precinct voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only."

Chapter 270 Section 29 Laws 2005

Section 29. Section 1-5-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 118, as amended) is amended to read:

"1-5-14. FILE MAINTENANCE LISTS.--

A. At least once a month, the county clerk shall have made from the state voter file a file maintenance list of additions, deletions and changes, if any, to the county register.

B. One copy of the list shall be stored by the county clerk for at least one year.

C. The county clerk shall also furnish copies of the list 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, the voter's day and month of birth or the voter's telephone number, if prohibited by the voter."

Chapter 270 Section 30 Laws 2005

Section 30. Section 1-5-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 122, as amended) is amended to read:

"1-5-17. VOTER REGISTRATION SYSTEM SOFTWARE--INSTRUCTIONS--STATUS--PROTECTION.--

A. Voter registration system software and instructions for its 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. Verified, identified and approved voter registration system software 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."

Chapter 270 Section 31 Laws 2005

Section 31. Section 1-5-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 124, as amended) is amended to read:

"1-5-18. LIST AND ROSTER PREPARATION--COMPATIBLE DUPLICATE MEANS.--

A. The secretary of state shall provide to the county clerk means for the preparation of voter lists and signature rosters.

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 secretary of state shall procure and preserve sufficient duplicate voter registration system software and operating instructions so that in case of disaster the duplicate master record and the duplicate voter registration system software 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."

Chapter 270 Section 32 Laws 2005

Section 32. Section 1-5-21 NMSA 1978 (being Laws 1975, Chapter 255, Section 75, as amended) is amended to read:

"1-5-21. DATA PROCESSOR--CUSTODY AND PROTECTION OF VOTER FILE--DELIVERY OF VOTER FILE AND PROGRAM RECORDS.--

A. The designated data processor shall provide the secretary of state, county clerk or county with data processing services in the implementation and maintenance of the Voter Records System Act and in carrying out such other services as are reasonably related to providing data processing of the voter records system.

B. The designated data processor shall preserve and safeguard voter files and voter registration system software from loss, damage, unauthorized alteration, unauthorized access and unauthorized reproduction and shall ensure their continued use and accessibility while they are in the data processor's custody.

C. No copies of the voter file or information or listings derived therefrom shall be furnished by the data processor to any person other than the secretary of state, the county clerk or their designated agents."

Chapter 270 Section 33 Laws 2005

Section 33. Section 1-5-22 NMSA 1978 (being Laws 1975, Chapter 255, Section 76) is amended to read:

"1-5-22. UNLAWFUL DISPOSITION OF VOTER FILE--PENALTY.--

A. Unlawful disposition of voter file consists of the willful selling, loaning, providing access to or otherwise surrendering of the voter file, duplicates of the file or a part of the file by a data processor; a data processor's agent or employee; a state or county officer; or a state or county officer's deputy, assistant, employee or agent to anyone not authorized by the Voter Records System Act to have possession of the file.

B. For purposes of this section, a file maintenance list shall be considered a voter file or a part of a voter file.

C. Any data processor, officer, deputy, assistant, agent or employee who commits unlawful disposition of a voter file is guilty of a fourth degree felony."

Chapter 270 Section 34 Laws 2005

Section 34. Section 1-5-23 NMSA 1978 (being Laws 1975, Chapter 255, Section 77) is amended to read:

"1-5-23. UNLAWFUL DESTRUCTION OR ALTERATION OF DATA RECORDING MEDIA, VOTER FILES, FILE MAINTENANCE LISTS, VOTER REGISTRATION SYSTEM SOFTWARE AND INSTRUCTIONS OR VOTER

LISTS--PENALTY.--

A. Unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists consists of the unauthorized destruction of, the unauthorized alteration of, the erasure of information from or the rendering unusable for their lawfully intended purpose of such media, files, software, instructions and lists or parts thereof by any person.

B. Any person who commits unlawful destruction or alteration of data recording media, voter files, file maintenance lists, voter registration system software and instructions or voter lists is guilty of a fourth degree felony."

Chapter 270 Section 35 Laws 2005

Section 35. Section 1-5-24 NMSA 1978 (being Laws 1975, Chapter 255, Section 78, as amended) is amended to read:

"1-5-24. REQUESTS FOR VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS.--

A. The county clerk or secretary of state shall furnish voter data, mailing labels or special voter lists only upon written request to the county clerk or the secretary of state and after compliance with the requirements of this section; provided, however, all requesters shall be treated equally in regard to the charges and the furnishing of the materials.

B. In furnishing voter data, mailing labels or special voter lists, the county clerk or secretary of state shall not provide data or lists that include voters' social security numbers, codes used to identify agencies where voters have registered, a voter's day and month of birth or voters' telephone numbers if prohibited by voters.

C. Each requester of voter data, mailing labels or special voter lists shall sign an affidavit that the voter data, mailing labels and special voter lists shall be used for governmental or election and election campaign purposes only and shall not be made available or used for unlawful purposes.

D. The secretary of state shall prescribe the form of the affidavit."

Chapter 270 Section 36 Laws 2005

Section 36. Section 1-5-25 NMSA 1978 (being Laws 1975, Chapter 255, Section 79, as amended) is amended to read:

"1-5-25. UNLAWFUL USE OF VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS--PENALTIES.--

A. 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 Voter Records System Act.

B. Any person, organization or corporation or agent, officer, representative or employee thereof who commits unlawful use of 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 that was unlawfully used.

C. Each and every unlawful use of voter data, mailing labels or special voter lists constitutes a separate offense."

Chapter 270 Section 37 Laws 2005

Section 37. Section 1-5-26 NMSA 1978 (being Laws 1975, Chapter 255, Section 80) is amended to read:

"1-5-26. CONTRACTUAL AGREEMENT REQUIRED WITH DATA PROCESSOR.--The secretary of state shall enter into a written contractual agreement with the data processor notwithstanding the fact that the data processor may be a department of state government."

Chapter 270 Section 38 Laws 2005

Section 38. Section 1-5-30 NMSA 1978 (being Laws 1989, Chapter 298, Section 1) is amended to read:

"1-5-30. SECRETARY OF STATE--ESTABLISHMENT OF STATEWIDE COMPUTERIZED VOTER REGISTRATION SYSTEM.--

A. The secretary of state shall develop, implement, establish and supervise a statewide computerized voter registration system that complies with the federal Help America Vote Act of 2002 to facilitate voter registration and to provide a central database containing voter registration information for New Mexico.

B. The statewide computerized voter registration system shall:

(1) provide for the establishment and maintenance of a central database for all voter registration information;

(2) permit the offices of all county clerks to add, modify and delete county information from the system to provide for accurate and up-to-date records;

(3) permit the offices of the county clerks and the bureau of elections to have access to the central database for review and search capabilities;

(4) provide security and protection for all information in the central database and monitor the central database to ensure the prevention of unauthorized entry;

(5) provide procedures for entering data into the central database;
and

(6) provide a centralized system for each county to enter the precinct to which a voter should be assigned for voting purposes."

Chapter 270 Section 39 Laws 2005

Section 39. Section 1-5-31 NMSA 1978 (being Laws 1989, Chapter 298, Section 2) is amended to read:

"1-5-31. UNIFORM PROCEDURES FOR COUNTIES.--The secretary of state shall:

A. assist county clerks by devising uniform procedures and forms that are compatible with the statewide computerized voter registration system;

B. provide to each county clerk the computer software necessary for the use and maintenance of the statewide computerized voter registration system; and

C. adopt such rules and regulations as are necessary to establish and administer the statewide computerized voter registration system and to require deadlines and time limits for the updating of voter files."

Chapter 270 Section 40 Laws 2005

Section 40. A new section of Chapter 1, Article 6 NMSA 1978 is enacted to read:

"EARLY VOTING--USE OF ABSENTEE VOTING PROCEDURES--ALTERNATE VOTING LOCATIONS.--

A. Commencing on the third Saturday prior to an election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk. In class A counties with more than two hundred thousand registered voters, the county clerk shall establish not less than twelve alternate voting locations as a convenience to the voters. For class A counties with two hundred thousand registered voters or fewer, the county clerk shall establish not less than four alternate voting locations. In non-class A counties with more than ten thousand registered voters, the county clerk shall establish at least one alternate voting location. In non-class A counties with ten thousand registered voters or fewer, early voting shall be conducted in the office of the county clerk or at such alternative locations as may be designated by the county clerk. Early voting may be done at an alternate location from 12:00 p.m. to

8:00 p.m., Tuesday through Friday, and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday immediately prior to the election.

B. When voting early, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required identification, the voter shall be allowed to vote after subscribing an application to vote in accordance with secretary of state rules. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early."

Chapter 270 Section 41 Laws 2005

Section 41. A new section of Chapter 1, Article 6 NMSA 1978 is enacted to read:

"THIRD PARTY AGENTS COLLECTING ABSENTEE BALLOT APPLICATIONS.-

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A. A person or organization that is not part of a government agency and that collects absentee ballot applications shall submit the applications to the appropriate office for filing within forty-eight hours of their completion or the next business day if the appropriate office is closed for that forty-eight-hour period.

B. The secretary of state shall establish procedures to ensure that absentee ballot applications collected in accordance with Subsection A of this section can be traced to the person and organization collecting the applications.

C. A person who intentionally alters or fails to submit a completed absentee ballot application is guilty of a fourth degree felony."

Chapter 270 Section 42 Laws 2005

Section 42. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 2003, Chapter 356, Section 18 and by Laws 2003, Chapter 357, Section 1) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED ELECTOR-
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OVERSEAS VOTER.--

A. Application by a federal qualified elector or an overseas voter for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence. The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed by the secretary of state in accordance with federal law. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be subscribed by the applicant and shall require the applicant's printed name, year of birth and unique identifier to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants that have registered by mail and at that time did not provide acceptable identification.

D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election."

Chapter 270 Section 43 Laws 2005

Section 43. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 2003, Chapter 355, Section 4 and by Laws 2003, Chapter 356, Section 19 and also by Laws 2003, Chapter 357, Section 2) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant does not have a valid certificate of registration on file in the county and is not a federal qualified elector or if the applicant states that the applicant is a federal qualified elector but the application indicates the applicant is not a federal qualified elector, an absentee ballot shall not be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of the application and, if rejected, shall explain why the application was rejected.

D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee ballot

register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. If the county clerk finds that the applicant is a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and beginning forty-five days before the election, mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office or alternate voting location. Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter, pursuant to the provisions of Section 1-12-15 NMSA 1978, may be assisted by one person of the voter's choice.

G. Absentee ballots shall be airmailed or, if so requested, electronically transmitted to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Friday immediately prior to the date of the election.

H. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

I. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided, however, that notice is provided at least ten days before early voting begins.

J. The secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots."

Chapter 270 Section 44 Laws 2005

Section 44. Section 1-6-5.4 NMSA 1978 (being Laws 1999, Chapter 267, Section 3) is amended to read:

"1-6-5.4. SECURITY--COUNTING AND CANVASSING.--

A. The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; and handling of, registering, counting and canvassing of absentee ballots.

B. As used in Chapter 1, Article 6 NMSA 1978, "registering of absentee ballots" means inserting the paper absentee ballot into an electronic voting system for recording and retention."

Chapter 270 Section 45 Laws 2005

Section 45. Section 1-6-5.6 NMSA 1978 (being Laws 2003, Chapter 357, Section 6) is amended to read:

"1-6-5.6. EARLY VOTING--ALTERNATE VOTING PLACES-- PROCEDURES.--
The secretary of state shall adopt rules to:

A. ensure that voters have adequate access to alternate locations for early voting in each county, taking into consideration population density and travel time to the place of voting;

B. ensure that early voters are not allowed to vote in person on election day;

C. ensure that adequate interpreters are available at alternative early voting locations in those precincts having a majority of qualified electors who are part of a recognized language minority; and

D. allow for mobile alternate voting places in rural areas of the state."

Chapter 270 Section 46 Laws 2005

Section 46. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk; provided the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the absentee ballot. The form shall identify the voter and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

D. The official mailing envelope shall contain a space for the voter to record the voter's unique identifier, year of birth and name. The envelope shall have a security flap to cover this information."

Chapter 270 Section 47 Laws 2005

Section 47. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. A person voting pursuant to the Absent Voter Act shall secretly mark the absentee ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, year of birth and unique identifier.

B. Federal qualified electors and overseas voters shall either deliver or mail the official mailing envelope or electronically transmit the absentee ballot to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

Chapter 270 Section 48 Laws 2005

Section 48. Section 1-6-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 136, as amended) is amended to read:

"1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the proper absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day and the absent voter precinct board shall accept completed official mailing envelopes from precincts within the county of the voters who turned in their absentee ballots at their precinct by the close of polls on election day. Any completed official mailing envelope received after that time shall not be delivered to a precinct board but shall be preserved by the county clerk until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, federal voters, overseas citizen voters and federal qualified electors and report the number from each category to the secretary of state.

C. At 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. The county clerk shall execute a certificate of destruction, which shall include the numbers on the absentee ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state."

Chapter 270 Section 49 Laws 2005

Section 49. Section 1-6-10.1 NMSA 1978 (being Laws 2003, Chapter 357, Section 5) is amended to read:

"1-6-10.1. ABSENTEE BALLOT--DELIVERY TO COUNTY CLERK.-- A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot."

Chapter 270 Section 50 Laws 2005

Section 50. Section 1-6-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 137, as amended) is amended to read:

"1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCTS.--

A. Beginning on the Thursday immediately preceding election day, the county clerk may deliver to the special deputy county clerk for delivery to the absent voter precinct board the absentee ballots received prior to the delivery day. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelopes in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for the absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. On election day, the county clerk shall deliver all absentee ballots not yet delivered to the absent voter precinct board but received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelope in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter

precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

C. At 7:00 a.m. on the Thursday prior to election day or on the day the absent voter precinct board begins early processing of absentee ballots, the county clerk shall deliver the electronic voting machines used for absentee voting by mail to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall:

- (1) obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine;
- (2) verify the public counter number on the machine; and
- (3) return the receipt to the county clerk for filing."

Chapter 270 Section 51 Laws 2005

Section 51. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended by Laws 2003, Chapter 354, Section 1 and by Laws 2003, Chapter 356, Section 22) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. A lawfully appointed challenger may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

- (1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or
- (2) the person offering to vote is not a federal voter, federal qualified elector, overseas voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

(1) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters; and

(2) only between 8:00 a.m. and 5:00 p.m. on the five days preceding election day, including Saturday and Sunday, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

E. It is unlawful for a person to disclose the results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

H. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code."

Chapter 270 Section 52 Laws 2005

Section 52. Section 1-6-20 NMSA 1978 (being Laws 1969, Chapter 54, Section 3, as amended) is amended to read:

"1-6-20. CREATION OF ABSENT VOTER PRECINCT.--

A. The board of county commissioners shall adopt a resolution creating, for absent voting purposes only, an absent voter precinct for each county.

B. Absent voter precincts shall be identified by the name of the county."

Chapter 270 Section 53 Laws 2005

Section 53. Section 1-6-22 NMSA 1978 (being Laws 1969, Chapter 54, Section 4, as amended) is amended to read:

"1-6-22. DESIGNATION OF ABSENT VOTER PRECINCT POLLING PLACE.-- The board of county commissioners of each county shall designate a polling place in each absent voter precinct at the time the precinct is created."

Chapter 270 Section 54 Laws 2005

Section 54. Section 1-6-23 NMSA 1978 (being Laws 1975, Chapter 255, Section 95, as amended) is amended to read:

"1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--HOURS ON ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or statutorily appointed supervisor of the election shall determine the hours during which the absent voter precinct polling place shall be open for delivery and registering of absentee ballots on the five days preceding election day and the delivery, registering and counting of ballots on election day and subsequent days until all ballots are counted."

Chapter 270 Section 55 Laws 2005

Section 55. Section 1-8-52 NMSA 1978 (being Laws 1977, Chapter 322, Section 8, as amended) is amended to read:

"1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITIONS--CIRCULATION--DATE OF FILING.--

A. Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the day following the primary election of each even-numbered year and ending at 5:00 p.m. on that same day and not later than

5:00 p.m. on the fifty-sixth day preceding any United States representative special election.

B. Declarations of independent candidacy and nominating petitions for the office of president of the United States shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the day following the primary election and ending at 5:00 p.m. on the same day."

Chapter 270 Section 56 Laws 2005

Section 56. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEM--VOTER VERIFIABLE PAPER TRAIL.--

A. All voting systems used in elections covered by the Election Code shall have a voter verifiable and auditable paper trail; provided, however, that voting systems owned or used by a county on the effective date of this 2005 act that do not have a voter verifiable and auditable paper trail may be used until the first occurrence of the following:

(1) sufficient federal, state or local funds are available to replace the voting system; or

(2) December 31, 2006.

B. In any event, no voting system shall be used that has not been certified by the secretary of state.

C. As used in this section:

(1) "voting system" includes a paper ballot system in which the voter physically marks the paper ballot to indicate the voter's choices; and

(2) "voter verifiable and auditable paper trail" means a paper record of the voter's choices, viewable prior to casting the ballot, which may be the paper ballot itself; the paper trail shall be used by the state or its contractor to check either the veracity of a machine count or the count itself, or may be used in a recount proceeding, and in case of a discrepancy, the voter verifiable and auditable paper trail shall be considered the true and correct record of the voter's choices."

Chapter 270 Section 57 Laws 2005

Section 57. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--TESTING OF PREVIOUSLY CERTIFIED SYSTEMS.--The secretary of state may voluntarily test and certify voting systems without an application by the manufacturer if the system has been previously certified by other states or by the national association of state election directors. Tests and inspections conducted pursuant to this section shall follow the testing procedures in Section 1-9-14 NMSA 1978 and shall be completed within six months of the date on which testing begins; provided, however, that if the manufacturer has not applied for certification of that voting system, the manufacturer shall not be required to pay for the costs of testing and certification."

Chapter 270 Section 58 Laws 2005

Section 58. Section 1-9-4.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 9) is amended to read:

"1-9-4.2. DEFINITION OF A VOTE.--

A. A vote on a touch-screen direct recording electronic voting system or electronic voting system consists of a voter's selection of a candidate or answer to a ballot question selected by the electro-optical ballot display of the device, followed by the voter activating the cast vote indicator.

B. A vote on a paper ballot card used on an electronic vote tabulating marksense voting system, optical scan vote tabulating system or high-speed central count marksense vote tabulator consists of a voter's selection of a candidate or answer to a ballot question indicated in the voting response area of the paper ballot card marked in accordance with the instructions for that ballot type. If the paper ballot card is marked indistinctly or not marked according to the instructions for that ballot type, only a cross (X) or a check () within the voting response area shall be counted. A vote on a paper ballot card shall also be counted if, on a ballot type requiring the completion of an arrow to indicate a voter's selection, the voter has marked an arrowhead on the tail portion of the arrow in the voting response area or has circled the name of the preferred candidate or both."

Chapter 270 Section 59 Laws 2005

Section 59. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"CONDUCT OF ELECTIONS--SUSPENSION OF CERTAIN VOTER IDENTIFICATION REQUIREMENTS.--If on election day the amount of time voters must spend in line before being able to vote in the precinct exceeds forty-five minutes, the presiding judge of the precinct shall suspend all physical forms of voter identification requirements other than those mandated by federal law; provided, however, that at the request of two or more precinct board members of different political parties, a voter shall still present the required physical form of identification, and in the case of a voter who does not provide the required name, birth year and unique identifier, the voter shall still be required to present the required physical form of identification."

Chapter 270 Section 60 Laws 2005

Section 60. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"CONDUCT OF ELECTION--ELECTION DAY DELIVERY OF ABSENTEE BALLOT BY VOTER--PROCEDURES.--

A. A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter's absentee ballot on election day to the precinct in which the voter is registered if the voter presents the official mailing envelope to the election judge before the polls close on election day.

B. The election judge shall note on the signature roster that the voter delivered the absentee ballot in person on election day. The precinct board shall deliver the unopened official mailing envelopes to the absent voter precinct board before midnight on election day."

Chapter 270 Section 61 Laws 2005

Section 61. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"QUALIFYING PROVISIONAL, ABSENTEE AND OTHER PAPER BALLOTS.--

A. The secretary of state shall issue rules to create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted.

B. When qualifying provisional, absentee and other paper ballots, middle initials, suffixes and addresses shall not be dispositive as to whether that person's ballot is qualified and counted in the vote totals, provided that the county clerk can otherwise verify the person is a voter based on the information provided on the outer envelope of the paper ballot or affidavit."

Chapter 270 Section 62 Laws 2005

Section 62. A new section of Chapter 1, Article 12 NMSA 1978 is enacted to read:

"CONDUCT OF ELECTION--USE OF VOTER'S COPY OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a voter whose name is not in the signature roster presents the voter's duplicate of the voter's certificate of registration, the voter shall be allowed to vote on a provisional ballot in the proper precinct in accordance with the provisions of Section 1-5-10 NMSA 1978. The election judge shall inform the voter that the voter will be notified by the county clerk to provide a copy of the certificate of registration to the county clerk if the original certificate is not located. A note shall be entered on the signature roster indicating that the voter's certificate of registration should be checked by the county clerk."

Chapter 270 Section 63 Laws 2005

Section 63. Section 1-5-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is recompiled as Section 1-12-7.1 NMSA 1978 and is amended to read:

"1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--USE DURING ELECTION.--

A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of the precinct voter list for use of the voters prior to voting. The posted copy shall not contain a listing of voter social security numbers.

B. The presiding judge of the precinct board shall assign one judge of the board to be in charge of one copy of the precinct voter list, which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one election clerk to be in charge of the signature roster.

D. The judge assigned to the precinct voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of the person's name on the precinct voter list and the voter provides the required voter identification, the judge shall announce to the election clerks the list number and the name of the voter as shown on the precinct voter list. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot and shall provide the required voter identification to the county clerk's office before the county canvass begins, or to the precinct board before the polls close, or the voter's provisional ballot shall not be qualified. If the required voter identification is provided, the voter's provisional ballot shall be qualified and the voter shall not vote on any other type of ballot.

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign the voter's usual signature or, if unable to write, to make the voter's mark opposite the voter's printed name. If the voter makes the voter's mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a physical form of identification before voting, the election judge shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional ballot, that ballot shall be qualified and the voter shall not vote on any other type of ballot.

F. The election judge shall follow the procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA 1978 if a person whose name does not appear on the

signature roster requests to vote or a person is required to vote on a provisional paper ballot.

G. A voter shall not be permitted to vote until the voter has properly signed the voter's usual signature or made the voter's mark in the signature roster.

H. After the poll is closed, the election clerk in charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears."

Chapter 270 Section 64 Laws 2005

Section 64. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

"1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

A. A person shall be permitted to vote on a provisional paper ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:

(1) the person's residence is within the boundaries of the county in which the person offers to vote;

(2) the person's name is not on the list of persons submitting absentee ballots; and

(3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional paper ballot if the voter:

(1) has not previously voted in a general election in New Mexico or has been purged from the voter list;

(2) registered to vote by mail;

(3) did not submit the physical form of the required voter identification with the certificate of registration form; and

(4) does not present to the election judge a physical form of the required voter identification.

C. A voter shall vote on a provisional ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

D. An election judge shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the precinct officer. The election judge shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting."

Chapter 270 Section 65 Laws 2005

Section 65. Section 1-12-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 249, as amended) is amended to read:

"1-12-10. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS,
SIGNATURE.--

A. When a voter presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice. When an election judge finds the voter's name in the signature roster, he shall in like manner repeat the name of the voter. The election judge shall then ask the voter to provide the required voter identification. The voter shall then sign his name or make his mark on the signature line in the copy of the signature roster to be returned to the county clerk. Upon the voter's name or mark being written in the signature roster, a challenge may be interposed as provided in the Election Code.

B. If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a provisional ballot."

Chapter 270 Section 66 Laws 2005

Section 66. Section 1-12-10.1 NMSA 1978 (being Laws 2003, Chapter 356, Section 2) is amended to read:

"1-12-10.1. CONDUCT OF ELECTIONS--VOTER INFORMATION.--

A. The secretary of state shall issue rules describing the voter information the county clerks shall display, in accordance with the federal Help America Vote Act of 2002, in each polling place on election day and in each county clerk's office and alternate location where absentee or early voting is taking place.

B. Each polling place shall post the phone numbers of the county clerk and the secretary of state and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct represented in that polling place."

Chapter 270 Section 67 Laws 2005

Section 67. Section 1-12-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 265, as amended) is amended to read:

"1-12-12. CONDUCT OF ELECTION--ELIGIBILITY FOR ASSISTANCE.--A voter may request assistance in voting only if the voter:

A. is blind;

B. is physically disabled;

C. is unable to read or write;

D. is a member of a language minority who has an inability to read well enough to exercise the elective franchise; or

E. requires assistance in operating the voting system."

Chapter 270 Section 68 Laws 2005

Section 68. Section 1-12-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 267, as amended) is amended to read:

"1-12-15. CONDUCT OF ELECTION--PERSONS WHO MAY ASSIST VOTER.--

A. In any primary, general or statewide special election, if a voter who has requested assistance in marking the ballot is blind, has a physical disability, has an inability to read or write or is a member of a language minority who has requested assistance pursuant to Subsection D of Section 1-12-12 NMSA 1978, the voter may be accompanied into the voting machine only by a person of the voter's own choice other than the voter's employer or an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in this election.

B. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster."

Chapter 270 Section 69 Laws 2005

Section 69. Section 1-12-19.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 2, as amended) is amended to read:

"1-12-19.1. GENERAL ELECTIONS--SPECIAL ELECTIONS--WRITE-IN CANDIDATES.--

A. A person desiring to be a write-in candidate in a special election for United States representative or a statewide special election shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election. A person desiring to be a write-in candidate in a general election shall file the declaration of intent between 9:00 a.m. and 5:00 p.m. on the day after the primary election.

B. The form of the declaration of intent shall be prescribed by the secretary of state and shall contain a sworn statement by the candidate that the candidate is qualified to be a candidate for and to hold the office for which the candidate is filing.

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligation to report under the Campaign Reporting Act, except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

D. The secretary of state shall, not less than ten days before the general election, certify the names of the declared write-in candidates to the county clerks of every county affected by such candidacy.

E. No person shall be a write-in candidate in the general election who was a candidate in the primary election immediately prior to the general election.

F. A vote for a write-in candidate 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 intent to be a 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 a declared write-in candidate; and

(2) the name is written in the proper office or entered upon the keyboard on the voting machine or on the proper line provided on a marksense ballot,

absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

G. No unopposed write-in candidate shall have an election certified unless the candidate receives at least the number of write-in votes as the candidate would need signatures on a nominating petition pursuant to the requirements in Section 1-8-33 NMSA 1978.

H. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Chapter 270 Section 70 Laws 2005

Section 70. Section 1-12-25.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 3) is amended to read:

"1-12-25.2. CONDUCT OF ELECTION--PROVISIONAL VOTING--
INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

A. If a voter is required to vote on a provisional paper ballot, the election judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted.

B. The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted. Access to information about an individual voter's provisional ballot is restricted to the voter who cast the ballot.

C. Beginning with the closing of the polls on election day through the tenth day following the election, the county clerk shall notify by certified mail each person whose provisional ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal to the county clerk a decision to reject the voter's ballot. The secretary of state shall establish procedures for handling appeals to the county clerk."

Chapter 270 Section 71 Laws 2005

Section 71. Section 1-12-25.3 NMSA 1978 (being Laws 2003, Chapter 356, Section 6) is amended to read:

"1-12-25.3. PROVISIONAL PAPER BALLOTS--REQUIRED INFORMATION.--

A. At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:

(1) the name and signature of the voter;

(2) the voter's registered address, both present and former if applicable;

(3) the voter's date of birth;

(4) the reason for using the ballot;

(5) the precinct and the polling place at which the voter has voted;

(6) the voter's social security number; and

(7) sufficient space to list the disposition of the ballot after review by the county clerk.

B. A provisional paper ballot shall not be rejected for lack of the information required by this section and shall be qualified as long as the voter provides a valid signature and sufficient information for the clerk to determine the voter is a qualified elector."

Chapter 270 Section 72 Laws 2005

Section 72. Section 1-12-25.4 NMSA 1978 (being Laws 2003, Chapter 356, Section 7) is amended to read:

"1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

A. Upon closing of the polls, provisional paper ballots shall be delivered to the county clerk, who shall determine if the ballots will be counted prior to certification of the election.

B. A provisional paper ballot shall not be counted if the registered voter did not sign either the signature roster or the ballot's envelope.

C. If there is no record of the voter ever having been registered in the county, the voter shall be offered the opportunity to register and the provisional paper ballot shall not be counted.

D. If the voter was registered in the county, the registration was later canceled and the county clerk determines that the cancellation was in error, the voter's registration shall be immediately restored and the provisional paper ballot counted.

E. If the county clerk determines that the cancellation was not in error, the voter shall be offered the opportunity to register at the voter's correct address, and the provisional paper ballot shall not be counted.

F. If the voter is a registered voter in the county, but has voted on a provisional paper ballot at a polling place other than the voter's designated polling place, the county canvassing board shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted.

G. If the county clerk finds that the voter who voted on a provisional paper ballot at the polls has also voted an absentee ballot in that election, the provisional paper ballot shall not be counted.

H. The county canvassing board shall prepare a tally displaying the number of provisional paper ballots received, the number found valid and counted, the number rejected and not counted and the reason for not counting the ballots as part of the canvassing process and forward it to the secretary of state immediately upon certification of the election.

I. The secretary of state shall issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, reviewing or recounting, and protecting against fraud in the voting process."

Chapter 270 Section 73 Laws 2005

Section 73. Section 1-5-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 113, as amended) is recompiled as Section 1-12-30.1 NMSA 1978 and is amended to read:

"1-12-30.1. VOTER LISTS--SIGNATURE ROSTERS--DISPOSITION AFTER THE POLLS CLOSE.--

A. After the polls are closed, the signature roster shall be properly certified by the precinct board and returned to the county clerk with the election returns destined for the county clerk. The precinct voter list marked for the secretary of state shall be returned to the secretary of state with the election returns destined for the secretary of state.

B. The signed and certified signature rosters used in any election shall be considered a part of the election returns and treated accordingly. They shall be preserved and finally disposed of in the same manner as provided in the Election Code and 42 U.S.C. 1974.

C. Whoever willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters used in an election is guilty of a fourth degree felony."

Chapter 270 Section 74 Laws 2005

Section 74. Section 1-12-53 NMSA 1978 (being Laws 1977, Chapter 222, Section 56, as amended) is amended to read:

"1-12-53. EMERGENCY SITUATIONS--VOTERS--EMERGENCY PAPER BALLOT--GENERAL ELECTION--MARKING.--The voter in preparing an emergency paper ballot in a general election shall mark the ballot in accordance with the instructions for that ballot type."

Chapter 270 Section 75 Laws 2005

Section 75. A new section of Chapter 1, Article 14 NMSA 1978 is enacted to read:

"POST-ELECTION DUTIES--RANDOM VOTING SYSTEM CHECK--RECOUNT.-

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A. The secretary of state shall direct the county clerks to compare the total votes tallied in the general election for the office of president or governor from two percent of the voting systems in the state with total votes tallied by hand from the voter verifiable and auditable paper trail from those voting systems. The check of the voting systems shall occur within five days of the completion of the county canvass. Canvass observers shall be allowed to observe the audit under the same conditions and restrictions as for observing the county canvass. In the event that one of the randomly selected voting machines is used for absentee voting, then the prescribed certification procedure shall be used to verify the accuracy of that machine's vote total.

B. For voting machines not used for absentee voting, if the vote totals for the voting system and the voter verifiable and auditable paper trail differ by more than one and one-half percent, the secretary of state shall have a recount conducted for the office in the precincts of the legislative district in which the discrepancy occurred. For voting machines used for absentee voting, if the results of the re-certification process produce an error rate that exceeds one and one-half percent or the error threshold approved for that machine, whichever is more restrictive, the ballots counted on that machine shall be recounted."

Chapter 270 Section 76 Laws 2005

Section 76. A new section of Chapter 1, Article 14 NMSA 1978 is enacted to read:

"CONTESTS, RECOUNTS AND RECHECKS--PROVISIONAL, ABSENTEE AND OTHER PAPER BALLOTS.--The secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest, recount or recheck of election results. All rejected provisional paper ballot envelopes shall be included in any contest,

recount or recheck of election results, and a review of the qualification of provisional ballot envelopes shall occur in a recount."

Chapter 270 Section 77 Laws 2005

Section 77. Section 1-14-15 NMSA 1978 (being Laws 1978, Chapter 48, Section 1, as amended) 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. The state canvassing board may condition the issuance of the summons on a receipt of a portion of or the full estimated costs of the recount or recheck to ensure sufficient security.

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, the board members shall not be entitled to such mileage or fees."

Chapter 270 Section 78 Laws 2005

Section 78. TEMPORARY PROVISION--RECOMPILATION.-- Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is recompiled as Section 1-12-7.2 NMSA 1978.

Chapter 270 Section 79 Laws 2005

Section 79. REPEAL.--Sections 1-5-9, 1-5-13, 1-5-15, 1-5-20, 1-5-27 through 1-5-29 and 1-6-21 NMSA 1978 (being Laws 1969, Chapter 240, Sections 111, 115 and 120, Laws 1977, Chapter 222, Section 11, Laws 1975, Chapter 255, Sections 81 through 83 and Laws 1975, Chapter 255, Section 93, as amended) are repealed.

Chapter 270 Section 80 Laws 2005

Section 80. REPEAL.--Laws 2003, Chapter 356, Section 18 is repealed.

Chapter 270 Section 81 Laws 2005

Section 81. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 74 and 76 through 80 of this act is July 1, 2005.

B. The effective date of the provisions of Section 75 of this act is January 1, 2007.

SJC/SRC/Senate Bills 678, 680, 718 & 735, aa

Approved April 6, 2005

LAWS 2005, CHAPTER 271

AN ACT

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; PROVIDING AUTHORITY TO OBTAIN NATIONWIDE CRIMINAL HISTORY RECORDS FOR EMPLOYMENT PURPOSES.

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

Chapter 271 Section 1 Laws 2005

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 department services and resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery and contracting for services across divisions and related agencies;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families;

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;

E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. enact regulations to control disposition and placement of children under the Children's Code, including regulations to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement responsibility for children's mental health and substance abuse services in the state, coordinating with the human services department and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee;

L. ensure that behavioral health services provided, including mental health and substance abuse services for children, adolescents and their families, shall be in compliance with requirements of Section 9-7-6.4 NMSA 1978; and

M. fingerprint and conduct nationwide criminal history record searches on all department employees whose jobs involve direct contact with department clients, including prospective employees and employees who are promoted, transferred or hired into new positions."

Chapter 271 Section 2 Laws 2005

Section 2. A new section of the Children, Youth and Families Department Act is enacted to read:

"CRIMINAL HISTORY RECORD INVESTIGATIONS--PROCEDURE--
CONFIDENTIALITY--VIOLATION--PENALTY.--

A. The department shall submit fingerprints for each individual required to be fingerprinted pursuant to the Children, Youth and Families Department Act to the department of public safety and the federal bureau of investigation.

B. Criminal histories obtained are confidential and shall be used only for the purpose of determining the suitability of an employee or prospective employee for employment by the department; except that criminal histories may be released or disclosed to another agency or person only upon court order or with the written consent of the person who is the subject of the criminal history record.

C. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and if convicted shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Senate Bill 91, aa

Approved April 6, 2005

LAWS 2005, CHAPTER 272

AN ACT

RELATING TO HIGHER EDUCATION ARTICULATION; REQUIRING A COMMON COURSE NAME AND NUMBERING SYSTEM FOR LOWER-DIVISION COURSES IN PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS; REQUIRING ACCEPTANCE OF TRANSFER MODULES; REQUIRING INSTITUTIONS TO REIMBURSE STUDENTS FOR COSTS OF COURSES NOT ACCEPTED FOR TRANSFER; REQUIRING REPORTS.

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

Chapter 272 Section 1 Laws 2005

Section 1. Section 21-1B-1 NMSA 1978 (being Laws 1995, Chapter 224, Section 1) is amended to read:

"21-1B-1. SHORT TITLE.--Chapter 21, Article 1B NMSA 1978 may be cited as the "Post-Secondary Education Articulation Act"."

Chapter 272 Section 2 Laws 2005

Section 2. Section 21-1B-2 NMSA 1978 (being Laws 1995, Chapter 224, Section 2) is amended to read:

"21-1B-2. DEFINITIONS.--As used in the Post-Secondary Education Articulation Act:

A. "articulation" means the transfer of course credit from one institution to another;

B. "commission" means the commission on higher education;

C. "discipline module" means lower-division courses, including the general education core, that meet the lower-division college-level requirements for a specific degree;

D. "general education core" means the grouping of lower division general education courses of at least thirty-five hours that are established by the commission for transfer and that are accepted by all institutions for transfer purposes;

E. "institution" means an accredited, public post-secondary educational institution operating in the state; and

F. "module" or "transfer module" means a standardized list of courses established by the commission for which credit is accepted for transfer from one institution to another."

Chapter 272 Section 3 Laws 2005

Section 3. Section 21-1B-3 NMSA 1978 (being Laws 1995, Chapter 224, Section 3) is amended to read:

"21-1B-3. ARTICULATION PLAN--DEVELOPMENT-- IMPLEMENTATION-- ESTABLISHMENT OF TRANSFER MODULE.--

A. The commission shall establish and maintain a comprehensive statewide plan to provide for the articulation of educational programs and facilitate the transfer of students between institutions.

B. In establishing a statewide articulation plan, the commission shall:

(1) establish a common course naming and numbering system for courses identified as substantially equivalent lower-division courses; provided that the commission shall establish an interim mechanism of a statewide equivalency table that uses a universal taxonomy to identify substantially equivalent courses until the common system is in place;

(2) establish a process to identify courses as substantially equivalent. The process shall:

(a) include a procedure for each course whereby faculty members from each segment teaching the academic discipline will reach mutual agreement on the material to be taught and the competencies to be gained;

(b) ensure that the content of each course is comparable across institutions offering that course;

(c) ensure that substantially all the content agreed to among the institutions as the content to be covered by a course is in fact covered in that course and that students successfully completing the course will achieve like competencies with respect to the content covered; and

(d) ensure that the content requirements for each course will be sufficient to prepare students for upper division course work in that field; and

(3) define, publish and maintain modules of lower-division courses accepted for transfer at all institutions and meeting requirements for lower-division requirements established for associate and baccalaureate degree-granting programs.

C. The commission shall ensure that institutions develop transfer modules that include approximately sixty-four hours of lower-division college-level credit.

D. Transfer modules shall include a common general education core component of not less than thirty-five semester hours. This general education core shall include a comprehensive array of lower-division college-level courses designed to demonstrate skills in communication, mathematics, science, social and behavioral science, humanities, fine arts or comparable areas of study coordinated for the purpose of providing a foundation for a liberal education for all programs normally leading to a baccalaureate degree. The general education core shall transfer as a block and count as required lower-division coursework toward a degree, and any course in the core shall be transferable and shall count as credit hours toward fulfilling an institution's general education core requirements.

E. Any course in the general education core may be offered for dual credit to secondary school students and, upon successful completion, the course shall be

transferable to any institution and shall count as fulfilling a required lower-division course.

F. A discipline module shall consist of an agreed-upon number of hours and courses, including the general education core, of approximately sixty-four hours applicable to the discipline and any course within the discipline module is transferable and shall count toward fulfilling degree requirements at a four-year institution."

Chapter 272 Section 4 Laws 2005

Section 4. Section 21-1B-4 NMSA 1978 (being Laws 1995, Chapter 224, Section 4) is amended to read:

"21-1B-4. USE OF TRANSFER MODULE--TRANSFER OF CREDITS.--

A. Each institution shall accept for transfer course credits earned by a student at any other institution that are included in a transfer module. Transfer credits shall be accepted to meet lower-division graduation requirements of an institution's degree-granting programs. This provision also applies to any course that is part of a transfer module.

B. An institution shall not increase requirements for degree-granting programs as a result of the use of a transfer module or acceptance of a course that is part of a transfer module. An institution may specify additional lower-division or upper-division requirements not included in a discipline module for one or more programs of study, provided that those requirements apply equally to transfer students and students originating their study at the institution.

C. Each institution shall accept completed transfer modules in total as a block and shall count the modules, whether they are the general education core or a specific discipline module, as fulfilling required lower-division coursework. Upon transfer of a completed discipline module, a student shall be granted admission to the upper-division program, except in limited access programs."

Chapter 272 Section 5 Laws 2005

Section 5. Section 21-1B-5 NMSA 1978 (being Laws 1995, Chapter 224, Section 5) is amended to read:

"21-1B-5. OVERSIGHT OF ARTICULATION PROGRAMS--COMPLAINT PROCEDURES.--

A. The commission shall establish and maintain a process to monitor and improve articulation through frequent and systematic consultation with institutions. Institutions shall monitor the progress of each transfer student and provide appropriate information to the student's originating institution.

B. The commission shall establish a complaint procedure for transfer students who fail to receive credit for courses contained in a transfer module taken at another institution. The commission may set standards for determining bona fide complaints, including a requirement that students follow institutions' internal procedures for resolving complaints prior to submitting them to the commission. The commission shall investigate all articulation complaints and render decisions as to the appropriateness of the actions of the participants.

C. Prior to December 31 of each year, the commission shall summarize all articulation complaints filed with the commission and the decisions of the commission with regard to those complaints. For those complaints for which the commission finds merit, the commission shall calculate the number of credits refused at the receiving institution and recommend a corresponding reduction of legislative funding to the next session of the legislature.

D. When a module becomes effective as provided in Subsection F of Section 21-1B-6 NMSA 1978, if a student's articulation complaint regarding courses contained in a module is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution."

Chapter 272 Section 6 Laws 2005

Section 6. A new section of the Post-Secondary Education Articulation Act is enacted to read:

"ARTICULATION COMPLAINT PROCESS--NOTIFICATION.--The receiving institution shall publish in the student handbook or otherwise notify transfer students of the complaint process to be followed in the event that a transfer module course is not accepted for credit. The notification shall include the remedy available to the student if the complaint is upheld."

Chapter 272 Section 7 Laws 2005

Section 7. Section 21-1B-6 NMSA 1978 (being Laws 1995, Chapter 224, Section 6) is amended to read:

"21-1B-6. REPORTING.--

A. Prior to December 31 of each year, the commission shall report to the legislative finance committee, the legislative education study committee and the governor regarding the status of articulation programs and the transfer of students between institutions.

B. The report developed by the commission shall include an analysis of the number of students transferring between campuses, the number of credits being

requested and accepted for transfer, institutions denying transfer of credits and reasons for denial, the progress of transfer students at receiving institutions, the average number of credit hours earned by graduating transfer students compared to the average number of credit hours earned by graduates who originated at the institution and a summary of student complaints regarding articulation. The report shall include data and other information obtained on both a statewide and individual institution basis.

C. The report shall look at outcomes with regard to such factors as transfer rates, persistence rates after transfer and graduation rates.

D. The report shall identify each institution against which a meritorious complaint has been filed. The report shall summarize the recommendations of the commission with regard to those complaints.

E. All institutions shall provide articulation information required by the commission for the development of the annual report prior to September 30 of each year.

F. The general education core, the discipline module for business and early childhood education and the common course numbering and naming system for all courses in those modules shall be effective by spring semester 2006, and the printed materials of all institutions shall conform to the system by fall 2006. A minimum of three additional discipline modules shall be effective not later than fall semester 2007 and an additional three discipline modules by

fall semester 2008."

Senate Bill 161, aa

Approved April 6, 2005

LAWS 2005, CHAPTER 273

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; INCREASING EMPLOYER AND EMPLOYEE CONTRIBUTIONS.

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

Chapter 273 Section 1 Laws 2005

Section 1. Section 22-11-21 NMSA 1978 (being Laws 1967, Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE

UNITS.--

A. Each member shall make contributions to the fund according to the following schedule:

(1) through June 30, 2005, an amount equal to seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006, an amount equal to seven and six hundred seventy-five thousandths percent of the member's annual salary;

(3) from July 1, 2006 through June 30, 2007, an amount equal to seven and seventy-five hundredths percent of the member's annual salary;

(4) from July 1, 2007 through June 30, 2008, an amount equal to seven and eight hundred twenty-five thousandths percent of the member's annual salary; and

(5) on and after July 1, 2008, an amount equal to seven and nine-tenths percent of the member's annual salary.

B. Each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) through June 30, 2005, a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2005 through June 30, 2006, a sum equal to nine and forty hundredths percent of the annual salary of each member employed by the local administrative unit;

(3) from July 1, 2006 through June 30, 2007, a sum equal to ten and fifteen hundredths percent of the annual salary of each member employed by the local administrative unit;

(4) from July 1, 2007 through June 30, 2008, a sum equal to ten and ninety hundredths percent of the annual salary of each member employed by the local administrative unit;

(5) from July 1, 2008 through June 30, 2009, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(6) from July 1, 2009 through June 30, 2010, a sum equal to twelve and four-tenths percent of the annual salary of each member employed by the local administrative unit;

(7) from July 1, 2010 through June 30, 2011, a sum equal to thirteen and fifteen hundredths percent of the annual salary of each member employed by the local administrative unit; and

(8) on and after July 1, 2011, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit."

Senate Bill 181, aa

Approved April 6, 2005

LAWS 2005, CHAPTER 274

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING CONSTRUCTION OF SCHOOL FACILITIES TO COMPLY WITH THE STATEWIDE ADEQUACY STANDARDS; REQUIRING MAINTENANCE PLANS FOR ALL PUBLIC SCHOOLS; INCREASING DISTRIBUTIONS PURSUANT TO THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT; CREATING A PROGRAM TO REPAIR OR REPLACE DAMAGED ROOFS OF PUBLIC SCHOOL FACILITIES; PROVIDING STANDARDS FOR CHARTER SCHOOL FACILITIES; PROVIDING FOR THE ASSESSMENT OF CHARTER SCHOOL FACILITIES; EXTENDING THE TIME PERIOD OF EXEMPT STATUS FOR PUBLIC SCHOOL FACILITIES AUTHORITY EMPLOYEES; SHIFTING THE OFFSET FOR PREVIOUS APPROPRIATIONS FOR EDUCATIONAL TECHNOLOGY; CHANGING CERTAIN FUNDING CRITERIA FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS; CHANGING THE DUTIES, COMPOSITION AND TERM OF THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE; RESTRICTING PROPERTY INSURANCE PROCEEDS; PROVIDING THAT CERTAIN BOND PROCEEDS BE TRANSFERRED IMMEDIATELY UPON SALE OF THE BONDS; REQUIRING THE APPLICATION OF STATE CONSTRUCTION STANDARDS AND CERTAIN FIRE REGULATIONS TO PUBLIC SCHOOL FACILITIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 274 Section 1 Laws 2005

Section 1. A new section of the Severance Tax Bonding Act, Section 7-27-12.3 NMSA 1978, is enacted to read:

"7-27-12.3. ADMINISTRATION OF CERTAIN BOND PROCEEDS APPROPRIATED TO THE PUBLIC SCHOOL CAPITAL OUTLAY FUND.-- Proceeds of severance tax bonds and supplemental severance tax bonds previously or hereafter issued by the state board of finance that are appropriated to the public school capital outlay fund for the purpose of carrying out the provisions of the Public School Capital Outlay Act shall, except to the extent that the proceeds are derived from any bonds the interest on which is excluded from federal income tax, be transferred by the state board of finance immediately upon receipt to the public school capital outlay fund. All money so transferred shall be administered for disbursement purposes by the public school capital outlay council consistent with the requirements of the Public School Capital Outlay Act."

Chapter 274 Section 2 Laws 2005

Section 2. A new section of the 1999 Charter Schools Act, Section 22-8B-4.2 NMSA 1978, is enacted to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section;

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."

Chapter 274 Section 3 Laws 2005

Section 3. Section 22-15A-9 NMSA 1978 (being Laws 1994, Chapter 96, Section 9, as amended) is amended to read:

"22-15A-9. EDUCATIONAL TECHNOLOGY FUND--DISTRIBUTION.--

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the school district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time-equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (6) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection; and

(6) the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Paragraph (5) of this subsection multiplied by the value calculated pursuant to Paragraph (4) of this subsection.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. A school district receiving funding pursuant to the Technology for Education Act is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act, on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days."

Chapter 274 Section 4 Laws 2005

Section 4. Section 22-20-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 270, as amended) is amended to read:

"22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

A. Each local school board shall secure the approval of the director of the public school facilities authority or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. A written application shall be submitted to the director requesting approval of the construction, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;
- (3) the estimated cost;
- (4) a description of the proposed construction project;
- (5) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and
- (6) such other information as may be required by the director.

B. The director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;
- (5) the construction project:
 - (a) is in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act; and

(b) if relevant, is appropriately integrated into the school district master plan;

(6) the school district is financially able to pay for the construction;
and

(7) the secretary has certified that the construction will support the educational program of the school district.

C. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local school board making the application and the department of approval or disapproval of the application.

D. A local school board shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act,

provided that, for a contract funded in whole or in part with insurance proceeds:

(1) the cost of settlement of any insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contract; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

E. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district.

F. The provisions of Subsection E of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

G. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting."

Chapter 274 Section 5 Laws 2005

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. Except as provided in Subsections G through K of this section, money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program.

C. The council may authorize the purchase by the public school facilities authority of portable classrooms 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 portable classrooms shall rest in the public school facilities authority. The council shall authorize the lending of the portable classrooms 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 portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms 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 portable classrooms by the public school facilities authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. The council shall require as a condition of application that a school district have a current five-year facilities plan, which shall include a current preventive maintenance plan to which the school adheres for each public school in the school 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 or an expenditure has been ordered by a court pursuant to Section 22-24-5.4 NMSA 1978. At the discretion of the council, money for a project shall be distributed as follows:

(1) up to ten percent of the portion of the project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater,

may be paid to the school district before work commences with the balance of the grant award made on a cost-reimbursement basis; or

(2) the council may authorize payments directly to the contractor.

G. Balances in the fund may be annually appropriated for the core administrative functions of the public school facilities authority pursuant to the Public School Capital Outlay Act and, in addition, balances in the fund may be expended by the public school facilities authority, upon approval of the council, for project management expenses; provided that:

(1) the total annual expenditures from the fund pursuant to this subsection shall not exceed five percent of the average annual grant assistance authorized from the fund during the three previous fiscal years; and

(2) any unexpended or unencumbered balance remaining at the end of a fiscal year from the expenditures authorized in this subsection shall revert to the fund.

H. Up to one million two hundred fifty thousand dollars (\$1,250,000) of the balances of the fund may be expended in fiscal years 2003 and 2004 by the council for the purpose of updating and refining the statewide assessment study required by Section 22-24-5 NMSA 1978 and for the training of state and local officials on the use of the database and other data-management-related issues identified by the council.

I. Up to thirty million dollars (\$30,000,000) of the fund may be allocated annually by the council in fiscal years 2006 and 2007 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that all money allocated pursuant to this subsection shall be expended prior to September 1, 2008.

J. Up to four million dollars (\$4,000,000) from the fund may be expended annually by the council in fiscal years 2005 through 2009 for grants to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council, provided that, an application on behalf of a charter school shall be made by the school district but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

(1) the amount of a grant to a school district shall not exceed:

(a) the actual annual lease payments owed for leasing classroom space for schools, including charter schools, in the district; or

(b) three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009 multiplied by the number of MEM using the leased classroom facilities; provided that, if the total grants awarded pursuant to this paragraph would exceed the total annual amount available, the rate specified in this subparagraph shall be reduced proportionately;

(2) a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal No Child Left Behind Act of 2001;

(3) at the end of each fiscal year, any unexpended or unencumbered balance of the appropriation shall revert to the fund; and

(4) as used in this subsection, "MEM" means:

(a) the average full-time-equivalent enrollment using leased classroom facilities on the fortieth, eightieth and one hundred twentieth days of the prior school year; or

(b) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school application, provided that, after the fortieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date.

K. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the public school facilities authority to reimburse the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority shall enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection."

Chapter 274 Section 6 Laws 2005

Section 6. A new section of the Public School Capital Outlay Act, Section 22-24-4.3 NMSA 1978, is enacted to read:

"22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

A. The council shall develop guidelines for a roof repair and replacement initiative pursuant to the provisions of this section.

B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council. The application shall include an assessment of the roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.

C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve roof repair or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.

E. The state share of the cost of an approved project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district prior to September 1, 2008."

Chapter 274 Section 7 Laws 2005

Section 7. A new section of the Public School Capital Outlay Act, Section 22-24-4.4 NMSA 1978, is enacted to read:

"22-24-4.4. SERIOUS ROOF DEFICIENCIES--CORRECTION.--

A. To complete the program to correct outstanding deficiencies, those serious deficiencies in the roofs of public school facilities identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act, the cost of correcting the deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

B. It is the intent of the legislature that all awards for correcting outstanding deficiencies in public school roofs that may adversely affect the health and safety of students and school personnel be made pursuant to this section no later than September 30, 2005 and that funds be expended no later than September 30, 2007."

Chapter 274 Section 8 Laws 2005

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. Applications for grant assistance, the approval of applications, the prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section; provided, however, that the order of priority in the two years beginning July 1, 2004 shall first reflect those specific projects that were partially funded by the council in September 2003 but are not as yet completed, excluding any expansion of the scope of those projects and contingent upon maintenance of the required local support. In that transition period, such projects shall be funded regardless of any deviation from the statewide adequacy standards; provided that the amount of the award received shall not exceed the amount necessary to meet the statewide adequacy standards, including projected enrollment growth.

B. Except as provided in Subsection A of this section and in Sections 22-24-4.3 and 22-24-5.4 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978:

(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 C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools; and

(b) in an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs; and

(c) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) except as provided in Paragraph (6) or (8) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph. No later than May 1 of each calendar year, a value shall be calculated for each school district in accordance with the following procedure:

(a) the final prior year net taxable value for a school district divided by the MEM for that school district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

(d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;

(e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

(f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;

(g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act, the Public School Buildings Act, the Education Technology Equipment Act and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;

(h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;

(i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;

(j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;

(k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

(l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;

(m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;

(n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the value for the subject school district;

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the value for the subject school district;

(p) except as reduced pursuant to Paragraph (6) of this subsection, the amount to be distributed from the fund for an approved project: 1) in calendar year 2005, shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in 2005 plus the value calculated for that district in 2004 and the denominator of which is two; and 2) in calendar year 2006 and each subsequent calendar year, shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in the current year plus the value calculated for that school district in each of the two preceding years and the denominator of which is three; and

(q) as used in this paragraph: 1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the fortieth, eightieth and one hundred twentieth days of the prior school year; and 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, but excluding educational technology appropriations made prior to January 1, 2005 and reauthorizations of appropriations previously made to the subject school district, is calculated; provided that an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation; provided further that the total shall be increased by an amount, certified to the council by the department, equal to the educational technology appropriations made to the subject school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act;

(b) the applicable fraction used for the subject school district and the current calendar year for the calculation in Subparagraph (p) of Paragraph (5) of this subsection is subtracted from one;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (b) of this paragraph for that school district;

(d) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other

approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(7) as used in Paragraphs (5) and (6) of this subsection, "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located;

(8) the council may adjust the amount of local share otherwise required if it determines that a school district has used all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the fortieth, eightieth and one hundred twentieth days of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district has: 1) an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; and

(9) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's

five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (5), (6) or (8) of this subsection, is not funded with grant assistance from the fund; provided that school district funds used for a project that was initiated after September 1, 2002 when the statewide adequacy standards were adopted, but before September 1, 2004 when the standards were first used as the basis for determining the state and school district share of a project, may be applied to the school district portion required for that project;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application; 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.

C. After consulting with the public school capital outlay task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C 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.

E. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

F. 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.

G. Upon the recommendation of the public school facilities authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

H. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature."

Chapter 274 Section 9 Laws 2005

Section 9. Section 22-24-5.3 NMSA 1978 (being Laws 2003, Chapter 147, Section 5) is amended to read:

"22-24-5.3. PREVENTIVE MAINTENANCE PLANS--GUIDELINES--
APPROVAL.--

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and

(4) evaluation and auditing.

B. The council shall develop, implement and maintain a uniform web-based facility information management system. Within available appropriations, the council shall develop a schedule and procedure for phasing all school districts into the system, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act. The facility information management system shall:

(1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;

(2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and

(3) facilitate training of facilities maintenance and management personnel.

C. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

D. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

(1) the school district has a preventive maintenance plan that has been approved by the council; and

(2) if applicable, the school district is participating in the implementation of the facility information management system.

E. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment."

Chapter 274 Section 10 Laws 2005

Section 10. Section 22-24-7 NMSA 1978 (being Laws 2001, Chapter 338, Section 12, as amended) is amended to read:

"22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE--
CREATION--STAFF.--

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-four members as follows:

(1) the secretary of finance and administration or the secretary's designee;

(2) the secretary of public education or the secretary's designee;

(3) the state investment officer or the state investment officer's designee;

(4) the speaker of the house of representatives or the speaker's designee;

(5) the president pro tempore of the senate or the president pro tempore's 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) two minority party members of the house of representatives, appointed by the New Mexico legislative council;

(8) two minority party members of the senate, appointed by the New Mexico legislative council;

(9) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;

(10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;

(11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;

(12) three public members, two of whom are residents of school districts 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 governor; and

(13) three superintendents of school districts or their designees, two of whom are from school districts 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 public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force."

Chapter 274 Section 11 Laws 2005

Section 11. Section 22-24-8 NMSA 1978 (being Laws 2001, Chapter 338, Section 13, as amended) is amended to read:

"22-24-8. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE--DUTIES.--The public school capital outlay oversight task force shall:

A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;

B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;

C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;

E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature."

Chapter 274 Section 12 Laws 2005

Section 12. Section 22-24-9 NMSA 1978 (being Laws 2003, Chapter 147, Section 1, as amended) is amended to read:

"22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--POWERS AND DUTIES.--

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director and deputies shall be exempt from the provisions of the Personnel Act; after July 1, 2006, all other employees of the authority shall be subject to the provisions of the Personnel Act.

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:
 - (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
 - (b) procurement of architectural and engineering services;
 - (c) management and oversight of construction activities; and
 - (d) training programs;
- (4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;
- (5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;

(6) ensure that public school capital outlay projects are in compliance with applicable building codes;

(7) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;

(8) require the use of standardized construction documents and the use of a standardized process for change orders;

(9) have access to the premises of a project and any documentation relating to the project;

(10) after consulting with the department, recommend building standards for public school facilities to the council and ensure compliance with building standards adopted by the council;

(11) notwithstanding the provisions of Subsection D of Section 22-24-6 NMSA 1978, account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee and the legislature;

(12) maintain a database of the condition of school facilities and maintenance schedules; and

(13) ensure that outstanding deficiencies are corrected pursuant to Section 22-24-4.1 NMSA 1978. In the performance of this duty, the authority:

(a) shall work with school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;

(b) shall work with school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;

(c) shall oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;

(d) may conduct on-site inspections while the deficiencies correction work is being done to ensure that the construction specifications are being met and may periodically inspect all of the documents relating to the projects;

(e) may require the use of standardized construction documents and the use of a standardized process for change orders;

(f) may access the premises of a project and any documentation relating to the project; and

(g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act.

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

D. A school district, aggrieved by a decision or recommendation of the authority, may appeal the matter to the council by filing a notice of appeal with the council within thirty days of the authority's decision or recommendation. Upon filing of the notice:

(1) the decision or recommendation of the authority shall be suspended until the matter is decided by the council;

(2) the council shall hear the matter at its next regularly scheduled hearing or at a special hearing called by the chair for that purpose;

(3) at the hearing, the school district, the authority and other interested parties may make informal presentations to the council; and

(4) the council shall finally decide the matter within ten days after the hearing."

Chapter 274 Section 13 Laws 2005

Section 13. A new section of the Public School Capital Outlay Act is enacted to read:

"PUBLIC FACILITIES TO BE USED BY CHARTER SCHOOLS--
ASSESSMENT.--

A. Prior to the occupancy of a public facility by a charter school, the charter school shall notify the council of the intended use, together with such other information as required by rule of the council.

B. Within sixty days of the notification to the council, the public school facilities authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

C. Once assessed pursuant to Subsection B of this section, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. As used in this section, "public facility" means a building owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or a tribal government."

Chapter 274 Section 14 Laws 2005

Section 14. Section 22-18-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 228, as amended) is amended to read:

"22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE.-- After consideration of the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, purchasing or improving school grounds, purchasing computer software and hardware for student use in public schools, providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act or any combination of these purposes. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code."

Chapter 274 Section 15 Laws 2005

Section 15. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection C or G of this section, the secretary 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 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) the amount calculated pursuant to Subsection D of this subsection per program unit; and

(2) for fiscal year 2006 and thereafter, an additional amount certified to the secretary by the public school capital outlay council. No later than June 1, 2005 and each June 1 thereafter, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. For fiscal year 2004 and thereafter, notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, except as provided in Subsection G of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection E of this section, multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate.

D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal fifty dollars (\$50.00) through fiscal year 2005, sixty dollars (\$60.00) in fiscal year 2006 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

E. For purposes of calculating the minimum distribution pursuant to Subsection C of this section, the amount used in that subsection shall equal five dollars (\$5.00) through fiscal year 2005 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price

index for the United States, all items, as published by the United States department of labor.

F. In expending distributions made pursuant to this section, school districts shall give priority to maintenance projects. In addition, distributions made pursuant to this section may be expended by school districts for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978.

G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.

H. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council."

Chapter 274 Section 16 Laws 2005

Section 16. A new section of the Public School Code is enacted to read:

"PREVENTIVE MAINTENANCE PLANS--PARTICIPATION IN FACILITY INFORMATION MANAGEMENT SYSTEM.--Each school district shall:

A. develop and implement a preventive maintenance plan following guidelines adopted by the public school capital outlay council pursuant to Section 22-24-5.3 NMSA 1978; and

B. participate in the facility information management system pursuant to the schedule adopted by the public school capital outlay council."

Chapter 274 Section 17 Laws 2005

Section 17. Section 22-29-1 NMSA 1978 (being Laws 1986, Chapter 94, Section 1) is amended to read:

"22-29-1. SHORT TITLE.--Chapter 22, Article 29 NMSA 1978 may be cited as the "Public School Insurance Authority Act"."

Chapter 274 Section 18 Laws 2005

Section 18. A new section of the Public School Insurance Authority Act is enacted to read:

"EXPENDITURE OF INSURANCE PROCEEDS FOR PUBLIC SCHOOLS.-- Payment for a claim under property insurance coverage for property damage to public school facilities may be paid directly to the school district, or, pursuant to the Procurement Code, the insurance proceeds may be expended by the insurer to repair the damage. If the payment is made directly to the school district, without further approval of the authority or any insurance carrier, the proceeds of the insurance payment may be expended by the school district to repair or replace the damaged facility if:

A. the school district complies with the Procurement Code; and

B. contracts for the repair or replacement are approved by the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, provided that:

(1) the cost of settlement of the insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contracts; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them."

Chapter 274 Section 19 Laws 2005

Section 19. APPROPRIATIONS.--

A. One million five hundred sixty-two thousand dollars (\$1,562,000) is appropriated from the public school capital outlay fund to the public school facilities authority for expenditure in fiscal years 2005 through 2007 for the purpose of developing and implementing a uniform, statewide web-based facility information management system pursuant to the provisions of Section 22-24-5.3 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the public school capital outlay fund.

B. Two hundred eighty-four thousand four hundred dollars (\$284,400) is appropriated from the public school capital outlay fund to the public school capital outlay council to make grants in fiscal year 2005 for the purpose of reimbursing charter schools that are in their first year of operation in the 2004-2005 school year for lease payments. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the public school capital outlay fund. The amount of a grant to a charter school shall be determined pursuant to Paragraph (1) of Subsection J of Section 22-24-4 NMSA 1978, provided that:

(1) the amount per MEM used in Subparagraph (b) of Paragraph (1) of Subsection J of Section 22-24-4 NMSA 1978 shall be three hundred dollars (\$300); and

(2) the MEM shall be calculated on the enrollment in the charter school on the fortieth, eightieth and one hundred twentieth days of the 2004-2005 school year.

Chapter 274 Section 20 Laws 2005

Section 20. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SFC/Senate Bill 455, aa, w/ec

Approved April 6, 2005

LAWS 2005, CHAPTER 275

AN ACT

RELATING TO INSURANCE; ENACTING THE PERSONAL INSURANCE CREDIT INFORMATION ACT; REGULATING THE USE OF CREDIT INFORMATION FOR PERSONAL INSURANCE.

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

Chapter 275 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "Personal Insurance Credit Information Act".

Chapter 275 Section 2 Laws 2005

Section 2. PURPOSE AND APPLICATION.--The Personal Insurance Credit Information Act regulates the use of credit information in the underwriting, rating or renewal of personal insurance for the protection of consumers and applies to personal insurance written by an insurer or a group of affiliated insurers authorized to do business in this state or written pursuant to the FAIR Plan Act, but does not apply to commercial insurance or any other types of insurance.

Chapter 275 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Personal Insurance Credit Information Act:

A. "adverse action" means a denial or cancellation of, an increase in a charge for or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, insurance, existing or applied for, in connection with the underwriting, rating or renewal of personal insurance, which adverse action occurs when an insurer offers insurance at less favorable terms than it would have offered a consumer if the consumer's credit information had been more favorable;

B. "affiliate" means a company that directly or indirectly controls, is controlled by or is under the common ownership or control of another company;

C. "company placement" means the assignment of a consumer to a particular insurer within a group of affiliates;

D. "consumer" means an individual applicant or insured whose credit information is relied upon or used to calculate an insurance score for underwriting, rating or renewing a personal insurance coverage;

E. "consumer reporting agency" means a person or entity that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties;

F. "credit information" means a written, oral or other communication of information prepared by a consumer reporting agency or provided by the consumer on an application for or renewal of credit, bearing on a consumer's credit worthiness, credit standing or credit capacity, that is used or expected to be used or collected in whole or in part for the purpose of underwriting, rating or renewing a personal insurance coverage;

G. "insurance score" means a number or rating that is derived from an algorithm, computer application, model or other process that is based in whole or in part on credit information and is used for underwriting, rating or renewing personal insurance coverage;

H. "personal insurance" means private passenger automobile, homeowners', motorcycle, mobile-homeowners', boat, personal watercraft, snowmobile, recreational vehicle, noncommercial dwelling fire, personal umbrella or any other type of insurance policy that is individually underwritten for personal, family or household use; and

I. "superintendent" means the superintendent of the insurance division of the public regulation commission.

Chapter 275 Section 4 Laws 2005

Section 4. USE OF CREDIT INFORMATION--LIMITS ON USE.--An insurer or group of affiliated insurers authorized to do business in New Mexico that uses credit information to underwrite, rate or renew personal insurance coverage shall not:

A. use an insurance score that is calculated using income, gender, address, race, color, national origin, religion or marital status of the consumer as a factor;

B. deny, cancel or fail to renew coverage, or base a consumer's company placement, tier placement or rates, on the basis of credit information or an insurance score without consideration of other underwriting factors permitted by state law;

C. consider an absence of credit information or an inability to calculate an insurance score in underwriting, rating or renewing personal insurance coverage unless the insurer:

(1) classifies the consumer as having average or better than average credit information for that insurer or group of affiliated insurers; or

(2) excludes the use of credit information as a factor in rating or underwriting personal insurance coverage;

D. take adverse action against a consumer based upon credit information, or upon an insurance score calculated from credit information, submitted more than ninety days before the date of notice of the adverse action;

E. use credit information upon renewal unless the insurer obtains current credit information and recalculates the insurance score at least every thirty-six months. Upon the request of a consumer, an insurer that uses credit information upon renewal shall obtain current credit information and recalculate an insurance score. An insurer shall not be required to obtain current credit information or recalculate an insurance score more frequently than every twelve months except for the correction of an error as described in Section 6 of the Personal Insurance Credit Information Act. The Personal Insurance Credit Information Act does not require an insurer to obtain current credit information or recalculate an insurance score if:

(1) an improved insurance score would not cause the consumer to be placed in a more favorably priced company or tier of the insurer; or

(2) the insurer does not rely upon credit information or an insurance score to underwrite, rate or renew the consumer's personal insurance coverage;

F. use an insurance score in whole or in part to deny, restrict or alter the fees charged for a premium payment plan; or

G. use credit inquiries as a factor in any insurance scoring methodology or to underwrite, rate or renew personal insurance coverage.

Chapter 275 Section 5 Laws 2005

Section 5. EXCEPTION PROCEDURES.--

A. As used in this section, "extraordinary life circumstance" means:

- (1) an acute or chronic medical condition, illness, injury or disease;
- (2) divorce;
- (3) death of a spouse, child or parent;
- (4) involuntary loss of employment for more than three consecutive months;
- (5) identity theft;
- (6) total or other loss that makes a home uninhabitable; or
- (7) other circumstances prescribed by the superintendent in a rule.

B. Insurers that use credit information to calculate an insurance score or to underwrite, rate or renew personal insurance coverage shall, upon written request from a consumer, provide a reasonable exception to the insurer's rates, rating classifications, company placement, tier placement or underwriting policies, procedures or guidelines when that consumer's credit information has been adversely impacted by an extraordinary life circumstance that has occurred within three years of the date of application for or renewal of personal insurance coverage.

C. Insurers shall file their extraordinary life circumstances exception policies and procedures and amendments to the policies and procedures with the superintendent. Filings shall include the following:

- (1) a list of extraordinary life circumstances;
- (2) procedures describing how a consumer may apply for the extraordinary life circumstances exception;
- (3) a description of the required substantiating information;
- (4) general guidelines for when an extraordinary life circumstances exception will be granted;

(5) a description of how a consumer's treatment in underwriting or rating would be modified by the granting of an extraordinary life circumstances exception;

(6) time frames for considering the extraordinary life circumstances exception request; and

(7) any other information prescribed by the superintendent in a rule.

D. An insurer's extraordinary life circumstances exception policies and procedures shall be effective for use upon filing with the superintendent.

E. The superintendent may disapprove an insurer's extraordinary life circumstances exception policies or procedures at any time upon providing the insurer with a sixty-day written notice setting forth the reasons for the disapproval. Disapproval shall be based upon a determination that the extraordinary life circumstances exception policies and procedures as contained in the filing are inadequate pursuant to this section, and the notice of disapproval shall specify the respects in which they are inadequate. An insurer affected by a disapproval may request a hearing before the superintendent pursuant to Section 59A-4-15 NMSA 1978, and the request for a hearing stays the effectiveness of the disapproval. No disapproval shall affect an action or determination made by an insurer concerning an application or policy of insurance made prior to the date of a notice of final determination of the disapproval.

F. An insurer may require the consumer to provide reasonable, independently verifiable written documentation of the event and the direct effect of the event on the consumer's credit before granting an exception.

G. An insurer that grants an extraordinary life circumstances exception shall maintain that exception for an amount of time that is reasonable for the particular circumstance. Once that reasonable amount of time is exhausted, the insurer is not required to grant another exception for the same specific extraordinary life circumstance.

H. An insurer is not out of compliance with a law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.

Chapter 275 Section 6 Laws 2005

Section 6. ERROR CORRECTION.--If it is determined by a consumer reporting agency that a consumer's credit information is inaccurate or incomplete and the insurer is notified of this determination by the consumer reporting agency or the consumer, the insurer or its group of affiliated insurers shall re-underwrite and re-rate the consumer's personal insurance coverage within thirty days of receiving the notice, refund any overpaid premium and, if necessary, make a related adjustment, including company placement, consistent with its filed underwriting and rating guidelines.

Chapter 275 Section 7 Laws 2005

Section 7. INITIAL NOTIFICATION OF USE OF CREDIT INFORMATION.--

A. If an insurer uses credit information to calculate an insurance score to underwrite, rate or renew personal insurance coverage, the insurer shall disclose to the consumer at least once, either at the time of application or upon the first renewal subsequent to December 31, 2005, in writing or in the same medium as the application or renewal, that it uses that information.

B. An insurer may use the following disclosure language to comply with the requirements of this section: "In connection with your application for insurance coverage, we may review and use information contained in your credit report to help determine your premium or your eligibility for coverage."

Chapter 275 Section 8 Laws 2005

Section 8. ADVERSE ACTION NOTIFICATION.--

A. If an insurer takes an adverse action based upon credit information, the insurer shall notify the consumer in writing, or in the same medium as the application or renewal, of the nature of the adverse action, the reasons for the adverse action and the insurer's extraordinary life circumstances exception policies and procedures as provided by Section 5 of the Personal Insurance Credit Information Act.

B. The notification shall identify, in clear and simple language and in descending order of importance, the four most important factors that prevented the consumer from receiving a more favorable insurance score. The factors shall be identified with sufficient specificity that a consumer can identify the factors on a standard credit report.

C. In addition to the information described in Subsections A and B of this section, the notification shall include any other language prescribed by rule issued by the superintendent.

Chapter 275 Section 9 Laws 2005

Section 9. INSURANCE SCORING FILINGS.--

A. Insurers and groups of affiliated insurers that use credit information or insurance scores to underwrite, rate or renew personal insurance coverage shall, prior to implementation or amendment, file with the superintendent their scoring models and all scoring ingredients and processes, including all criteria, matrices, weightings and score ranges, as well as all resulting rating factors and rating elements, and all resulting guidelines for accepting coverage, for company placement and for tier placement. A filing shall provide examples, either through electronic spreadsheets, formulas, tables or

detailed written documentation, of how scores and underwriting and rating results can be obtained. The filing shall be provided on an affiliated group basis whenever an insurer is an affiliate of an insurance group.

B. A filing that includes credit information or insurance scoring shall include loss experience justifying the design and use of the model.

C. If an insurer files a scoring model that has already been filed with the superintendent by a rate service organization licensed by the superintendent pursuant to Section 59A-17-19 NMSA 1978, the insurer may reference the rate service organization's filing of the model. In such circumstances, if the insurer deviates in any way from the referenced model filed by the rate service organization, the insurer must explain in detail the nature of such deviations.

D. Scoring models, processes and guidelines shall become effective and may be used on the date of filing with the superintendent.

E. The superintendent may issue an order to disapprove a filing at any time upon providing the insurer with a sixty-day written notice of the disapproval. Any such disapproval shall be based upon a determination that the filing under this section is either inadequate pursuant to Subsection A of this section, will result in rates that do not comply with the applicable requirements of the Insurance Rate Regulation Law or will result in uses not compliant with Section 4 of the Personal Insurance Credit Information Act. The notice of disapproval shall specify the bases for the disapproval and the date on which the filing shall be deemed no longer effective. An insurer affected by such a disapproval may request a hearing before the superintendent pursuant to Section 59A-4-15 NMSA 1978, and the request for hearing stays the effectiveness of the disapproval. No disapproval shall affect an action or determination made by an insurer concerning applications or policies of insurance made prior to the date of notice of final determination of the disapproval.

F. Filings made pursuant to this section shall be considered confidential trade secrets under the Uniform Trade Secrets Act.

Chapter 275 Section 10 Laws 2005

Section 10. RULEMAKING AUTHORITY.--The superintendent may adopt rules the superintendent deems necessary to implement and ensure full compliance with the provisions of the Personal Insurance Credit Information Act.

Chapter 275 Section 11 Laws 2005

Section 11. SEVERABILITY.--If any part or application of the Personal Insurance Credit Information Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 275 Section 12 Laws 2005

Section 12. APPLICABILITY.--The provisions of the Personal Insurance Credit Information Act apply to personal insurance policies written to be effective or renewed on or after January 1, 2006.

Chapter 275 Section 13 Laws 2005

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

SENATE BILL 560, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 276

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING THE PUBLIC REGULATION COMMISSION TO CONSIDER THE IMPACT OF ABANDONMENT OF SERVICE ON NEW MEXICO CONSUMERS.

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

Chapter 276 Section 1 Laws 2005

Section 1. Section 62-9-5 NMSA 1978 (being Laws 1941, Chapter 84, Section 48, as amended) is amended to read:

"62-9-5. ABANDONMENT OF SERVICE.--No utility shall abandon all or any portion of its facilities subject to the jurisdiction of the commission, or any service rendered by means of such facilities, without first obtaining the permission and approval of the commission. The commission shall grant such permission and approval, after notice and hearing, upon finding that the continuation of service is unwarranted or that the present and future public convenience and necessity do not otherwise require the continuation of the service or use of the facility; provided, however, that ordinary discontinuance of service or use of facilities for nonpayment of charges, nonuser or other reasons in the usual course of business shall not be considered as abandonment. In considering the present and future public convenience and necessity, the commission shall specifically consider the impact of the proposed abandonment of service on all consumers served in this state, directly or indirectly, by the facilities sought to be abandoned."

SENATE BILL 688

Approved April 6, 2005

LAWS 2005, CHAPTER 277

AN ACT

RELATING TO STATE MUSEUMS; CREATING THE STATE MUSEUMS IMPROVEMENTS AND EXHIBITS FUND FOR SUPPORTING FACILITIES AND EXHIBITS AT NEW MEXICO MUSEUMS; MAKING AN APPROPRIATION.

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

Chapter 277 Section 1 Laws 2005

Section 1. STATE MUSEUMS IMPROVEMENTS AND EXHIBITS FUND CREATED--USE.--

A. The "state museums improvements and exhibits fund" is created in the state treasury. The fund shall consist of:

- (1) money appropriated and transferred to the fund;
- (2) gifts, grants, donations and bequests; and
- (3) fifteen percent of the state museums' admission fees and facilities rentals.

B. Earnings from investment of the state museums improvements and exhibits fund shall be credited to the fund. Money in the fund is appropriated to the cultural affairs department to be distributed to state museums pursuant to the provisions of this section. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of cultural affairs.

C. Money in the state museums improvements and exhibits fund shall be expended by the cultural affairs department for development, implementation and maintenance of exhibitions at state museums and for maintenance and repairs of state museum facilities. Revenues in the fund earned by a specific division shall be expended by that division.

D. As used in this section, "state museum" means a museum, state monument, cultural center or laboratory administered by the cultural affairs department.

Chapter 277 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 905

Approved April 6, 2005

LAWS 2005, CHAPTER 278

AN ACT

RELATING TO INSURANCE; EXTENDING A SURCHARGE ON CERTAIN FEES; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE BONDS FOR THE PURPOSE OF FINANCING INFORMATION AND COMMUNICATION EQUIPMENT; MAKING AN APPROPRIATION.

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

Chapter 278 Section 1 Laws 2005

Section 1. Section 59A-6-1.1 NMSA 1978 (being Laws 1996, Chapter 6, Section 1) is amended to read:

"59A-6-1.1. SURCHARGE IMPOSED--APPROPRIATION.--A three-dollar (\$3.00) surcharge shall be assessed for the period beginning March 1, 1996 and ending June 30, 2009 on the annual continuation of appointment fees imposed in Subsections E, F, N, S, W and X of Section 59A-6-1 NMSA 1978. The surcharge collected shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of principal, interest and any other expenses or obligations related to the bonds issued by the authority to finance information and communication equipment, including computer hardware and software, for the insurance division."

Chapter 278 Section 2 Laws 2005

Section 2. Laws 1996, Chapter 6, Section 3, as amended by Laws 2003, Chapter 306, Section 8, is amended to read:

"NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--
APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in installments or at one time in an amount not exceeding one million dollars (\$1,000,000) for the purpose of financing information and communication equipment, including computer hardware and software, for the insurance division of the public regulation commission.

B. In addition to the bonds issued pursuant to Subsection A of this section, 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 an additional one million dollars (\$1,000,000) for the purpose of financing information and communication equipment, including computer hardware and software, for the insurance division of the public regulation commission.

C. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the superintendent of insurance certifies the need to issue the bonds. The net proceeds from the sale of the bonds are appropriated to the insurance division for the purposes described in Subsections A and B of this section.

D. The proceeds from the surcharge imposed pursuant to Section 59A-6-1.1 NMSA 1978 shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and any other expenses or obligations related to the bonds.

E. The surcharge proceeds distributed to the New Mexico finance authority shall be deposited in a separate fund or account of the authority. At the end of each fiscal year, any money remaining in the separate fund or account from distributions made to the authority during that fiscal year, after all principal, interest and any other expenses or obligations related to the bonds in that fiscal year are fully paid, may be appropriated by the legislature to the insurance division for acquisition, maintenance and operation of information and communication equipment, including computer hardware, software, systems planning, deployment and training. Upon payment of all principal, interest and any other expenses or obligations related to the bonds, the authority shall certify to the insurance division that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the division to cease distributing money pursuant to Section 59A-6-1.1 NMSA 1978 to the authority.

F. Any law authorizing the imposition or distribution of the surcharge or that affects the surcharge shall not be amended, repealed or otherwise directly or indirectly modified to impair any outstanding revenue bonds that may be secured by a pledge of the surcharge collections, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge."

SENATE BILL 975

Approved April 6, 2005

LAWS 2005, CHAPTER 279

AN ACT

RELATING TO SEX OFFENDER REGISTRATION; REVISING DEFINITIONS; ADDING NEW OFFENSES TO REGISTRATION REQUIREMENTS; LENGTHENING REGISTRATION PERIODS FOR CERTAIN OFFENDERS; REQUIRING ADDITIONAL NOTIFICATION AND REGISTRATION INFORMATION; EXPANDING NOTICE REQUIREMENTS TO SEX OFFENDERS; REQUIRING DNA SAMPLES; ESTABLISHING THE SEX OFFENDER DNA IDENTIFICATION SYSTEM; PREEMPTING SEX OFFENDER REGISTRATION AND NOTIFICATION.

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

Chapter 279 Section 1 Laws 2005

Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender Registration and Notification Act:

A. "conviction" means a conviction in any court of competent jurisdiction and includes a deferred sentence, but does not include a conditional discharge;

B. "institution of higher education" means a:

(1) private or public post-secondary educational institution;

(2) trade school; or

(3) professional school;

C. "registration requirement" means any requirement set forth in Section 29-11A-4 NMSA 1978 that requires a sex offender to register, provide information, including a DNA sample, renew, revise or change his registration information or provide written notice or disclosure regarding his status as a sex offender;

D. "sex offender" means a person who:

(1) is a resident of New Mexico who is convicted of a sex offense in New Mexico;

(2) changes his residence to New Mexico, when that person has been convicted of a sex offense in another state pursuant to state, federal, tribal or military law;

(3) is a resident of New Mexico who is convicted of a sex offense pursuant to federal, tribal or military law;

(4) does not have an established residence in New Mexico, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense in New Mexico or any other state pursuant to state, federal, tribal or military law; or

(5) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, including any employment or vocation, whether financially compensated, volunteered or for the purpose of government or educational benefit; or

(b) enrolled on a full-time or part-time basis in a private or public school or an institution of higher education in New Mexico; and

E. "sex offense" means:

(1) criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) kidnapping, as provided in Section

30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(8) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(9) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(10) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;

(11) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(12) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (10) of this subsection, as provided in Section 30-28-1 NMSA 1978."

Chapter 279 Section 2 Laws 2005

Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995, Chapter 106, Section 4, as amended) is amended to read:

"29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a resident of New Mexico shall register with the county sheriff no later than ten days after being released from the custody of the corrections department, a municipal or county jail or a federal, military or tribal correctional facility or detention center or being placed on probation or parole. A sex offender who changes his residence to New Mexico shall register with the county sheriff no later than ten days after his arrival in this state. When a sex offender registers with the county sheriff, he shall provide the following registration information:

(1) his legal name and any other names or aliases that he is using or has used;

(2) his date of birth;

- (3) his social security number;
- (4) his current address;
- (5) his place of employment;
- (6) the sex offense for which he was convicted; and
- (7) the date and place of his sex offense conviction.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff for the county in which the sex offender is working or attending school or an institution of higher education.

D. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff no later than ten days after beginning work or school. When the sex offender registers with the county sheriff, he shall provide the following registration information:

- (1) his legal name and any other names or aliases that he is using or has used;
- (2) his date of birth;
- (3) his social security number;
- (4) his current address in his state of residence and, if applicable, the address of his place of lodging in New Mexico while he is working or attending school or an institution of higher education;
- (5) his place of employment or the name of the school he is attending;
- (6) the sex offense for which he was convicted; and
- (7) the date and place of his sex offense conviction.

E. When a sex offender registers with a county sheriff, the sheriff shall obtain:

- (1) a photograph of the sex offender and a complete set of the sex offender's fingerprints;

(2) a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and

(3) a sample of his DNA for inclusion in the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act.

F. When a sex offender who is registered changes his residence within the same county, the sex offender shall send written notice of his change of address to the county sheriff no later than ten days after establishing his new residence.

G. When a sex offender who is registered changes his residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than ten days after establishing his new residence. The sex offender shall also send written notice of the change in residence to the county sheriff with whom he last registered no later than ten days after establishing his new residence.

H. When a sex offender who is registered or required to register does not have an established residence, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico, the sex offender shall register with the county sheriff for each county in which the sex offender is living or temporarily located. The sex offender shall register no later than ten days after a change in his living arrangements or temporary location.

I. When a sex offender who is registered or required to register is employed, begins a vocation or is enrolled as a student at an institution of higher education in New Mexico, the sex offender shall disclose his status as a sex offender in writing to the county sheriff for the county in which the institution of higher education is located, the law enforcement entity responsible for the institution of higher education and the registrar for the institution of higher education no later than ten days after beginning employment, beginning a vocation or enrolling at the institution of higher education. The sex offender shall also send written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar no later than ten days after the change in his employment, vocation or enrollment status.

J. When a sex offender who is registered or required to register is employed or is enrolled as a student at a public or private school in New Mexico, the sex offender shall disclose his status as a sex offender in writing to the county sheriff for the county in which the school is located and to the principal of the school no later than ten days after enrolling at the school. The sex offender shall also send written notice of any change regarding his enrollment status at a school to the county sheriff and the principal no later than ten days after the change in his enrollment status.

K. When a sex offender who is registered or required to register is employed, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, the sex offender shall disclose his

status as a sex offender in writing to his employer, supervisor or person similarly situated. The written disclosure shall be made immediately upon beginning his employment, vocation or volunteer service.

L. Following his initial registration pursuant to the provisions of this section:

(1) a sex offender required to register pursuant to the provisions of Subsection D of Section 29-11A-5 NMSA 1978 shall renew his registration with the county sheriff not less than once in each ninety-day period following the date of the sex offender's initial registration for the entirety of his natural life; and

(2) a sex offender required to register pursuant to the provisions of Subsection E of Section

29-11A-5 NMSA 1978 shall annually renew his registration with the county sheriff prior to December 31 of each subsequent calendar year for a period of ten years.

M. Notwithstanding the provisions of Paragraph (2) of Subsection L of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in Subsection E of Section 29-11A-5 NMSA 1978, he shall renew his registration with the county sheriff not less than once in each ninety-day period following the date of the sex offender's initial registration for the entirety of his natural life.

N. A sex offender who willfully or knowingly fails to comply with the registration requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly fails to comply with the registration requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful failure to comply with any registration requirement set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

O. A sex offender who willfully or knowingly provides false information when complying with the registration requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly provides false information when complying with the registration requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful providing by a sex offender of false information with respect to the registration requirements set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be

considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978."

Chapter 279 Section 3 Laws 2005

Section 3. Section 29-11A-4.1 NMSA 1978 (being Laws 2000, Chapter 8, Section 6) is amended to read:

"29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM NEW MEXICO TO ANOTHER STATE.--

A. If a sex offender intends to move from New Mexico to another state, no later than thirty days prior to moving to the other state, he shall:

(1) notify the county sheriff of the county he resides in that he is moving to the other state; and

(2) provide the county sheriff with a written notice that identifies the state to which the sex offender is moving.

B. Within five days of receiving a sex offender's written notice of intent to move to another state, the county sheriff shall transmit that information to the department of public safety. Within five days of receiving that information from a county sheriff, the department shall contact the state agency responsible for registering sex offenders in the state to which the sex offender is moving. The department shall provide that state agency with registration information regarding the sex offender. The department shall also obtain information regarding registration requirements for sex offenders in the state to which the sex offender is moving. The department shall provide the sex offender with written notification of the registration requirements in the state to which the sex offender is moving.

C. A sex offender who willfully fails to comply with the requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Chapter 279 Section 4 Laws 2005

Section 4. Section 29-11A-5 NMSA 1978 (being Laws 1995, Chapter 106, Section 5, as amended) is amended to read:

"29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

A. A county sheriff shall maintain a local registry of sex offenders in his jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act.

B. The county sheriff shall forward:

(1) registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides; and

(2) samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act.

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department of public safety shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of his natural life:

(1) criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(5) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; or

(6) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

E. The department of public safety shall retain registration information regarding a sex offender convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

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

(2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(3) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(4) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(5) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(6) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;

(7) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(8) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (6) of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. Notwithstanding the provisions of Subsection E of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in that subsection, the department of public safety shall retain information regarding the sex offender for the entirety of the sex offender's natural life.

G. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act. Rules necessary for the collection of DNA samples and the administration and operation of the

sex offender DNA identification system shall be adopted by the DNA identification system oversight committee pursuant to the provisions of the DNA Identification Act."

Chapter 279 Section 5 Laws 2005

Section 5. Section 29-11A-5.1 NMSA 1978 (being Laws 1999, Chapter 19, Section 8, as amended) is amended to read:

"29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY NOTIFICATION--INTERNET WEB SITE.--

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

(1) criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or

(5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:

(1) sheriff for the county in which the sex offenders reside;

(2) chief law enforcement officer for the municipality in which the sex offenders reside;

(3) district attorney for the judicial district in which the sex offenders reside; or

(4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number and DNA information, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number and DNA information.

E. The department of public safety shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department of public safety shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when he committed the sex offense for which he was convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978, unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or DNA information or a sex offender's place of employment, unless the sex offender's employment requires him to have direct contact with children."

Chapter 279 Section 6 Laws 2005

Section 6. Section 29-11A-7 NMSA 1978 (being Laws 1995, Chapter 106, Section 7, as amended) is amended to read:

"29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO REGISTER.--

A. A court shall provide a sex offender convicted in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall be included in judgment and sentence forms provided to the sex offender. The written notice shall inform the sex offender that he is required to:

(1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;

(2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;

(3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;

(4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;

(5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;

(6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

(9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible court official, designated by the chief judge for that judicial district, has explained the written notice to the sex offender.

B. The corrections department, a municipal or county jail or a detention center at the time of release of a sex offender in its custody, shall provide a written notice to the sex offender of his duty to register, pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall inform the sex offender that he is required to:

(1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;

(2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;

(3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;

(4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;

(5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;

(6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

(9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible corrections department official, designated by the secretary of corrections, or a responsible municipal or county jail official or detention center official has explained the written notice to the sex offender.

C. A court, the corrections department, a municipal or county jail or a detention center shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released and to the department of public safety.

D. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notice to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act."

Chapter 279 Section 7 Laws 2005

Section 7. A new section of the Sex Offender Registration and Notification Act is enacted to read:

"STATE PREEMPTION--SAVING CLAUSE.--

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any ordinance, rule, regulation, resolution or statute on sex offender registration and notification.

B. After January 18, 2005, cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or amending an ordinance, rule, regulation or resolution on sex offender registration and notification. An ordinance in effect on January 18, 2005 shall continue in force and effect until repealed; provided that the ordinance shall only continue in force and effect with regard to sex offenders who are required to register pursuant to the provisions of the ordinance, but who are not required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. All other sex offenders shall register pursuant to the provisions of the Sex Offender Registration and Notification Act."

Chapter 279 Section 8 Laws 2005

Section 8. A new section of the Sex Offender Registration and Notification Act is enacted to read:

"SEVERABILITY.--If any part or application of the Sex Offender Registration and Notification Act is held invalid, the remainder of that act and its application to other situations or persons shall not be affected."

Chapter 279 Section 9 Laws 2005

Section 9. Section 29-16-2 NMSA 1978 (being Laws 1997, Chapter 105, Section 2, as amended) is amended to read:

"29-16-2. PURPOSE OF ACT.--The purpose of the DNA Identification Act is to:

A. establish a DNA identification system for covered offenders;

B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the:

(1) identification, detection or exclusion of persons in connection with criminal investigations; and

(2) registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act;

C. establish a missing persons DNA identification system consisting of the following DNA indexes:

(1) unidentified persons;

(2) unidentified human remains; and

(3) relatives of, or known reference samples from, missing persons;

and

D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains."

Chapter 279 Section 10 Laws 2005

Section 10. Section 29-16-3 NMSA 1978 (being Laws 1997, Chapter 105, Section 3, as amended) is amended to read:

"29-16-3. DEFINITIONS.--As used in the DNA Identification Act:

A. "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system;

B. "DNA oversight committee" means the DNA identification system oversight committee;

C. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

D. "covered offender" means any person convicted of a felony offense as an adult under the Criminal Code, the Motor Vehicle Code or the constitution of New Mexico or convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code or a sex offender required to register pursuant to the provisions of the Sex Offender Registration and Notification Act;

E. "department" means the department of public safety;

F. "DNA" means deoxyribonucleic acid as the basis of human heredity;

G. "DNA identification system" means the DNA identification system established pursuant to the DNA Identification Act;

H. "DNA records" means the results of DNA testing and related information;

I. "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;

J. "fund" means the DNA identification system fund;

K. "missing persons DNA identification system" means the missing persons DNA identification system established by the DNA Identification Act;

L. "sample" means a sample of biological material sufficient for DNA testing; and

M. "sex offender DNA identification system" means the sex offender DNA identification system established by the DNA Identification Act."

Chapter 279 Section 11 Laws 2005

Section 11. Section 29-16-4 NMSA 1978 (being Laws 1997, Chapter 105, Section 4, as amended) is amended to read:

"29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

A. The administrative center shall be an appropriate unit of the department or such other qualified New Mexico law enforcement agency as the secretary of public safety may designate in accordance with this section.

B. The administrative center shall:

(1) establish and administer the DNA identification system. The DNA identification system shall provide for collection, storage, DNA testing, maintenance and comparison of samples and DNA records for forensic and humanitarian purposes. Those purposes shall include generation of investigative leads, statistical analysis of DNA profiles and identification of missing persons and unidentified human remains. Procedures used for DNA testing shall be compatible with the procedures the federal bureau of investigation has specified, including comparable test procedures, laboratory equipment, supplies and computer software. Procedures used shall meet or exceed the provisions of the federal DNA Identification Act of 1994 regarding minimum standards for state participation in CODIS, including minimum standards for the acceptance, security and dissemination of DNA records;

(2) coordinate sample collection activities;

(3) perform or contract for DNA testing;

(4) serve as a repository for samples and DNA records;

(5) act as liaison with the federal bureau of investigation for purposes of CODIS;

(6) adopt rules and procedures governing:

(a) sample collection;

(b) DNA testing;

(c) the DNA identification system and DNA records; and

(d) the acceptance, security and dissemination of DNA records;

(7) be reimbursed for, pursuant to the DNA Identification Act, the costs of sample collection and DNA testing of samples taken for the purposes of the identification of missing persons and unidentified human remains;

(8) establish and administer the missing persons DNA identification system as a part of the DNA identification system; and

(9) establish and administer the sex offender DNA identification system as part of the DNA identification system.

C. The secretary of public safety may designate, pursuant to a joint powers agreement, the crime laboratory of the police department for the largest

municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census to act as the administrative center.

D. The secretary of public safety may designate, pursuant to a joint powers agreement, any other law enforcement agency to act as administrative center upon recommendation of five voting members of the DNA advisory committee."

Chapter 279 Section 12 Laws 2005

Section 12. Section 29-16-5 NMSA 1978 (being Laws 1997, Chapter 105, Section 5, as amended) is amended to read:

"29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND DUTIES.--

A. The "DNA identification system oversight committee" is created. The DNA oversight committee shall be composed of nine voting members as follows:

(1) a scientific representative from the department crime laboratory appointed by the secretary of public safety;

(2) a scientific representative from the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census;

(3) the secretary of corrections or the secretary's designated representative;

(4) the state medical investigator or the investigator's designated representative;

(5) the attorney general or the attorney general's designated representative;

(6) the president of the district attorneys association or the president's designated representative;

(7) the chief public defender or the chief public defender's designated representative;

(8) the president of the New Mexico criminal defense lawyers association or the president's designated representative; and

(9) the head of the administrative center or the head's designated representative.

B. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the DNA identification system.

C. The administrative center shall review and make recommendations to the DNA oversight committee regarding rules and procedures for the administration and operation of the DNA identification system.

D. The DNA oversight committee shall oversee the establishment and administration of the missing persons DNA identification system as part of the DNA identification system.

E. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the missing persons DNA identification system as part of the DNA identification system.

F. The DNA oversight committee shall oversee the establishment and administration of the sex offender DNA identification system as part of the DNA identification system.

G. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the sex offender DNA identification system as part of the DNA identification system."

Chapter 279 Section 13 Laws 2005

Section 13. Section 29-16-6 NMSA 1978 (being Laws 1997, Chapter 105, Section 6, as amended) is amended to read:

"29-16-6. COLLECTION OF SAMPLES.--

A. A covered offender shall provide one or more samples to the administrative center, as follows:

(1) a covered offender convicted on or after July 1, 1997 shall provide a sample immediately upon request of the corrections department so long as the request is made before release from any correctional facility or, if the covered offender is not sentenced to incarceration, before the end of any period of probation or other supervised release;

(2) a covered offender incarcerated on or after July 1, 1997 shall provide a sample immediately upon request of the corrections department so long as the request is made before release from any correctional facility;

(3) a covered offender on probation or other supervised release on or after July 1, 1997 shall provide a sample immediately upon request of the corrections

department so long as the request is made before the end of any period of probation or other supervised release; and

(4) a covered offender required to register or renew his registration pursuant to the provisions of the Sex Offender Registration and Notification Act shall provide a sample immediately upon request by the county sheriff located in any county in which the sex offender is required to register, unless the sex offender provided a sample while in the custody of the corrections department or to the county sheriff of another county in New Mexico in which the sex offender is registered.

B. Samples from unidentified persons or relatives of a missing person shall be provided to the administrative center, as follows:

(1) upon the completion of a permission to search form authorizing the collection of a DNA sample;

(2) upon the receipt of a properly executed search warrant; or

(3) upon the issuance of a court order.

C. Samples from unidentified human remains shall be provided by the state medical investigator.

D. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency."

Chapter 279 Section 14 Laws 2005

Section 14. APPLICABILITY.--The provisions of this 2005 version of the Sex Offender Registration and Notification Act are applicable to:

A. a person convicted of a sex offense on or after July 1, 2005; and

B. a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

Chapter 279 Section 15 Laws 2005

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SUBSTITUTE FOR HOUSE BILL 165

Approved April 7, 2005

LAWS 2005, CHAPTER 280

AN ACT

RELATING TO CONTROLLED SUBSTANCES; MAKING IT A CRIME TO DISTRIBUTE CERTAIN RAPE DRUGS WITHOUT THE RECIPIENT'S KNOWLEDGE; PROVIDING PENALTIES FOR DISTRIBUTING A RAPE DRUG WITHOUT THE RECIPIENT'S KNOWLEDGE AND FOR POSSESSION OF RAPE DRUGS; RECONCILING MULTIPLE AMENDMENTS TO LAWS 1990.

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

Chapter 280 Section 1 Laws 2005

Section 1. Section 30-31-1 NMSA 1978 (being Laws 1972, Chapter 84, Section 1) is amended to read:

"30-31-1. SHORT TITLE.--Chapter 30, Article 31 NMSA 1978 may be cited as the "Controlled Substances Act"."

Chapter 280 Section 2 Laws 2005

Section 2. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

- (5) alphamethadol;
- (6) benzethidine;
- (7) betacetylmethadol;
- (8) betameprodine;
- (9) betamethadol;
- (10) betaprodine;
- (11) clonitazene;
- (12) dextromoramide;
- (13) dextrorphan;
- (14) diampromide;
- (15) diethylthiambutene;
- (16) dimenoxadol;
- (17) dimepheptanol;
- (18) dimethylthiambutene;
- (19) dioxaphetyl butyrate;
- (20) dipipanone;
- (21) ethylmethylthiambutene;
- (22) etonitazene;
- (23) etoxeridine;
- (24) furethidine;
- (25) hydroxypethidine;
- (26) ketobemidone;
- (27) levomoramide;

- (28) levophenacymorphan;
- (29) morpheridine;
- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;

- (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;
- (11) hydromorphinol;
- (12) methyl-desorphine;
- (13) methyl-dihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

C. any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;

- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;
- (10) marijuana;
- (11) mescaline;
- (12) peyote, except as otherwise provided in the Controlled Substances Act;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) psilocybin;
- (16) psilocyn;
- (17) tetrahydrocannabinols; and
- (18) hashish;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

Chapter 280 Section 3 Laws 2005

Section 3. Section 30-31-7 NMSA 1978 (being Laws 1972, Chapter 84, Section 7, as amended) is amended to read:

"30-31-7. SCHEDULE II.--

A. The following controlled substances are included in Schedule II:

(1) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act; and

(f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use of certified patients pursuant to the Controlled Substances Therapeutic Research Act.

Marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act;

(2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(a) alphaprodine;

(b) anileridine;

- (c) bezitramide;
- (d) dihydrocodeine;
- (e) diphenoxylate;
- (f) fentanyl;
- (g) hydromorphone;
- (h) isomethadone;
- (i) levomethorphan;
- (j) levorphanol;
- (k) meperidine;
- (l) metazocine;
- (m) methadone;
- (n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;
- (s) pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;
- (t) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (u) phenazocine;
- (v) piminodine;
- (w) racemethorphan; and

(x) racemorphan;

(3) unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

optical isomers; (a) amphetamine, its salts, optical isomers and salts of its

(b) phenmetrazine and its salts;

isomers; and (c) methamphetamine, its salts, isomers and salts of

(d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of his professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to himself the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both."

Chapter 280 Section 4 Laws 2005

Section 4. Section 30-31-8 NMSA 1978 (being Laws 1972, Chapter 84, Section 8) is amended to read:

"30-31-8. SCHEDULE III.--The following controlled substances are included in Schedule III:

A. any material, compound, mixture or preparation containing limited quantities of any substance having a stimulant effect on the central nervous system which is controlled and listed in Schedule II;

B. unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in another schedule;

(2) chlorhexadol;

(3) glutethimide;

(4) lysergic acid;

(5) lysergic acid amide;

(6) methyprylon;

(7) phencyclidine;

(8) sulfondiethylmethane;

(9) sulfonethylmethane; or

(10) sulfonmethane;

C. nalorphine;

D. any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(3) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per

dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(5) not more than one and eight-tenths grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(6) not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(7) not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; or

(8) not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

E. controlled substances added to Schedule III by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

F. the board may exempt by regulation any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections A and B of this section from the application of any part of the Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system."

Chapter 280 Section 5 Laws 2005

Section 5. Section 30-31-9 NMSA 1978 (being Laws 1972, Chapter 84, Section 9) is amended to read:

"30-31-9. SCHEDULE IV.--The following controlled substances are included in Schedule IV:

A. any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) barbital;
- (2) chloral betaine;
- (3) chloral hydrate;
- (4) ethchlorvynol;
- (5) ethinamate;
- (6) methohexital;
- (7) meprobamate;
- (8) methylphenobarbital;
- (9) paraldehyde;
- (10) petrichloral; or
- (11) phenobarbital;

B. controlled substances added to Schedule IV by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

C. the board may exempt by regulation any compound, mixture or preparation containing any depressant substance listed in Subsection A of this section from the application of all or any part of the Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system."

Chapter 280 Section 6 Laws 2005

Section 6. Section 30-31-22 NMSA 1978 (being Laws 1972, Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--DISTRIBUTION PROHIBITED.--

A. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally distribute or possess with intent to distribute a controlled substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled

substance enumerated in Schedule I or II that is a narcotic drug. Any person who violates this subsection with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

B. It is unlawful for any person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise

conduct or to decline participation in or communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to:

(1) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for a definite term not to exceed six months, or both.

D. Any person who knowingly violates Subsection A or C of this section while within a drug-free school zone, excluding private property residentially zoned or used primarily as a residence, with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(4) the intentional creation, delivery or possession with the intent to deliver:

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) a counterfeit substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of marijuana for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Section 30-31-23 NMSA 1978."

Chapter 280 Section 7 Laws 2005

Section 7. Section 30-31-23 NMSA 1978 (being Laws 1972, Chapter 84, Section 23, as amended by Laws 1990, Chapter 19, Section 5 and also by Laws 1990, Chapter 33, Section 1) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION PROHIBITED.--

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as

otherwise authorized by the Controlled Substances Act. It is unlawful for any person intentionally to possess a controlled substance analog.

B. Any person who violates this section with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both; or

(3) eight ounces or more of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except for those substances listed in Subsection D of this section, any person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

D. Any person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance

analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Any person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding any person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) eight ounces or more of marijuana is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

HOUSE BILL 713, WITH

CERTIFICATE OF CORRECTION

Approved April 7, 2005

LAWS 2005, CHAPTER 281

AN ACT

RELATING TO DOMESTIC ABUSE; REQUIRING MEDICAL PERSONNEL TO DOCUMENT DOMESTIC ABUSE OF A PERSON AND TO PROVIDE INFORMATION AND REFERRAL TO SERVICES; PROVIDING FOR CONFIDENTIALITY OF MEDICAL COMMUNICATIONS RELATED TO DOMESTIC ABUSE.

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

Chapter 281 Section 1 Laws 2005

Section 1. A new section of the Family Violence Protection Act is enacted to read:

"MEDICAL PERSONNEL--DOCUMENTATION OF DOMESTIC ABUSE.--

A. When medical personnel who are interviewing, examining, attending or treating a person:

(1) receive a report from the person of an act of domestic abuse, the medical personnel shall document the nature of the abuse and the name of the alleged perpetrator of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of domestic abuse; or

(2) may have reason to believe or suspect that the person is a victim of domestic abuse, the medical personnel shall provide the person with information and referral to services for victims of domestic abuse.

B. Medical and other health care related information or communications concerning domestic abuse of a person obtained by or from medical personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:

(1) with the prior written consent of the person;

(2) pursuant to a court order; or

(3) when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act.

C. As used in this section, "medical personnel" means:

(1) licensed health care practitioners;

(2) licensed emergency medical technicians;

(3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners; and

(4) residents and interns."

Chapter 281 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 440, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 282

AN ACT

RELATING TO CRIME VICTIM RESTITUTION; ESTABLISHING RESTITUTION AS A PERMISSIBLE LIEN.

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

Chapter 282 Section 1 Laws 2005

Section 1. Section 31-17-1 NMSA 1978 (being Laws 1977, Chapter 217, Section 2, as amended) is amended to read:

"31-17-1. VICTIM RESTITUTION.--

A. It is the policy of this state that restitution be made by each violator of the Criminal Code to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:

(1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;

(2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, "actual damages" includes damages for wrongful death;

(3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and

(4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act or Article 2, Section 24 of the constitution of New Mexico. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.

E. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant; the defendant's age, education, employment circumstances, potential for employment and vocational training, family circumstances and financial condition; the number of victims; the actual damages of each victim; what plan of restitution will most effectively aid the rehabilitation of the defendant; and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of pecuniary damages of each victim.

F. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, pursuant to the provisions of Subsection C of this section.

G. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

H. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

I. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

J. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages."

HOUSE BILL 555

Approved April 7, 2005

LAWS 2005, CHAPTER 283

AN ACT

RELATING TO CRIME VICTIMS; PROVIDING AN OPPORTUNITY FOR A VICTIM OF CRIME TO MAKE A STATEMENT AT A COURT PROCEEDING AND TO BE INFORMED OF PLEA AGREEMENTS; REQUIRING NOTICE TO VICTIMS OF SCHEDULED COURT PROCEEDINGS.

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

Chapter 283 Section 1 Laws 2005

Section 1. A new section of the Victims of Crime Act is enacted to read:

"CRIME VICTIM PRESENCE AT COURT PROCEEDINGS--PLEA AGREEMENT NOTIFICATION.--

A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in Section 31-26-4 NMSA 1978. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:

(1) reschedule the hearing; or

(2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(3) order the district attorney to notify the victim of the rescheduled hearing.

B. The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case.

C. The provisions of this section shall not require the court to continue or reschedule any proceedings if it would result in a violation of a jurisdictional rule."

Chapter 283 Section 2 Laws 2005

Section 2. Section 31-26-1 NMSA 1978 (being Laws 1994, Chapter 144, Section 1) is amended to read:

"31-26-1. SHORT TITLE.--Chapter 31, Article 26 NMSA 1978 may be cited as the "Victims of Crime Act"."

Chapter 283 Section 3 Laws 2005

Section 3. Section 31-26-9 NMSA 1978 (being Laws 1994, Chapter 144, Section 9) is amended to read:

"31-26-9. PROCEDURES FOR PROVIDING VICTIMS WITH NOTICE OF RIGHTS AND INFORMATION REGARDING PROSECUTION OF A CRIMINAL OFFENSE-- DISTRICT ATTORNEYS.--

A. Within seven working days after a district attorney files a formal charge against the accused for a criminal offense, the district attorney shall provide the victim of the criminal offense with:

(1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;

(2) a copy of the Victims of Crime Act;

(3) a copy of the charge filed against the accused for the criminal offense;

(4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and

(5) the name of a person within the district attorney's office whom the victim may contact for additional information regarding prosecution of the criminal offense.

B. The district attorney's office shall provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding attendant to the criminal offense."

HOUSE BILL 692, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 284

AN ACT

RELATING TO COURTS; CREATING ADDITIONAL JUDGESHIPS IN THE SECOND, NINTH AND ELEVENTH JUDICIAL DISTRICTS AND IN THE BERNALILLO COUNTY

METROPOLITAN COURT; CREATING ADDITIONAL MAGISTRATES IN SAN JUAN, SANDOVAL AND SANTA FE COUNTIES; MAKING APPROPRIATIONS.

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

Chapter 284 Section 1 Laws 2005

Section 1. Section 34-6-5 NMSA 1978 (being Laws 1968, Chapter 69, Section 8, as amended) is amended to read:

"34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall be twenty-four district judges in the second judicial district."

Chapter 284 Section 2 Laws 2005

Section 2. Section 34-6-12 NMSA 1978 (being Laws 1968, Chapter 69, Section 15, as amended) is amended to read:

"34-6-12. JUDGES--NINTH JUDICIAL DISTRICT.--There shall be four district judges in the ninth judicial district. The judge of division three shall reside in Curry or Roosevelt county and maintain a principal office in Roosevelt county. As used in this section, "maintain a principal office" means holding court or being available to hold court no less than one hundred forty days during each calendar year."

Chapter 284 Section 3 Laws 2005

Section 3. Section 34-6-14 NMSA 1978 (being Laws 1968, Chapter 69, Section 17, as amended by Laws 1995, Chapter 178, Section 3 and also by Laws 1995, Chapter 179, Section 1) is amended to read:

"34-6-14. JUDGES--ELEVENTH JUDICIAL DISTRICT.--There shall be seven district judges in the eleventh judicial district. The judges of divisions one, three, four and six shall reside and maintain their principal offices in San Juan county. The judges of divisions two, five and seven shall reside and maintain their principal offices in McKinley county."

Chapter 284 Section 4 Laws 2005

Section 4. Section 34-8A-4.1 NMSA 1978 (being Laws 1981, Chapter 318, Section 2, as amended) is amended to read:

"34-8A-4.1. METROPOLITAN COURT JUDGES--TERMS OF OFFICE.--The term of office for each judge of the metropolitan court is four years. Judges shall be appointed, elected and retained in accordance with Article 6 of the constitution of New Mexico."

Chapter 284 Section 5 Laws 2005

Section 5. Section 34-8A-8 NMSA 1978 (being Laws 1979, Chapter 346, Section 8, as amended) is amended to read:

"34-8A-8. METROPOLITAN COURT--BERNALILLO DISTRICT.--

A. The name of the metropolitan court in the Bernalillo metropolitan district shall be the "Bernalillo county metropolitan court".

B. The metropolitan court is an agency of the judicial department of state government. Personnel of the metropolitan court are subject to all laws and regulations applicable to state officers and agencies and state officers and employees, except where otherwise specifically provided by law.

C. There shall be eighteen judges of the Bernalillo county metropolitan court."

Chapter 284 Section 6 Laws 2005

Section 6. Section 35-1-26 NMSA 1978 (being Laws 1968, Chapter 62, Section 28) is amended to read:

"35-1-26. MAGISTRATE COURT--SANDOVAL DISTRICT.--There shall be three magistrates in Sandoval magistrate district, divisions 1 and 3 in Bernalillo and division 2 in Cuba."

Chapter 284 Section 7 Laws 2005

Section 7. Section 35-1-27 NMSA 1978 (being Laws 1968, Chapter 62, Section 29, as amended) is amended to read:

"35-1-27. MAGISTRATE COURT--SAN JUAN DISTRICT ELECTION DIVISION PRECINCTS.--

A. There shall be five magistrate divisions in San Juan magistrate district, each division having its own magistrate. Divisions 1 and 4 shall operate as a single court in Aztec and divisions 2, 3 and 5 shall operate as a single court in Farmington.

B. Magistrate judges shall not be elected at large from the district, but shall be elected by the voters of the division for which the magistrate sits. Magistrate judges may reside anywhere within the magistrate district and shall have district-wide jurisdiction. The composition of the divisions for elections purposes is:

(1) division 1 is composed of San Juan county precincts 60 through 69 and 72 through 76;

(2) division 2 is composed of San Juan county precincts 2 through 4, 8 through 14, 18, 19 and 82;

(3) division 3 is composed of San Juan county precincts 20, 22 through 25, 27, 30, 40 through 44, 46, 47 and 49;

(4) division 4 is composed of San Juan county precincts 1, 5 through 7, 15, 16, 53, 57, 58, 71, 79, 81 and 83 through 86; and

(5) division 5 is composed of San Juan county precincts 21, 26, 28, 29, 31, 45, 51, 52, 54 through 56, 59 and 70."

Chapter 284 Section 8 Laws 2005

Section 8. Section 35-1-29 NMSA 1978 (being Laws 1968, Chapter 62, Section 31, as amended) is amended to read:

"35-1-29. MAGISTRATE COURT--SANTA FE DISTRICT.--There shall be four magistrates in the Santa Fe magistrate district, divisions 1, 2, 3 and 4 operating as a single court in Santa Fe; however, one magistrate shall ride circuit to Pojoaque on a regularly scheduled basis."

Chapter 284 Section 9 Laws 2005

Section 9. TEMPORARY PROVISION--DISTRICT AND METROPOLITAN JUDGES--APPOINTMENTS.--The additional district and metropolitan judgeships provided for in this 2005 act shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

Chapter 284 Section 10 Laws 2005

Section 10. TEMPORARY PROVISION--MAGISTRATE COURT--APPOINTMENTS AND ELECTION.--The offices of magistrate in San Juan division 5, Sandoval division 3 and Santa Fe division 4 shall be filled by appointments by the governor to begin serving on July 1, 2005. The appointed magistrates shall serve until succeeded by magistrates elected at the general election in 2006. The first full term of office of the elected magistrates shall begin on January 1, 2007.

Chapter 284 Section 11 Laws 2005

Section 11. APPROPRIATIONS.--

A. The following amounts are appropriated from the general fund to the following agencies for expenditure in fiscal year 2006 for the following purposes:

(1) three hundred twelve thousand four hundred twenty-nine dollars (\$312,429) to the second judicial district for salaries and benefits and furniture, supplies and equipment for one additional district judge and support staff;

(2) three hundred twelve thousand four hundred twenty-nine dollars (\$312,429) to the ninth judicial district for salaries and benefits and furniture, supplies and equipment for one additional district judge and support staff;

(3) three hundred twelve thousand four hundred twenty-nine dollars (\$312,429) to the eleventh judicial district for salaries and benefits and furniture, supplies and equipment for one additional district judge and support staff;

(4) five hundred eighty-four thousand three hundred ninety dollars (\$584,390) to the Bernalillo county metropolitan court for salaries and benefits and furniture, supplies and equipment for two additional judges, one of which shall have a fiscal year 2006 docket composed primarily of criminal offenses associated with driving while intoxicated, and support staff;

(5) one hundred six thousand two hundred sixty-nine dollars (\$106,269) to the administrative office of the courts for salary and benefits and furniture, equipment and supplies for one additional magistrate judge in the San Juan magistrate district;

(6) one hundred six thousand two hundred sixty-nine dollars (\$106,269) to the administrative office of the courts for salary and benefits and furniture, equipment and supplies for one additional magistrate judge in the Sandoval magistrate district; and

(7) one hundred six thousand two hundred sixty-nine dollars (\$106,269) to the administrative office of the courts for salary and benefits and furniture, equipment and supplies for one additional magistrate judge in the Santa Fe magistrate district.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

Chapter 284 Section 12 Laws 2005

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 901, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 285

AN ACT

RELATING TO OCCUPATIONS; CHANGING THE POWERS AND DUTIES OF THE WATER QUALITY CONTROL COMMISSION AND THE DEPARTMENT OF ENVIRONMENT PERTAINING TO REGULATION OF UTILITY OPERATORS; INCREASING FEES; PROVIDING FOR HEARINGS AND APPEALS; MAKING AN APPROPRIATION.

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

Chapter 285 Section 1 Laws 2005

Section 1. Section 61-33-2 NMSA 1978 (being Laws 1992, Chapter 44, Section 2, as amended) 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 department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

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

C. "department" means the department of environment;

D. "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;

E. "domestic liquid waste treatment unit" means any system that is designed to discharge less than two thousand gallons per day and that is subject to rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

F. "operate" means performing any activity, function, process control decision or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public wastewater facility or to affect human health, public welfare or the environment;

G. "person" means any agency, department or instrumentality of the United States and any of its 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."

Chapter 285 Section 2 Laws 2005

Section 2. Section 61-33-3 NMSA 1978 (being Laws 1973, Chapter 394, Section 3, as amended) is amended to read:

"61-33-3. ADMINISTRATION--ENFORCEMENT.--

A. The administration and enforcement of the Utility Operators Certification Act is vested in the department.

B. The department shall:

(1) approve and accredit schools and training programs designed to educate and qualify persons for certification in one of the classifications of public water supply system operators or public wastewater facility operators;

(2) prepare and administer written and practical examinations, based on nationally accepted standards, for certification of applicants as operators for

one of the facility classifications established pursuant to Subsection A of Section 61-33-4 NMSA 1978;

(3) enter into agreements, contracts or cooperative arrangements with persons; and

(4) receive and accept financial and technical assistance."

Chapter 285 Section 3 Laws 2005

Section 3. Section 61-33-4 NMSA 1978 (being Laws 1973, Chapter 394, Section 4, as amended) is amended to read:

"61-33-4. POWERS AND DUTIES OF COMMISSION.--The commission may adopt rules relating to the administration and enforcement of the Utility Operators Certification Act. The commission shall:

A. adopt rules that classify public water supply systems and public wastewater facilities based on:

(1) size and type of system or facility;

(2) capacity of the system or facility based on the size of the serviced area and the number and size of the users to be served;

(3) type and character of the water or wastewater to be treated; and

(4) physical conditions affecting the treatment plants, collection systems and distribution systems;

B. adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications;

C. appoint a seven-member board from certified operators to function with the commission to establish qualifications of operators, classify public water supply systems and public wastewater facilities, adopt rules and advise the department on the administration of the Utility Operators Certification Act. Two board members selected by the board shall sit as commission members on matters to which that act is applicable;

D. adopt and file under the State Rules Act rules necessary to carry out the provisions of the Utility Operators Certification Act; and

E. adopt rules providing criteria for identifying the minimum number of certified operators needed to operate the various classifications of public water supply

systems or public wastewater facilities in order to protect human health, public welfare or the environment."

Chapter 285 Section 4 Laws 2005

Section 4. Section 61-33-5 NMSA 1978 (being Laws 1973, Chapter 394, Section 5, as amended) is amended to read:

"61-33-5. APPLICATION REQUIREMENTS--FEES--FUND

CREATED--ENDORSEMENT.--

A. An applicant for certification as a certified operator shall:

- (1) make application on forms furnished by the department;
- (2) submit evidence satisfactory to the department that the applicant has reached the age of majority; and
- (3) pay in advance to the department fees set by rule not to exceed:
 - (a) for examination for certification in each classification
\$100;
 - (b) for renewal of a certificate after a period set by rule
\$40; and
 - (c) for issuance of a certificate by endorsement \$100.

B. Fees collected pursuant to Subsection A of this section shall be deposited with the state treasurer in the "public water supply system operator and public wastewater facility operator fund", hereby created. The fund shall be used solely for the purpose of administering and enforcing the Utility Operators Certification Act. The fund shall be administered by the department. Money in the fund shall be retained by the department for use, subject to appropriation by the legislature. Balances in the fund at the end of any fiscal year shall not revert to the general fund, but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. The department may, in its discretion, endorse for certification without examination an operator who submits evidence satisfactory to the department that the applicant has reached the age of majority and holds a valid license or certification in any state, territory or foreign jurisdiction having standards equal to or exceeding those of New Mexico.

D. Fees shall not be increased more than once per calendar year. The first increase of the fees shall not result in any fee greater than thirty dollars (\$30.00). Any subsequent increase of the fees shall not be more than five percent of the existing fee."

Chapter 285 Section 5 Laws 2005

Section 5. Section 61-33-6 NMSA 1978 (being Laws 1973, Chapter 394, Section 6, as amended) is amended to read:

"61-33-6. CERTIFICATION REQUIRED--PROHIBITION.--It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate certification level."

Chapter 285 Section 6 Laws 2005

Section 6. Section 61-33-7 NMSA 1978 (being Laws 1973, Chapter 394, Section 7, as amended) is amended to read:

"61-33-7. SUSPENSION AND REVOCATION.--The department, in accordance with the provisions of the Uniform Licensing Act relating to notice and hearing, may suspend or revoke a certification upon the grounds that the certified operator:

- A. committed fraud or deceit in procuring the certification;
- B. committed gross incompetence in the operation of a public water supply system or public wastewater facility;
- C. was derelict in the performance of a duty as a certified operator;
- D. performed in the capacity of a higher classification of certified operator than that in which the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility; or
- E. is convicted of any violation of Section 61-33-8 NMSA 1978 or any state or federal water quality statutes."

Chapter 285 Section 7 Laws 2005

Section 7. Section 61-33-8 NMSA 1978 (being Laws 1973, Chapter 394, Section 8, as amended) is amended to read:

"61-33-8. PROHIBITIONS--PENALTY.--

- A. It is unlawful for any person not certified as an operator to:

(1) use the title "certified operator" or words of similar import in connection with the person's employment;

(2) represent himself as a certified operator; or

(3) perform the duties of a certified operator, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility.

B. Any violation of the provisions of this section is a misdemeanor."

Chapter 285 Section 8 Laws 2005

Section 8. Section 61-33-10 NMSA 1978 (being Laws 1992, Chapter 44, Section 10) is amended to read:

"61-33-10. ENFORCEMENT--COMPLIANCE ORDERS.--

A. Whenever, on the basis of any information, the department determines that a person has violated, is violating or threatens to violate any requirement of the Utility Operators Certification Act, any rule adopted pursuant to that act or any condition of a certification issued under that act, the department may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and either 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 penalty assessed in the compliance order shall not exceed two thousand five hundred dollars (\$2,500) per day for each violation of any provision of the Utility Operators Certification Act, any rule adopted pursuant to the provisions of that act or any condition of a certification issued under that act.

C. In assessing any penalty authorized by this section, the department shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

D. If a violator fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than five thousand dollars (\$5,000) for each day of continued noncompliance with the compliance order.

E. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the department for a public hearing. Upon receiving a request, the department shall promptly conduct a public hearing. A complete record of the proceedings shall be made and preserved.

F. The department may appoint a hearing officer to preside over the public hearing held pursuant to this section. If a hearing officer is appointed, the hearing officer shall forward a recommendation based upon the record to the secretary of environment, who shall make the final decision.

G. In connection with any proceeding pursuant to the provisions of this section, the department may:

(1) adopt rules for discovery procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents.

H. A person aggrieved by an adverse final decision of the secretary may appeal the decision to the commission. The appeal shall be on the record. The commission may, upon motion by a party, receive either oral or written arguments by the parties limited to the evidence contained in the record.

I. All penalties collected pursuant to this section shall be deposited in the general fund to the credit of the current school fund."

Chapter 285 Section 9 Laws 2005

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 153, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 286

AN ACT

RELATING TO STATE AGENCIES; ENUMERATING DIVISIONS OF THE PUBLIC EDUCATION DEPARTMENT.

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

Chapter 286 Section 1 Laws 2005

Section 1. Section 9-24-1 NMSA 1978 (being Laws 2004, Chapter 27, Section 1) is amended to read:

"9-24-1. SHORT TITLE.--Chapter 9, Article 24 NMSA 1978 may be cited as the "Public Education Department Act"."

Chapter 286 Section 2 Laws 2005

Section 2. Section 9-24-4 NMSA 1978 (being Laws 2004, Chapter 27, Section 4) is amended to read:

"9-24-4. DEPARTMENT CREATED.--

A. The "public education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- (1) the administrative services division;
- (2) the assessment and accountability division;
- (3) the educator quality division;
- (4) the Indian education division;
- (5) the information technology division;
- (6) the instructional support and vocational education division;
- (7) the program support and student transportation division;
- (8) the quality assurance and systems integration division;
- (9) the rural education division; and
- (10) the vocational rehabilitation division.

B. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy."

Approved April 7, 2005

LAWS 2005, CHAPTER 287

AN ACT

RELATING TO FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS OR GRANTS FOR CERTAIN WATER PROJECTS FROM THE WATER PROJECT FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 287 Section 1 Laws 2005

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 72-4A-9 NMSA 1978, the legislature authorizes the New Mexico finance authority to make loans or grants from the water project fund to the following qualified entities for the following qualifying water projects on terms and conditions established by the water trust board and the New Mexico finance authority:

A. to the Dona Ana mutual domestic water consumers association in Dona Ana county for a surface water project;

B. to the interstate stream commission for Middle Rio Grande endangered species collaborative program in Bernalillo county for water and refugium projects;

C. to the city of Aztec in San Juan county for a water storage project;

D. to the city of Alamogordo in Otero county for a regional water project;

E. to the El Rito regional water system in Rio Arriba county for a regional water project;

F. to Raton water works in Colfax county for a watershed project;

G. to the Eastern New Mexico rural water system in Curry county for a water project;

H. to Cuatro Villas mutual domestic water users association in Santa Fe county or Greater Chimayo mutual domestic water users association in Rio Arriba and Santa Fe counties or another entity that consists of water users from both of these associations and that has been approved by the water trust board for a water project;

I. to the Claunch-Pinto soil and water conservation district in Santa Fe, Torrance and Bernalillo counties for a watershed project;

J. to the village of Cloudcroft in Otero county for a water project;

K. to the city of Deming in Luna county for a water project;

L. to the city of Gallup and the Navajo Nation in McKinley county for water projects in communities to be served by the Navajo-Gallup water project;

M. to the city of Las Vegas in San Miguel county for water projects;

N. to the city of Santa Fe in Santa Fe county for a water project;

O. to the Pueblo of Taos in Taos county for the War Chief office watershed project;

P. to the town of Taos in Taos county for a water project;

Q. to Agua Fria mutual domestic water consumers association in Santa Fe county for a water project;

R. to Chama in Rio Arriba county for a water project;

S. to El Prado water and sanitation district in Taos county for water projects;

T. to Guadalupe county for water projects in the Anton Chico area of Guadalupe county;

U. to Santa Fe county for Pojoaque valley water projects;

V. to the office of the state engineer for the Elephant Butte channel extension and maintenance project;

W. to Sunland Park in Dona Ana county for water projects;

X. to Upper La Plata mutual domestic water consumers and sewerage works association in San Juan county for a water project; and

Y. to the Ute Creek soil and water conservation district in Harding county for a watershed restoration and management project.

Chapter 287 Section 2 Laws 2005

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

HOUSE BILL 271, AS AMENDED,

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 288

AN ACT

RELATING TO MOTOR CARRIER INSURANCE; REQUIRING INCIDENTAL CARRIERS TO PROVIDE EVIDENCE OF FINANCIAL RESPONSIBILITY TO THE PUBLIC REGULATION COMMISSION.

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

Chapter 288 Section 1 Laws 2005

Section 1. Section 65-2A-3 NMSA 1978 (being Laws 2003, Chapter 359, Section 3) is amended to read:

"65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "amendment" means a permanent change in the type of service or territory authorized by an existing certificate or permit;

B. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

C. "base state" means the registration state for an interstate motor carrier that either is subject to regulation or is transporting commodities exempt from regulation by the federal motor carrier safety administration pursuant to the single state registration system;

D. "cancellation" means the voluntary, permanent termination of all or part of an operating authority;

E. "certificate" means the operating authority issued by the commission to intrastate common motor carriers of persons or household goods;

F. "change in a certificate or permit" means the amendment, cancellation, change in tariff, change in form of ownership, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

G. "change of name" means a change in the legal name of the owner of an operating authority or in the does-business-as name of the motor carrier, but does not include a change in the form of ownership;

H. "commission" means the public regulation commission;

I. "common control" means control of more than one operating authority of the same kind for the same or overlapping territory;

J. "common motor carrier" means a person offering compensated transportation by motor vehicle to the general public, whether over regular or irregular routes, or under scheduled or unscheduled service, but does not include commuter services;

K. "common tariff" means a tariff applying to two or more common motor carriers;

L. "commuter service" means a person who provides seven- to fifteen-passenger motor vehicles to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is open to the public and incidental to the primary work or training-related purposes of the commuter group, and where the volunteer drivers have no employer-employee relationship with the commuter service;

M. "contract motor carrier" means a person offering compensated transportation by motor vehicle under individual agreements with particular customers or shippers;

N. "control" means the power to direct or cause the direction of the management and policies of a motor carrier deriving from:

(1) ownership of a sole proprietorship, if the operating authority is held by an individual as a sole proprietor;

(2) ownership of ten percent or more of the voting stock of the corporation, if the operating authority is held by a corporation;

(3) a partnership interest in a general partnership, if the operating authority is held by a general partnership;

(4) an interest in a limited partnership of ten percent or more of the total value of contributions made to the limited partnership, or entitlement to ten percent or more of the profits earned or other compensation paid by the limited partnership, if the operating authority is held by a limited partnership;

(5) a membership interest of ten percent or more in a limited liability company, if the operating authority is held by a limited liability company; or

(6) capacity as a trustee, personal representative or other person with a fiduciary duty to a motor carrier;

O. "electronic filing" means submission of a document by facsimile, electronic mail or other electronic transmission;

P. "financial responsibility" means the ability to respond in damages for liability arising out of the ownership, maintenance or use of a motor vehicle in the provision of transportation services;

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

R. "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the federal motor carrier safety administration may provide by regulation, but shall not include property moving from a factory or store, other than property the householder has purchased to use in his dwelling that is transported at the request of, and the transportation charges are paid to the carrier by, the householder;

S. "incidental carrier" means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides;

T. "interested person" means a motor carrier operating over the routes or in the territory involved in an application or grant of temporary authority, a person affected by a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

U. "interstate motor carrier" means a person providing compensated transportation in interstate commerce, whether or not the person is subject to regulation by the federal motor carrier safety administration;

V. "intrastate motor carrier" means a person providing compensated transportation by motor vehicle between points and places in the state;

W. "involuntary suspension" means the temporary cessation of use of all or part of an operating authority ordered by the commission for cause for a stated period of time or pending compliance with certain conditions;

X. "irregular route" means that the route to be used by a motor carrier is not restricted to a specific highway within the territory the motor carrier is authorized to serve;

Y. "lease of a certificate or permit" means an agreement by which the owner of a certificate or permit grants to another the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration;

Z. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another for use by the motor carrier in the exercise of its operating authority;

AA. "motor carrier" means a person offering compensated transportation of persons or property by motor vehicle, whether in intrastate or interstate commerce;

BB. "motor carrier organization" means an organization approved by the commission to discuss and propose a common tariff for a group of motor carriers or to represent motor carriers that have adopted the common tariff;

CC. "motor carrier of persons" means a person who provides compensated transportation of persons on a highway in the state;

DD. "motor vehicle" means a vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used on a highway in the transportation of property or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

EE. "nonconsensual tow" means the compensated transportation of a motor vehicle by a towing service, if such transportation is performed at the request of a law enforcement officer or without the prior consent or authorization of the owner or operator of the motor vehicle;

FF. "operating authority" means a certificate, permit, warrant, single trip ticket, single state registration receipt or temporary authority issued by the commission to a motor carrier;

GG. "permit" means the operating authority issued by the commission to intrastate contract motor carriers of persons or household goods;

HH. "process" means an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

II. "property" means movable articles of value, including cadavers, hazardous matter, farm products, livestock feed, stock salt, manure, wire, posts, dairy products, livestock hauled in lots of twenty-five thousand pounds or more, farm or ranch machinery and the items transported by a towing service, but does not include

household goods or unprocessed farm products transported by a farmer from the place of harvesting to market, storage or a processing plant;

JJ. "protest" means a document filed with the commission by an interested person that expresses an objection to a matter before the commission;

KK. "rate" means a form of compensation charged, whether directly or indirectly, by a person for a transportation service subject to the jurisdiction of the commission;

LL. "record" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information regarding the operation of a motor carrier;

MM. "registration year" means a calendar year;

NN. "regular route" means a route used by a motor carrier within the territory in which the motor carrier is authorized to serve that is fixed by its operating authority;

OO. "revocation" means the involuntary, permanent termination of all or part of an operating authority ordered by the commission for cause;

PP. "shipper" means a person who consigns or receives goods for transportation;

QQ. "single state registration receipt" means the document issued annually to a motor carrier operating in interstate commerce evidencing that proof of financial responsibility and safety has been filed with the base state and that the annual per vehicle fees have been paid for that registration year;

RR. "tariff" means a document filed by a motor carrier of persons or household goods or a towing service performing nonconsensual tows that has been approved by the commission and sets forth the transportation services offered by the motor carrier to the general public, including the rates, terms and conditions and applicable time schedules relating to those services, including a common tariff;

SS. "taxicab service" means a common motor carrier engaged in unscheduled passenger transportation in a motor vehicle having a capacity of not more than eight passengers, including the driver, not operated on a regular route or between specified places, and that:

(1) is licensed as a taxicab service by a state or local jurisdiction; or

(2) if not licensed or regulated by a state or local jurisdiction as a taxicab service, is offered by a person that:

(a) provides local transportation for a fare determined, except with respect to transportation to or from airport, train or bus terminals, primarily on the basis of the distance traveled; and

(b) does not primarily provide transportation to or from one or more airport, train or bus terminals;

TT. "terminal shuttle service" means a common motor carrier engaged in passenger transportation service that:

(1) is prearranged by contract or operated by hire on a regular route, allowing for deviation to pick up or drop off passengers, between specified or generally specified points; and

(2) primarily provides transportation to or from one or more airport, train or bus terminals but may also provide for intermediate pickup or departure of passengers;

UU. "towing services" means the use of specialized equipment, including repossession services using towing equipment, to transport:

(1) a damaged, disabled or abandoned motor vehicle and its cargo;

(2) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;

(3) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;

(4) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer;

(5) a motor vehicle whose driver has been removed from the scene or is unable to drive; or

(6) a motor vehicle repossessed or seized pursuant to lawful authority;

VV. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

WW. "transfer by operation of law" means that the ownership of or interest in a certificate or permit passes to another by application of established rules of law;

XX. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the motor carrier for a specified period of time;

YY. "warrant" means the operating authority issued by the commission to charter services, towing services, commuter services and motor carriers of property; and

ZZ. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods."

Chapter 288 Section 2 Laws 2005

Section 2. Section 65-2A-18 NMSA 1978 (being Laws 2003, Chapter 359, Section 18) is amended to read:

"65-2A-18. FINANCIAL RESPONSIBILITY.--

A. The commission shall prescribe minimum requirements for financial responsibility for all motor carriers, including incidental carriers pursuant to this section. Rules regarding financial responsibility of incidental carriers shall be adopted by July 1, 2006 by the commission, and implementation of the financial responsibility requirements for incidental carriers shall begin on July 1, 2006.

B. A motor carrier or incidental carrier shall not operate on the highways of this state without having filed with the commission proof of financial responsibility in the form and amount as the commission shall by rule prescribe. The maximum amount of financial responsibility, as determined by the commission, for incidental carriers shall not exceed that required of other motor carriers.

C. In prescribing minimum requirements for financial responsibility for motor carriers, the commission shall consider:

(1) the creation of sufficient incentives to motor carriers to maintain and operate their equipment in a safe manner;

(2) the number of passengers being transported;

(3) the nature of the transportation services provided by the motor carrier; and

(4) other factors necessary to ensure that motor carriers maintain an appropriate level of financial responsibility.

D. The commission may authorize a motor carrier to carry its own insurance in lieu of filing a policy of insurance, certificate showing the issuance of a

policy of insurance or a surety bond. In approving an application to be self-insured, the commission shall consider:

- (1) the financial stability of the carrier;
- (2) previous loss history of the carrier;
- (3) the safety record of the carrier;
- (4) the size, nature of operations and other operating characteristics of the carrier; and
- (5) other factors necessary for the protection of passengers, shippers and the public.

E. Notwithstanding any requirement of the New Mexico Insurance Code to the contrary, the commission may accept proof of public liability insurance from an insurer not authorized in New Mexico if:

- (1) the insurance is for an interstate motor carrier transporting commodities exempt from regulation by the federal motor carrier safety administration participating in the single state registration system for those motor carriers; and
- (2) the insurer is authorized to write public liability insurance in at least one other state.

F. All motor carriers shall carry proof of financial responsibility in each motor vehicle they operate in this state."

HOUSE BILL 739, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 289

AN ACT

RELATING TO STATE AGENCIES; CREATING THE HIGHER EDUCATION DEPARTMENT AS A CABINET DEPARTMENT; CREATING A HIGHER EDUCATION ADVISORY BOARD; PROVIDING POWERS AND DUTIES; PROVIDING FOR THE TRANSFER OF APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES OF THE COMMISSION ON HIGHER EDUCATION TO THE HIGHER EDUCATION DEPARTMENT; AMENDING,

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

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

Chapter 289 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Higher Education Department Act".

Chapter 289 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the Higher Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the commission on higher education.

Chapter 289 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the Higher Education Department Act:

- A. "board" means the higher education advisory board;
- B. "department" means the higher education department; and
- C. "secretary" means the secretary of higher education.

Chapter 289 Section 4 Laws 2005

Section 4. DEPARTMENT CREATED.--The "higher education department" is created in the executive branch. The department is a cabinet department. The secretary shall organize the department so that bureaus and divisions exist to focus on the needs of and for the diverse categories of post-secondary institutions, including two-year institutions, four-year institutions, research institutions and institutions with academic medical centers. The secretary shall make recommendations to the second session of the forty-seventh legislature on the statutory organization of the department.

Chapter 289 Section 5 Laws 2005

Section 5. SECRETARY--APPOINTMENT.--

A. The administrative head of the department is the "secretary of higher education", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet. The secretary shall possess a terminal degree from a regionally accredited post-secondary educational institution, a minimum of five

years of senior administrative experience, experience in higher education and experience in the development of public policy at the state or federal level.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the secretary's appointment.

Chapter 289 Section 6 Laws 2005

Section 6. DIVISION DIRECTORS.--The secretary shall appoint directors of the divisions established within the department. Division directors are exempt from the Personnel Act.

Chapter 289 Section 7 Laws 2005

Section 7. BUREAU CHIEFS.--The secretary may establish within each division of the department such bureaus as the secretary deems necessary to carry out the provisions of the Higher Education Department Act. The secretary shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act.

Chapter 289 Section 8 Laws 2005

Section 8. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the duties of the secretary, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Higher Education Department Act or Chapter 21 NMSA 1978, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the duties of the secretary;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution the secretary 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 operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration;

(8) prepare an annual budget for the department; and

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

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 United States government funds, available to the department to carry out its programs, duties or services.

D. 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, 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 the secretary. No rule promulgated by the department shall infringe upon the authority vested by Article 12 of the constitution of New Mexico in the boards of regents of the educational institutions

specified in that article. The final public hearing on adoption, amendment or repeal of a rule 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 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.

Chapter 289 Section 9 Laws 2005

Section 9. ADDITIONAL DUTIES.--Consistent with constitutional provisions relating to the control and management of the educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, the department shall:

A. cooperate with colleges and universities to create a statewide public agenda to meet higher education needs and goals;

B. periodically study and report to the governor and the legislative finance committee on enrollment capacity needs over a ten-year period, based on state demographic models, academic program demands, institutional competencies and infrastructure, state workforce needs, economic development goals and other factors; and

C. by November 1 of each year, present to the legislature a comprehensive funding request and a legislative priorities list for all higher education. The funding request and priorities shall encompass the needs of all public post-secondary educational institutions and programs.

Chapter 289 Section 10 Laws 2005

Section 10. HIGHER EDUCATION ADVISORY BOARD--MEMBERSHIP--TERMS--ADMINISTRATIVE ATTACHMENT.--

A. The "higher education advisory board" is created to advise the department and the governor on policy matters and perform other functions as provided by law. The board is administratively attached to the department, with administrative staff provided by the department.

B. The secretary shall appoint fourteen members giving due regard to geographic representation, cultural diversity and the composition of higher education institutions in New Mexico. Four members shall represent the four-year public post-secondary educational institutions, one of whom shall represent the university of New Mexico, one of whom shall represent New Mexico state university, one of whom shall represent New Mexico institute of mining and technology and one of whom shall

represent either New Mexico highlands university, eastern New Mexico university or western New Mexico university; three members shall represent the two-year public post-secondary educational institutions; one member shall represent the accredited private post-secondary educational institutions; one member shall represent business; one member shall represent college and university faculty; one member shall represent college and university nonfaculty staff; one member shall be a college or university student; one representative of the tribal colleges in New Mexico; and one representative of the Indian nations, tribes and pueblos in New Mexico. The members representing the categories of post-secondary educational institutions shall be the chief executive officers of the institutions of those categories or the chief executive officers' designees. The members representing faculty and nonfaculty staff and the student member shall be the leaders of faculty, staff and student organizations at their respective institutions.

C. Four members of the initial board, including the student member, shall be appointed for two years, five members shall be appointed for three years and five members shall be appointed for four years; thereafter, the student member shall serve a two-year term and the other members shall serve four-year terms. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

D. The board shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

E. The board shall meet at the call of the chair at least quarterly. Meetings of the board shall be held in Santa Fe and at other sites within the state at the direction of the board.

Chapter 289 Section 11 Laws 2005

Section 11. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 of the Higher Education Department Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law; provided, however, that when the department requires confidential institutional data, including student records and other information necessary to fulfill the functions of the department, the secretary and the institution shall cooperate to provide the department with information adequate to meet its needs while meeting all legal requirements to ensure the confidentiality of such information and records.

Chapter 289 Section 12 Laws 2005

Section 12. COOPERATION WITH THE FEDERAL GOVERNMENT--
AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of higher education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement higher education programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any higher education program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any federally funded higher education program not targeted for specific post-secondary educational institutions. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

Chapter 289 Section 13 Laws 2005

Section 13. ADVISORY COMMITTEES.--

A. In addition to the higher education advisory board, the department may create other advisory committees. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act.

B. All members of advisory committees are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Chapter 289 Section 14 Laws 2005

Section 14. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"EDUCATIONAL NEEDS AND GUIDELINES--ACCOUNTABILITY REPORTS.--

A. The higher education department shall, through consultation with all public post-secondary educational institutions, develop and publish a statement of statewide educational needs and guidelines to assist the institutions in the development or modification of institutional strategic plans. The department may conduct studies of statewide educational needs and make recommendations to the governor, the legislature and public post-secondary educational institutions.

B. All public post-secondary educational institutions, including off-campus instruction programs and learning centers, shall:

(1) approve and submit accountability reports prepared in accordance with the statewide public agenda; and

(2) submit budgets for review no later than August 1 each year for the following fiscal year."

Chapter 289 Section 15 Laws 2005

Section 15. Section 21-1-26 NMSA 1978 (being Laws 1951, Chapter 190, Section 1, as amended) is amended to read:

"21-1-26. HIGHER EDUCATION DEPARTMENT--GENERAL

POWERS.--

A. The higher education department shall be concerned with the problems of finance of those educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and other public post-secondary educational institutions in the state. The department shall:

(1) be concerned with the adequate financing of these institutions and with the equitable distribution of available funds among them;

(2) receive, adjust and approve the budgets submitted by these institutions prior to the submission of these budgets to the state budget division of the department of finance and administration;

(3) develop and maintain programs, on a regular basis, for the orientation and in-service education of members of the boards of regents of the various educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and the governing bodies of other public post-secondary educational institutions in the state;

(4) analyze the financial impact of each new degree program of each public post-secondary educational institution as part of the department's review of the institution's operating budget; and

(5) exercise such other powers as may be granted it by law.

B. Effective July 1, 2005, all new state-funded baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational institutions after a timely and thorough consultation with and review by the department.

C. Notwithstanding any other provisions of law, the higher education department may be designated by the governor to administer funds furnished under acts of congress for post-secondary educational institutions, except for funds specifically appropriated or otherwise designated for those educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico.

D. The higher education department is also charged with oversight of all private post-secondary educational institutions operating within the state."

Chapter 289 Section 16 Laws 2005

Section 16. Section 21-1-26.1 NMSA 1978 (being Laws 1980, Chapter 145, Section 2) is amended to read:

"21-1-26.1. ADDITIONAL DUTIES.--In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act, the department shall perform the same planning and budgeting functions for the university of New Mexico hospital as it performs for other post-secondary educational institutions."

Chapter 289 Section 17 Laws 2005

Section 17. Section 21-1-26.2 NMSA 1978 (being Laws 1981, Chapter 69, Section 1) is amended to read:

"21-1-26.2. POST-SECONDARY EDUCATION--ADULT CORRECTIONAL FACILITIES.--Upon approval by the corrections department in consultation with the higher education department, state-supported post-secondary educational institutions shall receive credit on a full-time equivalency basis for students enrolled in their respective programs within adult correctional facilities. Funding recommendations to implement the provisions of this section shall be developed by the higher education department or the public education department as appropriate in the same manner that funding recommendations for similar programs at other institutions are calculated."

Chapter 289 Section 18 Laws 2005

Section 18. Section 21-1-26.3 NMSA 1978 (being Laws 1986, Chapter 24, Section 3, as amended) is amended to read:

"21-1-26.3. VERIFICATION FUNCTION.--The higher education department shall annually conduct special verifications of the institutions of higher education. The verifications shall include enrollments, fund balances, compliance with legislation, comparison of expenditures to budgets and other areas to be determined by the department. Reports on the verifications shall be made annually to the department of finance and administration and the legislative finance committee. The department shall consider the verification findings in making its annual recommendations to the executive and legislature for higher education funding."

Chapter 289 Section 19 Laws 2005

Section 19. Section 21-1-26.7 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 4, Section 2, as amended) is amended to read:

"21-1-26.7. ANNUAL ACCOUNTABILITY REPORT.--

A. The higher education department shall submit an annual accountability report to the governor and to the legislature by December 31. Prior to publication, the department shall distribute a draft of the accountability report to all public post-secondary educational institutions and shall allow comment upon the draft report.

B. The department in consultation with the public post-secondary educational institution shall develop and adopt the content and a format for the report, including the following information:

- (1) student progress and success;
- (2) student access and diversity;
- (3) affordability and cost of educational services; and
- (4) public and community service by the institutions.

C. The department shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public post-secondary educational institution that has not submitted the information required pursuant to this section."

Chapter 289 Section 20 Laws 2005

Section 20. Section 21-1-26.9 NMSA 1978 (being Laws 1998, Chapter 61, Section 2) is amended to read:

"21-1-26.9. LIMITATION--HIGHER EDUCATION DEPARTMENT--REVIEW OF PROPOSED CAMPUSES.--Effective January 1, 1998, no new public post-secondary educational institution, branch campus or off-campus instructional center shall be

created except as specifically created by the legislature. The higher education department shall review any proposal for the establishment of a new public post-secondary educational institution or campus and submit its recommendations to the legislature. In reviewing proposals, the department may consider:

- A. provisions for a local mill levy of at least two mills;
- B. population base to provide at least five hundred full-time students;
- C. whether at least fifty percent of the costs of initial construction comes from private or local sources;
- D. governance structure;
- E. means for acquisition of property, including purchase, lease, donations or any other means;
- F. eligibility and level of funding request of the state; and
- G. brokering of extended learning provisions."

Chapter 289 Section 21 Laws 2005

Section 21. Section 21-1-26.10 NMSA 1978 (being Laws 1999 (1st S.S.), Chapter 6, Section 18) is amended to read:

"21-1-26.10. HIGHER EDUCATION DEPARTMENT--PLAN FOR FUNDING SIGNIFICANT POST-SECONDARY EDUCATIONAL INFRASTRUCTURE NEEDS.-- The higher education department, in conjunction with the governing bodies of the post-secondary educational institutions and other state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, shall develop and approve a five-year plan for funding the infrastructure renovation and expansion projects designated by the department as the highest priority of significant needs. The department shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to appropriations."

Chapter 289 Section 22 Laws 2005

Section 22. Section 21-1-26.11 NMSA 1978 (being Laws 2003, Chapter 394, Section 1) is amended to read:

"21-1-26.11. HIGHER EDUCATION DEPARTMENT--ADDITIONAL DUTIES.--In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act, the department shall plan and budget for the statewide adult basic education program and shall adopt and promulgate rules for all

such adult educational programs. The department shall establish a uniform protocol for identifying, communicating with and providing direct and equitable access to funding for eligible agencies, which include:

- A. local educational agencies;
- B. community-based organizations;
- C. volunteer literacy organizations;
- D. post-secondary institutions;
- E. public or private nonprofit agencies;
- F. public libraries;
- G. public housing authorities; and

H. a consortium of agencies, organizations, institutions, libraries or authorities as described in Section 203 of Public Law 105."

Chapter 289 Section 23 Laws 2005

Section 23. Section 21-1-27 NMSA 1978 (being Laws 1965, Chapter 267, Section 1, as amended) is amended to read:

"21-1-27. HIGHER EDUCATION DEPARTMENT--DISTRIBUTION OF AVAILABLE FUNDS.--In its distribution of available funds and its adjustment and approval of budgets, the higher education department shall not, in any event or in any manner, substitute for public funds any gift, donation, private endowment, patent income or other gratuity received or enjoyed by an institution in determining the adequate financing of an institution under its charge."

Chapter 289 Section 24 Laws 2005

Section 24. Section 21-1-33 NMSA 1978 (being Laws 1974, Chapter 30, Section 2, as amended) is amended to read:

"21-1-33. SYSTEM OF ACCOUNTING AND REPORTING--MANUAL.--

A. The higher education department, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting that includes the reporting of all funds available. The manual shall apply to all institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and all their branches, except the New Mexico school for the

blind and visually impaired and the New Mexico school for the deaf. The manual shall also apply to the two-year public post-secondary educational institutions.

B. The uniform system for budgeting and reporting shall require the submission of at least quarterly financial reports.

C. Following review by the legislative finance committee, the manual shall be reproduced by the department and filed as required by the State Rules Act. Upon the filing, the requirements set forth in the manual shall constitute rules of the department and have the force of law. The department shall review the manual annually. Sections of the manual may be revised or amended from time to time by the department, and revisions or amendments shall become effective upon review by the legislative finance committee and reproduction and filing as provided in this section.

D. All institutions to which this section and Section 21-1-32 NMSA 1978 apply shall comply with all of the requirements in the manual, submit reports to the department as requested and furnish such additional information as the department deems necessary."

Chapter 289 Section 25 Laws 2005

Section 25. Section 21-1-34 NMSA 1978 (being Laws 1977, Chapter 330, Section 1, as amended) is amended to read:

"21-1-34. EDUCATIONAL TELEVISION EQUIPMENT REPLACEMENT FUND--DISBURSEMENT.--The "educational television equipment replacement fund" is created. The higher education department shall develop criteria and promulgate rules for the disbursement of money in this fund for the replacement of equipment at educational television stations operated by institutions of higher education. Disbursement shall be made to the institutions by warrant of the department of finance and administration upon vouchers signed by the secretary of higher education. It is the intent of the legislature that in subsequent years a specific line item for educational television replacement shall be included in the appropriations recommended for educational television by the department. The appropriation to the fund in the General Appropriation Act of 1982 shall not revert to the general fund at the end of any fiscal year, and no subsequent appropriation to the fund shall revert unless it contains the sentence "The appropriation to the educational television equipment replacement fund shall revert."."

Chapter 289 Section 26 Laws 2005

Section 26. Section 21-13-11 NMSA 1978 (being Laws 1963, Chapter 17, Section 10, as amended) is amended to read:

"21-13-11. STANDARDS AND ACCREDITING OF COMMUNITY COLLEGES.--

A. The community college board shall prescribe the course of study for the community college and shall define, in conjunction with the higher education department, official standards of excellence in all matters relating to the administration, course of study and quality of instruction, except that the prescribed standards may not be less in quality or quantity than those prescribed for other state institutions of higher learning by the regional accrediting agency that accredits other colleges and universities of the state.

B. The department shall annually inspect, or investigate through the requirement of reports prescribed by the department, each community college. The inspection or investigation by report shall be conducted upon the facilities and program of each community college to determine the extent of compliance with the rules promulgated by the department. A report of each inspection or final investigation by report shall be made to the department.

C. In the event of any serious deviation from established practices and procedures or any deficiencies that impair the quality of the instructional program in any community college, the department shall first call these to the attention of the president of the community college and the community college board.

D. In the case of repeated failure to meet the standards provided for in Subsection A of this section, the department may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the department may reinstate its approval of a disapproved community college."

Chapter 289 Section 27 Laws 2005

Section 27. Section 21-21B-1 NMSA 1978 (being Laws 1982, Chapter 88, Section 1) is amended to read:

"21-21B-1. SHORT TITLE.-- Chapter 21, Article 21B NMSA 1978 may be cited as the "Work-Study Act"."

Chapter 289 Section 28 Laws 2005

Section 28. Section 21-21B-2 NMSA 1978 (being Laws 1982, Chapter 88, Section 2) is amended to read:

"21-21B-2. DEFINITIONS.--As used in the Work-Study Act:

A. "board" or "commission" or "department" means the higher education department; and

B. "institution" means any state post-secondary educational institution and any private nonprofit post-secondary educational institution within New Mexico."

Chapter 289 Section 29 Laws 2005

Section 29. TEMPORARY PROVISION--TRANSFERS.--

A. On the effective date of this act, all functions, appropriations, money, personnel, records, files, furniture, equipment and other property of the commission on higher education shall be transferred to the higher education department.

B. On the effective date of this act, all contractual obligations of the commission on higher education shall be binding on the higher education department.

C. On the effective date of this act, all references in law to the commission on higher education shall be deemed to be references to the higher education department and all references in law to the executive director of the commission on higher education shall be deemed to be references to the secretary of higher education.

Chapter 289 Section 30 Laws 2005

Section 30. REPEAL.--Sections 21-1-28 through 21-1-31 NMSA 1978 (being Laws 1977, Chapter 246, Section 49, Laws 1971, Chapter 224, Section 1 and Laws 1951, Chapter 190, Sections 3 and 4, as amended) are repealed.

Chapter 289 Section 31 Laws 2005

Section 31. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 745, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 290

AN ACT

RELATING TO LAW ENFORCEMENT; CLARIFYING THAT THE POWERS OF A COUNTY SHERIFF TO APPOINT DEPUTY SHERIFFS IS NOT LIMITED BY PROVISIONS OF SECTION 29-1-11 NMSA 1978 (BEING LAWS 1972, CHAPTER 8, SECTION 1, AS AMENDED).

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

Chapter 290 Section 1 Laws 2005

Section 1. Section 29-1-11 NMSA 1978 (being Laws 1972, Chapter 8, Section 1, as amended) is amended to read:

"29-1-11. AUTHORIZATION OF TRIBAL AND PUEBLO POLICE OFFICERS AND CERTAIN FEDERAL OFFICERS TO ACT AS NEW MEXICO PEACE OFFICERS--AUTHORITY AND PROCEDURE FOR COMMISSIONED PEACE OFFICERS.--

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws.

B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the Indian nation, tribe or pueblo or the appropriate federal official.

C. The agreement referred to in Subsection B of this section shall contain the following conditions:

(1) the Indian nation, tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;

(2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;

(3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the chief's discretion;

(4) if any provision of the agreement is violated by the Indian nation, tribe or pueblo or any of its agents, the chief of the New Mexico state police shall

suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;

(5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;

(6) any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(7) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority that the court or authority would not otherwise have;

(8) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo Nation may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Nation reservation intersects the western right-of-way line of US 491, and running thence; southerly along the western right-of-way line of US 491 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right of way of I-40; thence, in an easterly direction along the northerly side of the right of way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia Lake; thence in a straight line between the southerly boundary of Ambrosia Lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right of way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right of way of state road 44 to the southerly boundary of the Jicarilla Apache Nation reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Nation reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the southerly side of the right of way of state road 44; thence, northerly along the southerly side of the right of way of state road 44 to its intersection with the northerly side of the right of way of Navajo road 3003; thence, along the northerly side of the right of way of Navajo road 3003 to a point where the northerly side of the right of way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right of way of state road 371 to the

southerly side of the right of way of Navajo road 36; thence, westerly along the southerly side of the right of way of Navajo road 36 to the eastern border of the Navajo Nation reservation; thence, along the eastern and southerly borders of the Navajo Nation reservation to the point of beginning.

The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into pursuant to provisions of this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia Lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco Trading Post and those communities commonly known as the Wingate community; the Navajo Nation Blue Water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 491 and ending where state road 264 intersects the Arizona-New Mexico state line; and

(9) the chief of the New Mexico state police or the chief's designee and the Indian nation, tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary.

D. Nothing in this section impairs or affects the existing status and sovereignty of an Indian nation, tribe or pueblo as established under the laws of the United States.

E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States customs service; immigration and naturalization service; United States marshals service; postal inspection service; United States probation department; and United States pretrial services agency; and other appropriate federal officers whose primary duty is law enforcement related, who are assigned in New Mexico and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. The department of public safety shall maintain a registry that lists the name and affiliated federal agency of every federal law enforcement officer recognized and authorized to act as a New Mexico peace officer pursuant to the provisions of this subsection. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection.

F. The provisions of Subsection E of this section regarding designation of federal law enforcement officers by a county sheriff do not apply to federal law enforcement officers who are duly commissioned officers of a police or sheriff's department for an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs.

G. Nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint pursuant to Chapter 4, Article 41 NMSA 1978 duly commissioned state or federally certified officers who are employees of a police or sheriff's department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law."

HOUSE BILL 793

Approved April 7, 2005

LAWS 2005, CHAPTER 291

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; REMOVING THE REQUIREMENT THAT A PORTION OF LOCAL AND FEDERAL REVENUE BE USED FOR CAPITAL OUTLAY; PROVIDING FOR THE CALCULATION OF MEM ON THE EIGHTIETH AND ONE HUNDRED TWENTIETH DAYS.

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

Chapter 291 Section 1 Laws 2005

Section 1. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--

DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district

property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) seventy-five percent of grants from the federal government as assistance to those 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".

D. To determine the amount of the state equalization guarantee distribution, the department shall:

(1) calculate the number of program units to which each school district is entitled using an average of the MEM on the eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district with a MEM of two hundred or less is entitled by using an average of the MEM on the eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act, if that act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature.

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act, if that act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district to the state general fund."

Chapter 291 Section 2 Laws 2005

Section 2. TEMPORARY PROVISION--APPLICABILITY.--The provisions of Paragraphs (1) and (3) of Subsection D of Section 1 of this act that change the procedure for calculating the number of program units are applicable to the 2006-2007 and subsequent school years.

Chapter 291 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provision of this act is July 1, 2005.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 1091, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 292

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; ENACTING THE CHARTER SCHOOL DISTRICT ACT OF 2005; PROVIDING PROCEDURES FOR A SCHOOL DISTRICT TO BECOME A CHARTER SCHOOL DISTRICT.

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

Chapter 292 Section 1 Laws 2005

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

"SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Charter School District Act of 2005"."

Chapter 292 Section 2 Laws 2005

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

"DEFINITION.--As used in the Charter School District Act of 2005, "charter school district" means an existing school district that operates under a charter approved by the department, that is nonreligious, that does not charge tuition and that does not have admission requirements in addition to those found in the Public School Code."

Chapter 292 Section 3 Laws 2005

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

"CHARTER SCHOOL DISTRICT APPLICATION REQUIREMENTS--PROCESS.-

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A. Before a school district applies for a charter from the department, the local school board shall adopt a resolution approving the application plan and hold at least two public hearings on the matter. The school district shall advertise the charter school district application plan in the same manner as other legal notices of the school district. In addition, the school district shall send a notice to the principal of each school in the district, with instructions that each school distribute the notice to the families whose children are enrolled in the school. The local school board may amend the charter school district application after the public hearings. The local school board shall vote to approve the final application before the school district submits it to the department.

B. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter school district.

C. The department shall establish by rule the process and requirements for applying for charter school district status and the process and requirements for renewing charter school district status. In each case, the department shall hold a public hearing.

D. The department shall approve no more than nine charter school districts altogether, three small, three medium and three large districts as determined by the department.

E. The department shall disapprove an initial application or application for renewal of charter school district status when it determines, after a hearing, that the application is not in the best interests of the students, the school district or the community."

Chapter 292 Section 4 Laws 2005

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

"CHARTER CONTRACT.--

A. The local school board of a school district that meets the requirements for a charter school district shall enter into a contract with the department establishing its charter to operate as a charter school district for five years.

B. The contract shall reflect all agreements regarding the operation of the charter school district. The terms of the contract may be revised at any time with the approval of both the department and the charter school district.

C. The charter shall include:

(1) assurances that the charter school district shall comply with state laws pertaining to accreditation, state educational standards, assessment and accountability and financial requirements;

(2) a statement of mission and purpose for the operation of the charter school district, including the charter school district's goals and objectives;

(3) evidence that the charter school district's educational and operational plans are economically sound and comply with all state and federal laws and rules;

(4) a description of the charter school district's educational programs and student performance standards and curriculum that must meet or exceed

department standards and must be designed to enable each student to achieve those standards;

(5) a description of the way the charter school district's educational program will meet the individual needs of the students, including students with disabilities and students determined to be at risk;

(6) an explanation of the relationship that will exist between the charter school district and its employees and a description of the way the terms and conditions of employment will be addressed with affected employees; and

(7) a description of all waivers from department rules requested and granted.

D. The charter school district shall:

(1) continue to operate as a public, nonsectarian public school district and operate in the same geographic boundaries that existed for the school district prior to becoming a charter school district;

(2) receive state money as provided in the Public School Code;

(3) provide special education services as required by state and federal law;

(4) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it was before becoming a charter school district; and

(5) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

E. The charter school district shall be accountable to the department for ensuring compliance with its charter and applicable state and federal laws and rules.

F. Employees of a charter school district shall be considered continuous employees without interruption of employment pursuant to the School Personnel Act and shall be afforded procedural due process rights and protection.

G. The governing body of the charter school district shall continue to be the local school board."

Chapter 292 Section 5 Laws 2005

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

"CHARTER SCHOOL DISTRICT RESPONSIBILITIES--EXEMPTIONS FROM PUBLIC SCHOOL CODE.--

A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.

B. The charter school district is exempt from provisions of the Public School Code and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.

C. The department may waive other requirements the secretary deems appropriate."

Chapter 292 Section 6 Laws 2005

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

"RENEWAL OF CHARTER.--

A. A charter for a charter school district may be renewed for successive periods of five years each.

B. Before it submits an application for renewal to the department, the local school board shall hold a public hearing to adopt a resolution approving the application for renewal.

C. A charter school district renewal application submitted to the department shall contain:

(1) a report on the progress that the charter school district has made toward achieving the goals of its charter;

(2) a list of schools in the charter school district that have made adequate yearly progress;

(3) a list of schools in the charter school district that have not made adequate yearly progress, together with an indication of the school improvement status of each of those schools;

(4) a petition in support of the charter school district renewing its charter school district status signed by not less than sixty-five percent of the employees in the charter school district;

(5) a resolution by the local school board requesting renewal of the charter; and

(6) any other information that the department deems appropriate."

Chapter 292 Section 7 Laws 2005

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

"EVALUATION--GROUNDS FOR NONRENEWAL, PROBATION OR REVOCATION OF CHARTER.--

A. The department shall provide ongoing evaluation of the charter school district's compliance with accreditation and state laws pertaining to state educational standards, assessment and accountability and financial requirements. Department staff shall visit the charter school district at least once each year to provide technical assistance and to determine the status of the charter school district and the progress of the charter school district toward the goals of its charter.

B. If the department finds that the charter school district is not in compliance with its charter or with any applicable state or federal law or rules, or is not in the best interests of the students, the school district or the community, the department may deny renewal, revoke the charter or place the charter school district on probationary status."

Chapter 292 Section 8 Laws 2005

Section 8. A new section of the Public School Code is enacted to read:

"REPORT TO THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND THE GOVERNOR.--Each December, the department and each charter school district shall report to the legislative education study committee and the governor regarding the progress that each charter school district has made toward achieving the goals of its charter."

Chapter 292 Section 9 Laws 2005

Section 9. REPEAL.--Sections 22-8C-1 through 22-8C-7 and 22-8D-1 through 22-8D-7 NMSA 1978 (being Laws 1999, Chapter 293, Sections 1 through 7 and Laws 2003, Chapter 434, Sections 1 through 7) are repealed.

Chapter 292 Section 10 Laws 2005

Section 10. EFFECTIVE DATE.--The effective date of the provisions of Section 9 of this act is July 1, 2005.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 1101, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 293

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING THAT TEN PERCENT OF THE WATER PROJECT FUND BE
DEDICATED TO WATER RIGHTS ADJUDICATIONS.

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

Chapter 293 Section 1 Laws 2005

Section 1. Section 72-4A-9 NMSA 1978 (being Laws 2001, Chapter 164, Section 9) is amended to read:

"72-4A-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 subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans. Ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office of the courts for the courts' costs associated with those adjudications.

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 and for water rights adjudications.

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."

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1110, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 294

AN ACT

RELATING TO HEALTH INSURANCE; PROVIDING FOR SMALL GROUP
COVERAGE IN THE NEW MEXICO MEDICAL INSURANCE POOL.

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

Chapter 294 Section 1 Laws 2005

Section 1. 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. issue a policy of insurance, in accordance with the requirements of the Medical Insurance Pool Act, for a small group that is formed voluntarily through an employer, association, cooperative, mutual alliance or other organization; provided, however, that an employer group may not have more than fifty persons;

G. 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

H. 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."

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 610

Approved April 7, 2005

LAWS 2005, CHAPTER 295

AN ACT

RELATING TO CRIMINAL LAW; ELIMINATING THE CRIMINAL OFFENSES OF DISSEMINATION OF MATERIAL THAT IS HARMFUL TO A MINOR BY COMPUTER AND CHILD LURING; CREATING A NEW CRIMINAL OFFENSE KNOWN AS CHILD SOLICITATION BY COMPUTER; PROVIDING PENALTIES.

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

Chapter 295 Section 1 Laws 2005

Section 1. Section 30-37-3.2 NMSA 1978 (being Laws 1998, Chapter 64, Section 1) is amended to read:

"30-37-3.2. CHILD SOLICITATION BY COMPUTER.--

A. Child solicitation by computer consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of computer, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least three years older than the child. Whoever commits child solicitation by computer is guilty of a fourth degree felony.

B. In a prosecution for child solicitation by computer, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.

C. For purposes of determining jurisdiction, child solicitation by computer is committed in this state if a computer transmission either originates or is received in this state."

Chapter 295 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 415, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 296

AN ACT

RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE KNOWN AS OBTAINING IDENTITY BY ELECTRONIC FRAUD; INCREASING A PENALTY.

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

Chapter 296 Section 1 Laws 2005

Section 1. Section 30-16-24.1 NMSA 1978 (being Laws 2001, Chapter 138, Section 1) is amended to read:

"30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY ELECTRONIC FRAUD.--

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. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

C. As used in this section:

(1) "fraudulent electronic communication" means a communication by a person that is an electronic mail message, web site or any other use of the internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right; and

(2) "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.

D. Whoever commits theft of identity is guilty of a fourth degree felony.

E. Whoever commits obtaining identity by electronic fraud is guilty of a fourth degree felony.

F. 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.

G. In a prosecution brought pursuant to this section, the theft of identity or obtaining identity by electronic fraud shall be considered to have been committed in the county:

(1) where the person whose identifying information was appropriated, obtained or sought resided at the time of the offense; or

(2) in which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

H. A person found guilty of theft of identity or of obtaining identity by electronic fraud 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 offense. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing the person's 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 offense.

I. 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 or of obtaining identity by electronic fraud."

Chapter 296 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 720, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 297

AN ACT

RELATING TO THE JUDICIAL BRANCH OF GOVERNMENT; PROVIDING FOR A CONSOLIDATION STUDY COMMITTEE TO STUDY THE POTENTIAL CONSOLIDATION OF THE MAGISTRATE AND MUNICIPAL COURTS IN DONA ANA COUNTY.

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

Chapter 297 Section 1 Laws 2005

Section 1. CONSOLIDATION STUDY COMMITTEE--COMPOSITION--DUTIES.-

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A. With the approval and direction of the supreme court, the administrative office of the courts shall create a "consolidation study committee" to study the potential

consolidation of the magistrate and municipal courts in Dona Ana county. The committee shall consist of fifteen members as follows:

(1) a district judge from the third judicial district, appointed by the chief judge of the district;

(2) a Dona Ana county magistrate judge, appointed by the director of the administrative office of the courts;

(3) a municipal judge from the city of Las Cruces, appointed by the director of the administrative office of the courts;

(4) three attorneys who commonly practice in the Dona Ana county magistrate court or the city of

Las Cruces municipal court, appointed by the third judicial district bar association;

(5) one public member appointed by the mayor of the city of Las Cruces;

(6) one public member appointed by the board of county commissioners for Dona Ana county;

(7) one administrative employee from the Dona Ana county magistrate court, appointed by the magistrates;

(8) one administrative employee from the city of Las Cruces municipal court, appointed by the municipal judges;

(9) one administrative employee from the third judicial district court, appointed by the district court judges;

(10) a designee of the director of the administrative office of the courts;

(11) the district attorney for the third judicial district;

(12) the district public defender for the third judicial district; and

(13) a member of the city council of the city of Las Cruces, appointed by the city council.

B. The committee shall elect a chair and such other officers as it deems necessary. The committee shall meet at the call of the chair but no less than once per month. The committee may contract with a part-time individual to assist the committee with its administrative functions.

C. The committee shall investigate and evaluate the effectiveness and judicial efficiency of community-based judicial systems in other areas and determine the feasibility of creating a consolidated system in the Dona Ana county court system. The committee shall report its findings and recommendation to the city council, the board of county commissioners and the legislature by December 1, 2005.

SENATE BILL 831, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 298

AN ACT

RELATING TO MOTOR VEHICLES; REQUIRING CHILD BOOSTER SEAT USE FOR CERTAIN CHILDREN.

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

Chapter 298 Section 1 Laws 2005

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;

(3) children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards; and

(4) children seven years of age through twelve years of age shall be properly secured in a child passenger restraint device or by a seat belt.

C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

D. Failure to be secured by a child passenger restraint device, by a child booster seat 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."

SENATE BILL 586, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 299

AN ACT

RELATING TO INDIAN EDUCATION; PROVIDING FOR A KINDERGARTEN THROUGH SIXTH GRADE CURRICULUM FOR AMERICAN INDIAN STUDENTS TO PREPARE THEM FOR ADVANCED PLACEMENT COURSEWORK.

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

Chapter 299 Section 1 Laws 2005

Section 1. Section 22-23A-1 NMSA 1978 (being Laws 2003, Chapter 151, Section 1) is amended to read:

"22-23A-1. SHORT TITLE.--Chapter 22, Article 23A NMSA 1978 may be cited as the "Indian Education Act"."

Chapter 299 Section 2 Laws 2005

Section 2. Section 22-23A-5 NMSA 1978 (being Laws 2003, Chapter 151, Section 5) is amended to read:

"22-23A-5. INDIAN EDUCATION DIVISION--CREATED--ASSISTANT SUPERINTENDENT--DUTIES.--

A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division.

B. The Indian education division shall:

(1) provide assistance to school districts and tribes to meet the educational needs of American Indian students;

(2) provide assistance to school districts and tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for American Indian students;

(3) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to American Indian students in kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through twelve;

(4) provide assistance to school districts and tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(5) establish an Indian education advisory council;

(6) by January 2006, enter into agreements with each tribe or authorized tribal educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian students;

(7) seek funds to establish an Indian education office in the northwest corner of the state to implement agreements with each tribe or authorized tribal educational entity, monitor the progress of American Indian students and coordinate technical assistance at the public schools that serve American Indian students;

(8) require school districts to obtain a signature of approval by the tribal governments or tribal government designees residing within school district boundaries, verifying that the tribes agree to Indian education policies and procedures pursuant to federal requirements;

(9) seek funds to establish, develop and implement the following support services for the purposes of increasing the number of American Indian teachers and principals and providing continued professional development for educational

assistants, teachers and principals serving American Indian students, in conjunction with the Indian education advisory council:

- (a) recruitment and retention;
- (b) academic transition programs;
- (c) academic financial support;
- (d) teacher preparation;
- (e) teacher induction; and
- (f) professional development;

(10) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(11) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978; and

(12) develop a plan to establish a post-secondary investment system for Indian students to which parents, tribes and the state may contribute."

SENATE BILL 215

Approved April 7, 2005

LAWS 2005, CHAPTER 300

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR A CORE CURRICULUM FRAMEWORK FOR KINDERGARTEN THROUGH GRADE SIX; PROVIDING FOR GRANTS.

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

Chapter 300 Section 1 Laws 2005

Section 1. A new section of Article 13 of the Public School Code is enacted to read:

"CORE CURRICULUM FRAMEWORK--PURPOSE--CURRICULUM.--

A. School districts and charter schools may create core curriculum frameworks to provide high quality curricula in kindergarten through grade six to prepare students for pre-advanced placement and advanced placement coursework in grades seven through twelve.

B. The framework shall include:

(1) a curriculum that is aligned with state academic content and performance standards that is challenging, specific as to content and sequential from grade to grade, similar to a core curriculum sequence;

(2) in-depth professional development for teachers that includes vertical teaming in content areas; and

(3) content, materials and instructional strategies or methodologies that current research demonstrates are likely to lead to improved student achievement in pre-advanced placement and advanced placement coursework in grades seven through twelve.

C. The framework may be selected from previously developed curricula or may be developed by the school district or charter school.

D. A school district or charter school that meets department eligibility requirements may apply to the department for support of its core curriculum framework. Applications shall be in the form prescribed by the department and shall include the following information:

(1) a statement of need;

(2) goals and expected outcomes of the framework;

(3) a detailed description of the curriculum to be implemented;

(4) a detailed work plan and budget for the framework;

(5) documentation of the research upon which the anticipated success of the framework is based;

(6) a description of any partnership proposed to implement the framework, supported by letters of commitment from the partner;

(7) an evaluation plan; and

(8) any other information that the department requires.

E. The department shall award grants within ninety days of the deadline for receipt of grant applications.

F. The department shall adopt and promulgate rules to implement the provisions of this section."

SENATE BILL 138, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 301

AN ACT

RELATING TO HEALTH CARE; PROVIDING OPTIONS FOR SMALL EMPLOYERS TO INCREASE ACCESS TO VOLUNTARY HEALTH CARE COVERAGE.

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

Chapter 301 Section 1 Laws 2005

Section 1. Section 10-7B-1 NMSA 1978 (being Laws 1989, Chapter 231, Section 1) is amended to read:

"10-7B-1. SHORT TITLE.--Chapter 10, Article 7B NMSA 1978 may be cited as the "Group Benefits Act"."

Chapter 301 Section 2 Laws 2005

Section 2. Section 10-7B-2 NMSA 1978 (being Laws 1989, Chapter 231, Section 2, as amended) is amended to read:

"10-7B-2. DEFINITIONS.--As used in the Group Benefits Act:

A. "committee" means the group benefits committee;

B. "director" means the director of the risk management division of the general services department;

C. "employee" means a salaried officer, employee or legislator of the state or a salaried officer or employee of a local public body;

D. "local public body" means any New Mexico incorporated municipality, county or school district;

E. "professional claims administrator" means any person or legal entity that has at least five years of experience handling group benefits claims, as well as such other qualifications as the director may determine from time to time with the committee's advice;

F. "small employer" means a person having for-profit or nonprofit status that employs an average of fifty or fewer persons over a twelve-month period; and

G. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Chapter 301 Section 3 Laws 2005

Section 3. Section 10-7B-5 NMSA 1978 (being Laws 1989, Chapter 231, Section 5) is amended to read:

"10-7B-5. ADMINISTRATIVE COSTS.--The director, with the prior approval of the committee, may apportion the costs of employee benefits administration and other employee benefit costs to all participating state agencies and their employees, participating local public bodies and their employees and participating small employers and persons and dependents eligible through the small employer, whether the plan is insured or self-insured."

Chapter 301 Section 4 Laws 2005

Section 4. A new section of the Group Benefits Act is enacted to read:

"SMALL EMPLOYER HEALTH CARE COVERAGE.--

A. The director may enter into an agreement with a small employer to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

B. The director may enter into agreements with an association, cooperative or mutual alliance representing small employers to provide outreach and assistance for small employers to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

C. The director shall only permit voluntary purchase of health care coverage by small employers if the small employer has not offered health care coverage to persons and dependents eligible through a small employer for a period of at least twelve months prior to enrollment in the coverage offered pursuant to the Group Benefits Act.

D. A separate account shall be maintained for small employers that voluntarily elect to purchase health care coverage offered pursuant to the Group Benefits Act to provide separate accounting, payment and private funding of health care coverage for small employers. The funds in the small employers account shall be maintained separately in actuarially sound condition as evidenced by an annual written certification of a qualified actuary, including verification that the premiums charged are actuarially sound in relation to the benefits provided. This certification shall be filed with the superintendent of insurance."

Chapter 301 Section 5 Laws 2005

Section 5. Section 59A-54-10 NMSA 1978 (being Laws 1987, Chapter 154, Section 10, as amended) is amended to read:

"59A-54-10. ASSESSMENTS.--

A. Following the close of each fiscal year, the pool administrator shall determine the net premium, being premiums less administrative expense allowances, the pool expenses and claim expense losses for the year, taking into account investment income and other appropriate gains and losses. The assessment for each insurer shall be determined by multiplying the total cost of pool operation by a fraction the numerator of which equals that insurer's premium and subscriber contract charges or their equivalent for health insurance written in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges written in the state; provided that premium income shall include receipts of medicaid managed care premiums but shall not include any payments by the secretary of health and human services pursuant to a contract issued under Section 1876 of the Social Security Act, as amended. The board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members, including assessment of health insurers and reinsurers based upon the number of persons they cover through primary, excess and stop-loss insurance in the state.

B. If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

C. The proportion of participation of each member in the pool shall be determined annually by the board based on annual statements and other reports

deemed necessary by the board and filed with it by the member. Any deficit incurred by the pool shall be recouped by assessments apportioned among the members of the pool pursuant to the assessment formula provided by Subsection A of this section; provided that the assessment for any pool member shall be allowed as a thirty-percent credit on the premium tax return for that member and a fifty percent credit on the premium tax return for a member on the low-income premium schedule pursuant to Subsection B of Section 59A-54-19 NMSA 1978.

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."

Chapter 301 Section 6 Laws 2005

Section 6. Section 59A-54-12 NMSA 1978 (being Laws 1987, Chapter 154, Section 12, as amended) is amended to read:

"59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

A. Except as provided in Subsection B of this section, a person is eligible for a pool policy only if on the effective date of coverage or renewal of coverage the person is a New Mexico resident, and:

(1) is not eligible as an insured or covered dependent for any health plan that provides coverage for comprehensive major medical or comprehensive physician and hospital services;

(2) is currently paying a rate for a health plan that is higher than one hundred twenty-five percent of the pool's standard rate;

(3) has been rejected for coverage for comprehensive major medical or comprehensive physician and hospital services;

(4) is only eligible for a health plan with a rider, waiver or restrictive provision for that particular individual based on a specific condition;

(5) has a medical condition that is listed on the pool's pre-qualifying conditions;

(6) has as of the date the individual seeks coverage from the pool an aggregate of eighteen or more months of creditable coverage, the most recent of

which was under a group health plan, governmental plan or church plan as defined in Subsections P, N and D, respectively, of Section 59A-23E-2 NMSA 1978, except, for the purposes of aggregating creditable coverage, a period of creditable coverage shall not be counted with respect to enrollment of an individual for coverage under the pool if, after that period and before the enrollment date, there was a sixty-three-day or longer period during all of which the individual was not covered under any creditable coverage; or

(7) is entitled to continuation coverage pursuant to Section 59A-23E-19 NMSA 1978.

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

(1) a person's eligibility for a policy issued under the Health Insurance Alliance Act shall not preclude a person from remaining on or purchasing a pool policy; provided that a self-employed person who qualifies for an approved health plan under the Health Insurance Alliance Act by using a dependent as the second employee may choose a pool policy in lieu of the health plan under that act; and

(2) if a pool policyholder becomes eligible for any group health plan, the policyholder's pool coverage shall not be involuntarily terminated until any preexisting condition period imposed on the policyholder by the plan has been exhausted.

C. Coverage under a pool policy is in excess of and shall not duplicate coverage under any other form of health insurance.

D. A policyholder's newborn child or newly adopted child is automatically eligible for thirty-one consecutive calendar days of coverage for an additional premium.

E. Except for a person eligible as provided in Paragraph (6) of Subsection A of this section, a pool policy may contain provisions under which coverage is excluded during a six-month period following the effective date of coverage as to a given individual for preexisting conditions.

F. The preexisting condition exclusions described in Subsection E of this section shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance coverage that was involuntarily terminated, if the application for pool coverage is made not later than thirty-one days following the involuntary termination. In that case, coverage in the pool shall be effective from the date on which the prior coverage was terminated. This subsection does not prohibit preexisting conditions coverage in a pool policy that is more favorable to the insured than that specified in this subsection.

G. An individual is not eligible for coverage by the pool if:

(1) except as provided in Subsection I of this section, the individual is, at the time of application, eligible for medicare or medicaid that would provide coverage for amounts in excess of limited policies such as dread disease, cancer policies or hospital indemnity policies;

(2) the individual has voluntarily terminated coverage by the pool within the past twelve months and did not have other continuous coverage during that time, except that this paragraph shall not apply to an applicant who is a federally defined eligible individual;

(3) the individual is an inmate of a public institution or is eligible for public programs for which medical care is provided;

(4) the individual is eligible for coverage under a group health plan;

(5) the individual has health insurance coverage as defined in Subsection R of Section 59A-23E-2 NMSA 1978;

(6) the most recent coverages within the coverage period described in Paragraph (6) of Subsection A of this section were terminated as a result of nonpayment of premium or fraud; or

(7) the individual has been offered the option of continuation coverage under a federal COBRA continuation provision as defined in Subsection F of Section 59A-23E-2 NMSA 1978 or under a similar state program and he has elected the coverage and did not exhaust the continuation coverage under the provision or program, provided, however, that an unemployed former employee who has not exhausted COBRA coverage shall be eligible.

H. Any person whose health insurance coverage from a qualified state health policy with similar coverage is terminated because of nonresidency in another state may apply for coverage under the pool. If the coverage is applied for within thirty-one days after that termination and if premiums are paid for the entire coverage period, the effective date of the coverage shall be the date of termination of the previous coverage.

I. The board may issue a pool policy for individuals who:

(1) are enrolled in both Part A and Part B of medicare because of a disability; and

(2) except for the eligibility for medicare, would otherwise be eligible for coverage pursuant to the criteria of this section."

Chapter 301 Section 7 Laws 2005

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 271, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 302

AN ACT

RELATING TO MINIMUM WAGES; CLARIFYING THE MINIMUM WAGE FOR TIPPED EMPLOYEES; AMENDING SECTION 50-4-22 NMSA 1978 (BEING LAWS 1955, CHAPTER 200, SECTION 3, AS AMENDED).

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

Chapter 302 Section 1 Laws 2005

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

A. An employer, except as provided in Section 50-4-21 NMSA 1978, shall pay the minimum wage rate of five dollars fifteen cents (\$5.15) an hour, except that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

B. An employee subject to Subsection A of this section who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage of two dollars thirteen cents (\$2.13). The employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than five dollars sixty cents (\$5.60) per hour. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

C. An employee subject to the provisions of Subsection A of this section shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government,

the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act of 1938 and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage."

Chapter 302 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of Subsection B of Section 1 of this 2005 act apply to wages earned on or after July 1, 2005.

SENATE BILL 250, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 303

AN ACT

RELATING TO NURSING; AMENDING THE NURSING PRACTICE ACT TO UNIFY THE SEVERAL MEDICATION AIDES PROGRAMS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 303 Section 1 Laws 2005

Section 1. Section 61-3-10.2 NMSA 1978 (being Laws 1991, Chapter 209, Section 1, as amended) is amended to read:

"61-3-10.2. MEDICATION AIDES.--

A. A statewide program for certification of medication aides and medication aide training programs is created under the board of nursing.

B. For the purposes of this section, "certified medication aide" means a person who, under the supervision of a licensed nurse is permitted to administer medications according to the standards adopted by the board.

C. Unless certified as a certified medication aide under the Nursing Practice Act, no person shall:

(1) practice as a certified 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 certified to practice as a certified medication aide;

(2) adopt rules for certified medication aide education and certification, including standards and curricula;

(3) adopt rules governing the supervision of certified medication aides by licensed nurses, including standards and performance evaluations of certified medication aides;

(4) conduct disciplinary hearings of certified medication aides or on the denial, suspension or revocation of a certified medication aide certificate in accordance with the Uniform Licensing Act; and

(5) grant approval to a certified medication aide training program that meets all requirements set by the board and deny or withdraw approval from programs that fail to meet prescribed standards or fail to maintain a current contract with the board.

E. Every applicant for certification as a certified medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of certified medication aides and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

F. Every certificate issued by the board to practice as a certified medication aide shall be renewed every two years. The certified medication aide seeking renewal shall submit proof of employment as a certified medication aide and proof of having met any continuing education requirements adopted by the board.

G. The board shall set the following nonrefundable fees:

(1) initial certification by examination, not to exceed sixty dollars (\$60.00);

(2) renewal of certification, not to exceed sixty dollars (\$60.00);

(3) reactivation of a lapsed certificate after failure to renew a certificate or following board action, not to exceed sixty dollars (\$60.00);

(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 that has changed, not to exceed two hundred dollars (\$200);

(6) subsequent review and approval of a training program when a change has been required by a change in board policy or rules, not to exceed fifty dollars (\$50.00); and

(7) periodic evaluation of a training program, not to exceed two hundred dollars (\$200)."

Chapter 303 Section 2 Laws 2005

Section 2. Section 61-3-29 NMSA 1978 (being Laws 1968, Chapter 44, Section 25, as amended) is amended to read:

"61-3-29. EXCEPTIONS.--The Nursing Practice Act shall not apply to or affect:

A. gratuitous nursing by friends or members of the family;

B. nursing assistance in case of emergencies;

C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;

D. nursing in this state by a legally licensed nurse of another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;

E. nursing in this state by any person who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of the person's official duties;

F. the practice of midwifery by any person other than a registered nurse who is certified or licensed in this state to practice midwifery;

G. any person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

H. any nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

I. any registered nurse holding a current license in another jurisdiction who is enrolled in any professional course requiring nursing practice as a part of the educational program; or

J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess the individual's own needs."

Chapter 303 Section 3 Laws 2005

Section 3. REPEAL.--Sections 61-3-10.3 and 61-3-10.4 NMSA 1978 (being Laws 1995, Chapter 117, Section 1 and Laws 2003, Chapter 282, Section 2, as amended) are repealed.

Chapter 303 Section 4 Laws 2005

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

SENATE BILL 119, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 304

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE NAME OF NORTHERN NEW MEXICO STATE SCHOOL FOR COMMON CONVENIENCE; REMOVING THE TWO-YEAR LIMIT ON ACCREDITED COLLEGE LEVEL ACADEMIC INSTRUCTION TO RESTORE ITS ORIGINAL CONSTITUTIONAL MISSION.

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

Chapter 304 Section 1 Laws 2005

Section 1. Section 21-4-1 NMSA 1978 (being Laws 1909, Chapter 97, Section 2, as amended) is amended to read:

"21-4-1. MANAGEMENT AND CONTROL OF NORTHERN NEW MEXICO COLLEGE.--The management and control of the northern New Mexico state school at El Rito, also known as northern New Mexico college, and the appointment, qualification, powers and duties of its board of regents shall be the same as provided in Article 12, Section 13 of the constitution of New Mexico for the other state educational institutions mentioned in Article 12, Section 11 of the constitution of New Mexico."

Chapter 304 Section 2 Laws 2005

Section 2. Section 21-4-2 NMSA 1978 (being Laws 1947, Chapter 97, Section 1, as amended) is amended to read:

"21-4-2. USE OF NAME "NORTHERN NEW MEXICO COLLEGE" FOR COMMON CONVENIENCE.--Except for financial transactions, the use of the name northern New Mexico college is hereby permitted in lieu of northern New Mexico state school, for common convenience."

Chapter 304 Section 3 Laws 2005

Section 3. Section 21-4-3 NMSA 1978 (being Laws 1909, Chapter 97, Section 3, as amended) is amended to read:

"21-4-3. NORTHERN NEW MEXICO COLLEGE--PURPOSE OF INSTRUCTION--ACADEMIC COURSES--BOARDING OF STUDENTS.--

A. The courses of instruction at northern New Mexico college shall:

(1) meet the needs of young people of New Mexico who cannot be served adequately by the local public schools in their home communities;

(2) prepare technical and trade students for occupations and vocations that are useful and necessary in the economy of New Mexico; and

(3) provide academic, technical and vocational instruction beyond the high school level and accredited college level academic instruction.

B. The board of regents of northern New Mexico college may provide quarters for the boarding of resident students.

C. Nothing in this section shall preclude the university of New Mexico from continuing to provide upper college level and graduate courses in any areas in which such courses were being offered prior to January 1, 1977.

D. The board of regents of northern New Mexico college may develop, implement and seek accreditation for a baccalaureate degree program in teacher education."

SENATE BILL 594

Approved April 7, 2005

LAWS 2005, CHAPTER 305

AN ACT

RELATING TO HEALTH CARE; PROVIDING OPTIONS FOR SMALL EMPLOYERS TO INCREASE ACCESS TO VOLUNTARY HEALTH CARE COVERAGE.

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

Chapter 305 Section 1 Laws 2005

Section 1. Section 10-7B-1 NMSA 1978 (being Laws 1989, Chapter 231, Section 1) is amended to read:

"10-7B-1. SHORT TITLE.--Chapter 10, Article 7B NMSA 1978 may be cited as the "Group Benefits Act"."

Chapter 305 Section 2 Laws 2005

Section 2. Section 10-7B-2 NMSA 1978 (being Laws 1989, Chapter 231, Section 2, as amended) is amended to read:

"10-7B-2. DEFINITIONS.--As used in the Group Benefits Act:

- A. "committee" means the group benefits committee;
- B. "director" means the director of the risk management division of the general services department;
- C. "employee" means a salaried officer, employee or legislator of the state or a salaried officer or employee of a local public body;
- D. "local public body" means any New Mexico incorporated municipality, county or school district;

E. "professional claims administrator" means any person or legal entity that has at least five years of experience handling group benefits claims, as well as such other qualifications as the director may determine from time to time with the committee's advice;

F. "small employer" means a person having for-profit or nonprofit status that employs an average of fifty or fewer persons over a twelve-month period; and

G. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Chapter 305 Section 3 Laws 2005

Section 3. Section 10-7B-5 NMSA 1978 (being Laws 1989, Chapter 231, Section 5) is amended to read:

"10-7B-5. ADMINISTRATIVE COSTS.--The director, with the prior approval of the committee, may apportion the costs of employee benefits administration and other employee benefit costs to all participating state agencies and their employees, participating local public bodies and their employees and participating small employers and persons and dependents eligible through the small employer, whether the plan is insured or self-insured."

Chapter 305 Section 4 Laws 2005

Section 4. A new section of the Group Benefits Act is enacted to read:

"SMALL EMPLOYER HEALTH CARE COVERAGE.--

A. The director may enter into an agreement with a small employer to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

B. The director may enter into agreements with an association, cooperative or mutual alliance representing small employers to provide outreach and assistance for small employers to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

C. The director shall only permit voluntary purchase of health care coverage by small employers if the small employer has not offered health care coverage to persons and dependents eligible through a small employer for a period of at least twelve months prior to enrollment in the coverage offered pursuant to the Group Benefits Act.

D. A separate account shall be maintained for small employers that voluntarily elect to purchase health care coverage offered pursuant to the Group Benefits Act to provide separate accounting, payment and private funding of health care coverage for small employers. The funds in the small employers account shall be maintained separately in actuarially sound condition as evidenced by an annual written certification of a qualified actuary."

Chapter 305 Section 5 Laws 2005

Section 5. Section 59A-54-10 NMSA 1978 (being Laws 1987, Chapter 154, Section 10, as amended) is amended to read:

"59A-54-10. ASSESSMENTS.--

A. Following the close of each fiscal year, the pool administrator shall determine the net premium, being premiums less administrative expense allowances, the pool expenses and claim expense losses for the year, taking into account investment income and other appropriate gains and losses. The assessment for each insurer shall be determined by multiplying the total cost of pool operation by a fraction the numerator of which equals that insurer's premium and subscriber contract charges or their equivalent for health insurance written in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges written in the state; provided that premium income shall include receipts of medicaid managed care premiums but shall not include any payments by the secretary of health and human services pursuant to a contract issued under Section 1876 of the Social Security Act, as amended. The board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members, including assessment of health insurers and reinsurers based upon the number of persons they cover through primary, excess and stop-loss insurance in the state.

B. If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

C. The proportion of participation of each member in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed with it by the member. Any deficit incurred by the pool shall be recouped by assessments apportioned among the members of the pool pursuant to the assessment formula provided by Subsection A of this section; provided that the assessment for any pool member shall be allowed as a thirty-percent credit on the premium tax return for that member and a fifty percent credit on the premium tax return for a member on the low-income premium schedule pursuant to Subsection B of Section 59A-54-19 NMSA 1978.

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."

Chapter 305 Section 6 Laws 2005

Section 6. Section 59A-54-12 NMSA 1978 (being Laws 1987, Chapter 154, Section 12, as amended) is amended to read:

"59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

A. Except as provided in Subsection B of this section, a person is eligible for a pool policy only if on the effective date of coverage or renewal of coverage the person is a New Mexico resident, and:

(1) is not eligible as an insured or covered dependent for any health plan that provides coverage for comprehensive major medical or comprehensive physician and hospital services;

(2) is currently paying a rate for a health plan that is higher than one hundred twenty-five percent of the pool's standard rate;

(3) has been rejected for coverage for comprehensive major medical or comprehensive physician and hospital services;

(4) is only eligible for a health plan with a rider, waiver or restrictive provision for that particular individual based on a specific condition;

(5) has a medical condition that is listed on the pool's pre-qualifying conditions;

(6) has as of the date the individual seeks coverage from the pool an aggregate of eighteen or more months of creditable coverage, the most recent of which was under a group health plan, governmental plan or church plan as defined in Subsections P, N and D, respectively, of Section 59A-23E-2 NMSA 1978, except, for the purposes of aggregating creditable coverage, a period of creditable coverage shall not be counted with respect to enrollment of an individual for coverage under the pool if, after that period and before the enrollment date, there was a sixty-three-day or longer period during all of which the individual was not covered under any creditable coverage;
or

(7) is entitled to continuation coverage pursuant to Section 59A-23E-19 NMSA 1978.

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

(1) a person's eligibility for a policy issued under the Health Insurance Alliance Act shall not preclude a person from remaining on or purchasing a pool policy; provided that a self-employed person who qualifies for an approved health plan under the Health Insurance Alliance Act by using a dependent as the second employee may choose a pool policy in lieu of the health plan under that act; and

(2) if a pool policyholder becomes eligible for any group health plan, the policyholder's pool coverage shall not be involuntarily terminated until any preexisting condition period imposed on the policyholder by the plan has been exhausted.

C. Coverage under a pool policy is in excess of and shall not duplicate coverage under any other form of health insurance.

D. A policyholder's newborn child or newly adopted child is automatically eligible for thirty-one consecutive calendar days of coverage for an additional premium.

E. Except for a person eligible as provided in Paragraph (6) of Subsection A of this section, a pool policy may contain provisions under which coverage is excluded during a six-month period following the effective date of coverage as to a given individual for preexisting conditions.

F. The preexisting condition exclusions described in Subsection E of this section shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance coverage that was involuntarily terminated, if the application for pool coverage is made not later than thirty-one days following the involuntary termination. In that case, coverage in the pool shall be effective from the date on which the prior coverage was terminated. This subsection does not prohibit preexisting conditions coverage in a pool policy that is more favorable to the insured than that specified in this subsection.

G. An individual is not eligible for coverage by the pool if:

(1) except as provided in Subsection I of this section, the individual is, at the time of application, eligible for medicare or medicaid that would provide coverage for amounts in excess of limited policies such as dread disease, cancer policies or hospital indemnity policies;

(2) the individual has voluntarily terminated coverage by the pool within the past twelve months and did not have other continuous coverage during that

time, except that this paragraph shall not apply to an applicant who is a federally defined eligible individual;

(3) the individual is an inmate of a public institution or is eligible for public programs for which medical care is provided;

(4) the individual is eligible for coverage under a group health plan;

(5) the individual has health insurance coverage as defined in Subsection R of Section 59A-23E-2 NMSA 1978;

(6) the most recent coverages within the coverage period described in Paragraph (6) of Subsection A of this section were terminated as a result of nonpayment of premium or fraud; or

(7) the individual has been offered the option of continuation coverage under a federal COBRA continuation provision as defined in Subsection F of Section 59A-23E-2 NMSA 1978 or under a similar state program and he has elected the coverage and did not exhaust the continuation coverage under the provision or program, provided, however, that an unemployed former employee who has not exhausted COBRA coverage shall be eligible.

H. Any person whose health insurance coverage from a qualified state health policy with similar coverage is terminated because of nonresidency in another state may apply for coverage under the pool. If the coverage is applied for within thirty-one days after that termination and if premiums are paid for the entire coverage period, the effective date of the coverage shall be the date of termination of the previous coverage.

I. The board may issue a pool policy for individuals who:

(1) are enrolled in both Part A and Part B of medicare because of a disability; and

(2) except for the eligibility for medicare, would otherwise be eligible for coverage pursuant to the criteria of this section."

Chapter 305 Section 7 Laws 2005

Section 7. TEMPORARY PROVISION.--By January 1, 2010, the superintendent of insurance shall:

A. promulgate rules to allow participating small employers and persons and dependents eligible pursuant to this act to participate in the coverage afforded pursuant to the Health Insurance Alliance Act; and

B. recommend statutory changes to the Health Insurance Alliance Act as may be needed.

Chapter 305 Section 8 Laws 2005

Section 8. DELAYED REPEAL.--Section 4 of this act is repealed effective July 1, 2010.

Chapter 305 Section 9 Laws 2005

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 523, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 306

AN ACT

RELATING TO MINIMUM WAGES; CLARIFYING THE MINIMUM WAGE FOR TIPPED EMPLOYEES; AMENDING SECTION 50-4-22 NMSA 1978 (BEING LAWS 1955, CHAPTER 200, SECTION 3, AS AMENDED).

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

Chapter 306 Section 1 Laws 2005

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

A. An employer, except as provided in Section 50-4-21 NMSA 1978, shall pay the minimum wage rate of five dollars fifteen cents (\$5.15) an hour, except that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

B. An employee subject to Subsection A of this section who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage of two dollars thirteen cents (\$2.13). The employer may consider

tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than five dollars sixty cents (\$5.60) per hour. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

C. An employee subject to the provisions of Subsection A of this section shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act of 1938 and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage."

Chapter 306 Section 2 Laws 2005

Section 2. APPLICABILITY.--The provisions of Subsection B of Section 1 of this 2005 act apply to wages earned on or after July 1, 2005.

HOUSE BILL 178, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 307

AN ACT

RELATING TO NURSING; REVISING THE NURSING PRACTICE ACT TO MAKE PERMANENT VARIOUS MEDICATION AIDES AND HEMODIALYSIS TECHNICIAN PROGRAMS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 307 Section 1 Laws 2005

Section 1. 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 hemodialysis technician" means a person who is certified by the board to assist in the direct care of a patient undergoing hemodialysis, under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

D. "certified medication aide" means a person who is certified by the board to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

E. "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;

F. "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;

G. "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;

H. "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;

I. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

J. "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;

K. "Nurse Licensure Compact" means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

L. "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;

M. "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;

N. "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;

O. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of

licensed registered nurses maintained by the board or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

P. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise; and

Q. "training program" means an educational program approved by the board."

Chapter 307 Section 2 Laws 2005

Section 2. Section 61-3-6 NMSA 1978 (being Laws 1973, Chapter 149, Section 2, as amended) is amended to read:

"61-3-6. ADMINISTRATION OF ANESTHETICS.--It is unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry or a currently licensed certified registered nurse anesthetist, to administer anesthetics to any person. Nothing in this section prohibits a person currently licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or moderate sedation."

Chapter 307 Section 3 Laws 2005

Section 3. 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. A statewide program for certification of hemodialysis technicians is created according to the rules adopted by the board.

B. Unless certified as a certified hemodialysis technician pursuant to the Nursing Practice Act, no person shall:

(1) practice as a certified hemodialysis technician; or

(2) 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 certified hemodialysis technician.

C. The board shall:

(1) maintain a permanent register of all certified hemodialysis technicians;

(2) adopt rules for certified hemodialysis technician training programs, including standards and curricula;

(3) provide for periodic evaluation of training programs at least every two years;

(4) grant, deny or withdraw approval from a training program that fails to meet prescribed standards or fails to maintain a current contract with the board; and

(5) conduct disciplinary hearings of certified hemodialysis technicians or on the denial, suspension or revocation of certified hemodialysis technician certificates in accordance with the Uniform Licensing Act.

D. Every applicant for certification as a certified hemodialysis technician shall pay the required application fee, submit written evidence of having completed a board-approved training program for hemodialysis technicians and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified hemodialysis technician shall be renewed every two years. The certified hemodialysis technician seeking renewal shall submit proof of employment as a certified hemodialysis technician and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

(2) for renewal of certification, a fee not to exceed sixty dollars (\$60.00);

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

(4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200)."

Chapter 307 Section 4 Laws 2005

Section 4. 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. A statewide program for certification of medication aides and approval of medication aide training programs is created under the board.

B. Unless certified as a certified medication aide under the Nursing Practice Act, no person shall:

(1) practice as a certified 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.

C. The board shall:

(1) maintain a permanent register of all persons certified to practice as a certified medication aide;

(2) adopt rules for certified medication aide education and certification, including standards and curricula;

(3) adopt rules governing the supervision of certified medication aides by licensed nurses, including standards and performance evaluations of certified medication aides;

(4) conduct disciplinary hearings of certified medication aides or on the denial, suspension or revocation of certified medication aide certificates in accordance with the Uniform Licensing Act; and

(5) grant approval to a certified medication aide training program that meets all the requirements set by the board and deny or withdraw approval from medication aide training programs that fail to meet prescribed standards or fail to maintain a current contract.

D. Every applicant for certification as a certified medication aide shall pay the required application fee, submit written evidence of having completed a board-approved training program for certified medication aides and successfully complete a

board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified medication aide shall be renewed every two years. The certified medication aide seeking renewal shall submit proof of employment as a certified medication aide and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

(2) for renewal of certification, a fee not to exceed sixty dollars (\$60.00);

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

(4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200)."

Chapter 307 Section 5 Laws 2005

Section 5. Section 61-3-16 NMSA 1978 (being Laws 1968, Chapter 44, Section 13, as amended) is amended to read:

"61-3-16. FEES FOR LICENSURE AS REGISTERED NURSES.--Applicants for licensure as registered nurses shall pay the following nonrefundable fees:

A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);

B. for licensure by examination when the examination is the first for the applicant in this state, a fee not to exceed one hundred fifty dollars (\$150);

C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00); and

D. for initial licensure as a certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, a fee not to exceed one hundred dollars (\$100). This fee shall be in addition to the fee paid for registered nurse licensure."

Chapter 307 Section 6 Laws 2005

Section 6. Section 61-3-22 NMSA 1978 (being Laws 1968, Chapter 44, Section 19, as amended) is amended to read:

"61-3-22. FEES FOR LICENSURE AS LICENSED PRACTICAL NURSES.-- Applicants for licensure as licensed practical nurses shall pay the following nonrefundable fees:

A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);

B. for licensure by examination when the examination is the first for the applicant in this state, a fee not to exceed one hundred fifty dollars (\$150); and

C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00) for each examination."

Chapter 307 Section 7 Laws 2005

Section 7. 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 and shall show proof of continuing education as required by the board except when on active military duty during a military action.

B. Upon receipt of the application and fee, in an amount not to exceed one hundred ten dollars (\$110), a license valid for two years shall be issued.

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.

D. A person who allows a license to lapse shall be reinstated by the board on payment of the fee for the current two years plus a reinstatement fee not to exceed two hundred dollars (\$200), provided that all other requirements are met."

Chapter 307 Section 8 Laws 2005

Section 8. Section 61-3-29 NMSA 1978 (being Laws 1968, Chapter 44, Section 25, as amended) is amended to read:

"61-3-29. EXCEPTIONS.--The Nursing Practice Act shall not apply to or affect:

A. gratuitous nursing by friends or members of the family;

B. nursing assistance in case of emergencies;

C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;

D. nursing in this state by a nurse licensed in another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;

E. nursing in this state by a person employed by the United States government, while in the discharge of the person's official duties;

F. the practice of midwifery by a person other than a registered nurse who is certified or licensed in this state to practice midwifery;

G. a person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

H. a nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

I. a registered nurse holding a current license in another jurisdiction who is enrolled in a professional course requiring nursing practice as a part of the educational program; or

J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess the individual's own needs."

Chapter 307 Section 9 Laws 2005

Section 9. 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 pursuant to 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 pursuant to 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 pursuant to 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 the person's 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;
- I. employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board to practice as a certified hemodialysis technician or certified medication aide; or
- J. 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."

Chapter 307 Section 10 Laws 2005

Section 10. REPEAL.--Sections 61-3-10.3, 61-3-10.4, 61-3-24.3 and 61-3-31 NMSA 1978 (being Laws 1995, Chapter 117, Section 1, Laws 2003, Chapter 282, Section 2, Laws 2003, Chapter 307, Section 3 and Laws 1979, Chapter 379, Section 11, as amended) are repealed.

Chapter 307 Section 11 Laws 2005

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

House Bill 639

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 308

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE NAME OF NORTHERN NEW MEXICO STATE SCHOOL FOR COMMON CONVENIENCE; REMOVING THE TWO-YEAR LIMIT ON ACCREDITED COLLEGE LEVEL ACADEMIC INSTRUCTION TO RESTORE ITS ORIGINAL CONSTITUTIONAL MISSION.

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

Chapter 308 Section 1 Laws 2005

Section 1. Section 21-4-1 NMSA 1978 (being Laws 1909, Chapter 97, Section 2, as amended) is amended to read:

"21-4-1. MANAGEMENT AND CONTROL OF NORTHERN NEW MEXICO COLLEGE.--The management and control of the northern New Mexico state school at El Rito, also known as northern New Mexico college, and the appointment, qualification, powers and duties of its board of regents shall be the same as provided in Article 12,

Section 13 of the constitution of New Mexico for the other state educational institutions mentioned in Article 12, Section 11 of the constitution of New Mexico."

Chapter 308 Section 2 Laws 2005

Section 2. Section 21-4-2 NMSA 1978 (being Laws 1947, Chapter 97, Section 1, as amended) is amended to read:

"21-4-2. USE OF NAME "NORTHERN NEW MEXICO COLLEGE" FOR COMMON CONVENIENCE.--Except for financial transactions, the use of the name northern New Mexico college is hereby permitted in lieu of northern New Mexico state school, for common convenience."

Chapter 308 Section 3 Laws 2005

Section 3. Section 21-4-3 NMSA 1978 (being Laws 1909, Chapter 97, Section 3, as amended) is amended to read:

"21-4-3. NORTHERN NEW MEXICO COLLEGE--PURPOSE OF INSTRUCTION--
-
ACADEMIC COURSES--BOARDING OF STUDENTS.--

A. The courses of instruction at northern New Mexico college shall:

(1) meet the needs of young people of New Mexico who cannot be served adequately by the local public schools in their home communities;

(2) prepare technical and trade students for occupations and vocations that are useful and necessary in the economy of New Mexico; and

(3) provide academic, technical and vocational instruction beyond the high school level and accredited college level academic instruction.

B. The board of regents of northern New Mexico college may provide quarters for the boarding of resident students.

C. Nothing in this section shall preclude the university of New Mexico from continuing to provide upper college level and graduate courses in any areas in which such courses were being offered prior to January 1, 1977.

D. The board of regents of northern New Mexico college may develop, implement and seek accreditation for a baccalaureate degree program in teacher education."

HOUSE BILL 461

Approved April 7, 2005

LAWS 2005, CHAPTER 309

AN ACT

RELATING TO HUMAN RIGHTS; CHANGING THE COURT OF REVIEW FOR A DISTRICT COURT HUMAN RIGHTS APPEAL JUDGMENT.

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

Chapter 309 Section 1 Laws 2005

Section 1. Section 28-1-13 NMSA 1978 (being Laws 1969, Chapter 196, Section 12, as amended) is amended to read:

"28-1-13. APPEAL.--

A. A person aggrieved by an order of the commission may obtain a trial de novo by filing a notice of appeal in the district court of the county where the discriminatory practice occurred or where the respondent does business. The notice of appeal must be filed within thirty days from the date of service of the commission's order. A copy of the notice of appeal shall be served personally or by certified mail, return receipt requested, on all parties who appeared before the commission at their last known addresses. A copy of the notice of appeal shall also be served at the division office in Santa Fe. An order of the commission shall not be superseded or stayed during the appeal unless the district court so directs after notice to the commission and a hearing.

B. If testimony at the hearing was transcribed, the division shall, upon receipt of the notice of appeal, file so much of the transcript of the record as the parties requesting the transcript designate as necessary for the appeal with the district court.

C. Upon appeal, either party may request a jury. The jurisdiction of the district court is exclusive and its judgment is final, subject to further appeal to the court of appeals.

D. If the complainant prevails in an action or proceeding under this section, the court in its discretion may allow actual damages and reasonable attorney fees, and the state shall be liable the same as a private person."

HOUSE BILL 254

Approved April 7, 2005

LAWS 2005, CHAPTER 310

AN ACT

RELATING TO COMMERCIAL DRIVER'S LICENSES; PROVIDING PROCEDURES FOR CONFIDENTIALITY OF BACKGROUND CHECKS CONDUCTED PURSUANT TO FEDERAL DEPARTMENT OF HOMELAND SECURITY REQUIREMENTS.

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

Chapter 310 Section 1 Laws 2005

Section 1. Section 66-5-65 NMSA 1978 (being Laws 1989, Chapter 14, Section 14, as amended) is amended to read:

"66-5-65. CLASSIFICATIONS--ENDORSEMENTS--RESTRICTIONS.--

A. Commercial driver's licenses may be issued with the classifications, endorsements and restrictions enumerated in Subsections B, C and D of this section. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

B. The following classifications shall apply to commercial driver's licenses:

(1) class A - any combination of vehicles with a gross combination weight rating of more than twenty-six thousand pounds, if the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand pounds;

(2) class B - any single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds and any such vehicle towing a vehicle with a gross vehicle weight rating of ten thousand pounds or less; and

(3) class C - any single vehicle or combination of vehicles that does not meet either the definition of Paragraph (1) or (2) of this subsection but is:

(a) designed to transport sixteen or more passengers, including the driver; or

(b) used in the transportation of hazardous materials, which requires the vehicle to be placarded under applicable law.

C. The secretary, by regulation, may provide for classifications in addition to those set forth in Subsection B of this section.

D. The following endorsements and restrictions shall apply to commercial driver's licenses:

- (1) "H" - authorizes driving a vehicle transporting hazardous material;
- (2) "L" - restricts the driver to vehicles not equipped with airbrakes;
- (3) "T" - authorizes driving a vehicle towing more than one trailer;
- (4) "P" - authorizes driving vehicles, other than school buses, carrying passengers;
- (5) "N" - authorizes driving tank vehicles;
- (6) "X" - represents a combination of the hazardous material ("H") and tank vehicle ("N") endorsements;
- (7) "S" - authorizes driving a school bus; and
- (8) "K" - restricts the driver to driving a commercial motor vehicle in intrastate commerce only.

E. The department shall require an applicant requesting a hazardous material ("H") endorsement to be subject to a background check pursuant to the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Information received pursuant to a background check required by the federal transportation security administration of the department of homeland security shall be kept confidential and shall be released only to the subject of the background check and the division. Fees charged for the background check shall be borne by the subject of the background check or by the employer."

Chapter 310 Section 2 Laws 2005

Section 2. Section 66-5-66 NMSA 1978 (being Laws 1989, Chapter 14, Section 15) is amended to read:

"66-5-66. APPLICANT RECORD INFORMATION--INFORMATION EXCHANGE.-

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A. Before issuing a commercial driver's license, the department shall obtain pertinent driving record information from each state where the applicant has been licensed, through a multistate database, or from each state.

B. The department has the authority to exchange commercial driver's license information as it deems necessary to carry out the provisions of the New Mexico Commercial Driver's License Act, except that the results of a background check conducted pursuant to federal department of homeland security requirements shall be:

(1) confidential and not disseminated except to the subject of the background check and the division;

(2) used only for the purpose authorized by this section; and

(3) subject to protest, appeal or consideration of mitigating circumstances if used as a basis to disqualify a driver who held a commercial driver's license under rules promulgated by the transportation security administration of the department of homeland security."

Chapter 310 Section 3 Laws 2005

Section 3. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for at least thirty days if the federal motor carrier safety administration reports to the division that the person poses an imminent hazard.

B. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one year if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act; or

(2) is convicted of a violation of:

(a) driving a commercial motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state;

(c) using a commercial motor vehicle in the commission of a felony;

(d) driving a commercial motor vehicle after the driver's commercial driver's license is revoked, suspended, disqualified or canceled for violations while operating a commercial motor vehicle; or

(e) causing a fatality in the unlawful operation of a motor vehicle pursuant to Section 66-8-101 NMSA 1978.

C. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection B of this section occur while transporting a hazardous material required to be placarded.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection B of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

E. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

G. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

H. The department shall disqualify a person from driving a commercial motor vehicle for sixty days if:

(1) the person has been convicted of two serious traffic violations in separate incidents within a three-year period; and

(2) the second conviction results in revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges for sixty days.

I. The department shall disqualify a person from driving a commercial motor vehicle for one hundred twenty days if:

(1) the person has been convicted of more than two serious traffic violations within a three-year period; and

(2) the third or a subsequent conviction results in the revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges.

J. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without separate proceeding of any kind and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

K. The department shall disqualify a person from driving a commercial motor vehicle for not less than:

(1) sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

L. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

M. The department shall post and enforce any disqualification sent by the federal motor carrier safety administration to the department that indicates that a commercial motor vehicle driver poses an imminent hazard.

N. The transportation security administration of the department of homeland security shall provide for an appeal of a disqualification for a commercial driver's license hazardous materials endorsement on the basis of a background check, and the department shall provide to a hazardous materials applicant a copy of the procedures established by the transportation security administration, on request, at the time of application.

O. New Mexico shall conform to the federal transportation security administration of the department of homeland security rules and shall "look back" or review a maximum of seven years for a background check."

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 785

Approved April 7, 2005

LAWS 2005, CHAPTER 311

AN ACT

RELATING TO HUMAN RIGHTS; EXTENDING THE TIME LIMIT FOR FILING APPEALS AND GRIEVANCES UNDER THE HUMAN RIGHTS ACT.

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

Chapter 311 Section 1 Laws 2005

Section 1. Section 28-1-10 NMSA 1978 (being Laws 1969, Chapter 196, Section 9, as amended) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE.--

A. A person claiming to be aggrieved by an unlawful discriminatory practice and a member of the commission who has reason to believe that discrimination has occurred may file with the human rights division of the labor department a written complaint that shall state the name and address of the person alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints shall be filed with the division within three hundred days after the alleged act was committed.

B. The director shall advise the respondent that a complaint has been filed against the respondent and shall furnish the respondent with a copy of the complaint. The director shall promptly investigate the alleged act. If the director determines that the complaint lacks probable cause, the director shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, the director shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. An officer or employee of the labor department who makes public in any manner information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year.

D. A person who has filed a complaint with the human rights division may request and shall receive an order of nondetermination from the director without delay after the division's receipt of the complaint and in jointly filed cases, after the federal complaint has been closed. The order of nondetermination may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation and the complainant has not requested a waiver of right to hearing pursuant to the provisions of Subsection J of this section, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and who so elects, the director shall issue an order of nondetermination, which may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978. The complaint shall set forth the alleged discriminatory practice, the secretary's regulation or the section of the Human Rights Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission or hearing officer and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen or less than ten days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

G. Within one year of the filing of a complaint by a person aggrieved, the commission or its director shall:

- (1) dismiss the complaint for lack of probable cause;
- (2) achieve satisfactory adjustment of the complaint as evidenced by order of the commission; or
- (3) file a formal complaint on behalf of the commission.

H. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

I. For purposes of this section, "urgent medical condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement that poses a serious threat to the life of the person with the medical condition.

J. The complainant may seek a trial de novo in the district court in lieu of a hearing before the commission, provided the complainant requests from the director, in writing, a waiver of complainant's right to hearing within sixty days of service of written notice of a probable cause determination by the director. The director shall approve the waiver request and shall serve notice of the waiver upon the complainant and respondent. The complainant may request a trial de novo pursuant to Section 28-1-13 NMSA 1978 within ninety days from the date of service of the waiver. Issuance of the notice shall be deemed a final order of the commission for the purpose of appeal pursuant to Section 28-1-13 NMSA 1978."

Chapter 311 Section 2 Laws 2005

Section 2. Section 28-1-13 NMSA 1978 (being Laws 1969, Chapter 196, Section 12, as amended) is amended to read:

"28-1-13. APPEAL.--

A. A person aggrieved by an order of the commission may obtain a trial de novo in the district court of the county where the discriminatory practice occurred or where the respondent does business by filing a notice of appeal within ninety days from the date of service of the commission's order. A copy of the notice of appeal shall be served personally or by certified mail, return receipt requested, at their last known address on all parties who appeared before the commission and shall also be served at the division office in Santa Fe. An order of the commission shall not be superseded or

stayed during the appeal unless the district court so directs after notice to the commission and a hearing.

B. If testimony at the hearing was transcribed, the division shall, upon receipt of the notice of appeal, file so much of the transcript of the record as the parties requesting the transcript designate as necessary for the appeal with the district court.

C. Upon appeal, either party may request a jury. The jurisdiction of the district court is exclusive and its judgment is final, subject to further appeal to the court of appeals.

D. In any action or proceeding under this section, if the complainant prevails, the court in its discretion may allow actual damages and reasonable attorney fees and the state shall be liable the same as a private person."

SENATE BILL 174, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 312

AN ACT

RELATING TO MOTOR VEHICLES; ADDING AND CHANGING DEFINITIONS; PROVIDING APPLICATION AND TESTING REQUIREMENTS FOR COMMERCIAL DRIVER'S LICENSE APPLICANTS; PROVIDING FOR CERTAIN RESTRICTIONS ON ISSUANCE OF COMMERCIAL DRIVER'S LICENSES; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO PROVIDE INFORMATION TO THE COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM; PROVIDING REQUIREMENTS FOR USE OF INFORMATION RECEIVED FROM THE COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM; PROVIDING DISQUALIFICATION CRITERIA FOR HOLDERS OF COMMERCIAL DRIVER'S LICENSES; REQUIRING THE DIRECTOR OF THE MOTOR VEHICLE DIVISION OF THE TAXATION AND REVENUE DEPARTMENT TO COLLECT PENALTIES UPON CONVICTIONS OF CERTAIN VIOLATIONS; CHANGING A DEFINITION; CHANGING PROVISIONS TO COMPLY WITH FEDERAL REQUIREMENTS.

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

Chapter 312 Section 1 Laws 2005

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 self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle:

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

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

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

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

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

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

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

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

N. "conviction" means:

(1) an unvacated adjudication of guilt, or a determination by a court of original jurisdiction that a person has violated or failed to comply with the law;

(2) an unvacated adjudication of guilt, or a determination by an authorized administrative tribunal authorized pursuant to the Implied Consent Act that a person who holds a valid commercial driver's license has violated or failed to comply with the law;

(3) an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court;

(4) a plea of guilty or nolo contendere accepted by the court;

(5) the payment of a fine or court cost; or

(6) a violation of a condition of release without bail, regardless of whether the payment is rebated, suspended or probated;

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."

Chapter 312 Section 2 Laws 2005

Section 2. Section 66-5-54 NMSA 1978 (being Laws 1989, Chapter 14, Section 3, as amended) is amended to read:

"66-5-54. DEFINITIONS.--As used in the New Mexico Commercial Driver's License Act:

A. "commerce" means:

(1) trade, traffic or transportation within the jurisdiction of the United States between a place in New Mexico and a place outside of New Mexico, including a place outside of the United States; and

(2) trade, traffic or transportation in the United States that affects any trade, traffic or transportation described in Paragraph (1) of this subsection;

B. "commercial driver's license information system" means the information system created pursuant to the federal Commercial Motor Vehicle Safety Act of 1986 that contains information pertaining to operators of commercial motor vehicles;

C. "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(2) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(3) is designed to transport sixteen or more passengers, including the driver; or

(4) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law;

D. "director" means the director of the motor vehicle division of the department;

E. "disqualification" means:

(1) a suspension, revocation or cancellation of a commercial driver's license by the state or jurisdiction that issued the commercial driver's license;

(2) a withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle control other than a parking, vehicle weight or vehicle defect violation; and

(3) a determination by the federal motor carrier safety administration that a person is not qualified to operate a motor vehicle;

F. "division" means the motor vehicle division of the department;

G. "driving a commercial motor vehicle while under the influence of alcohol" means:

(1) driving a commercial motor vehicle while the driver has an alcohol concentration in the driver's blood or breath of four one hundredths or more;

(2) driving a commercial motor vehicle while the driver is under the influence of intoxicating liquor; or

(3) refusal to submit to chemical tests administered pursuant to Section 66-8-107 NMSA 1978;

H. "employee" means an operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent owner-operator contractors, while in the course of operating a commercial motor vehicle, who is either directly employed by or under lease to an employer;

I. "employer" means a person, including the United States, a state and a political subdivision of a state or their agencies or instrumentalities, that owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

J. "fatality" means the death of a person as a result of a motor vehicle accident;

K. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and any load thereon;

L. "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle;

M. "imminent hazard" means a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment will occur before the reasonable foreseeable completion date of a formal proceeding to lessen the risk of that death, illness, injury or endangerment;

N. "noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles that is not a commercial motor vehicle;

O. "nonresident commercial driver's license" means a commercial driver's license issued by another state to a person domiciled in that state or by a foreign country to a person domiciled in that country;

P. "out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle or a motor carrier operation is temporarily prohibited from operating;

Q. "railroad-highway grade crossing violation" means a violation of a provision of Section 66-7-341 or 66-7-343 NMSA 1978 or a violation of federal or local law or rule pertaining to stopping at or crossing a railroad-highway grade crossing; and

R. "serious traffic violation" means conviction of any of the following if committed when operating a motor vehicle:

(1) speed of fifteen miles or more per hour above the posted limits;

(2) reckless driving as defined by Section 66-8-113 NMSA 1978 or a municipal ordinance or the law of another state;

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

(4) injury to pregnant woman by vehicle as defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance or the law of another state;

(5) any other violation of law relating to motor vehicle traffic control, other than a parking violation, that the secretary determines by regulation to be a serious traffic violation. "Serious traffic violation" does not include a vehicle weight or vehicle defect violation;

(6) improper or erratic lane changes in violation of Section 66-7-317 NMSA 1978;

(7) following another vehicle too closely in violation of Section 66-7-318 NMSA 1978;

(8) directly or indirectly causing death or great bodily injury to a human being in the unlawful operation of a motor vehicle in violation of Section 66-8-101 NMSA 1978;

(9) driving a commercial motor vehicle without possession of a commercial driver's license in violation of Section 66-5-59 NMSA 1978;

(10) driving a commercial motor vehicle without the proper class of commercial driver's license and endorsements pursuant to Section 66-5-65 NMSA 1978 and the Motor Carrier Safety Act for the specific vehicle group operated or for the passengers or type of cargo transported; or

(11) driving a commercial motor vehicle without obtaining a commercial driver's license in violation of Section 66-5-59 NMSA 1978."

Chapter 312 Section 3 Laws 2005

Section 3. Section 66-5-58 NMSA 1978 (being Laws 1989, Chapter 14, Section 7, as amended) is amended to read:

"66-5-58. EMPLOYER RESPONSIBILITY.--It is unlawful for an employer to knowingly allow, require, permit or authorize a driver to drive a commercial motor vehicle during a period in which:

A. the driver has a driver's license suspended, revoked or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

B. the driver has more than one driver's license as of the effective date of the provisions of the New Mexico Commercial Driver's License Act;

C. the driver, the commercial motor vehicle the driver is driving or the motor carrier operation of the employer is subject to an out-of-service order; or

D. the driver has been convicted of a railroad-highway grade crossing violation."

Chapter 312 Section 4 Laws 2005

Section 4. Section 66-5-60 NMSA 1978 (being Laws 1989, Chapter 14, Section 9) is amended to read:

"66-5-60. COMMERCIAL DRIVER'S LICENSE--QUALIFICATIONS--STANDARDS.--

A. The division shall not issue a commercial driver's license to a person unless that person is a resident of New Mexico and has passed a knowledge and skills test for driving a commercial motor vehicle and for related endorsements, has passed a medical fitness test and has satisfied any other requirements of the New Mexico Commercial Driver's License Act.

B. The division may authorize a person, including an agency of this or another state, an employer, a private driver-training facility or other private institution or a department, agency or instrumentality of local government to administer the skills test specified by this section.

C. The director may waive the requirement of any test specified in this section for a commercial driver's license applicant who complies with the other provisions of the New Mexico Commercial Driver's License Act through any pertinent rules, regulations or contractual agreements with the public education department, other governments or private entities.

D. A commercial driver's license applicant shall not take a test specified in this section more than three times within one year.

E. If the department determines that a commercial driver's license applicant has committed an offense in taking a test specified in this section, the division shall not issue a commercial driver's license to that applicant within one year of the department's determination."

Chapter 312 Section 5 Laws 2005

Section 5. Section 66-5-63 NMSA 1978 (being Laws 1989, Chapter 14, Section 12, as amended) is amended to read:

"66-5-63. COMMERCIAL DRIVER'S LICENSE--PERMIT--APPLICATION--
DUPLICATE.--

A. The application for a commercial driver's license or commercial driver's instruction permit shall include the following:

(1) the full name and current mailing and residential address of the person;

(2) a physical description of the person, including sex, height, weight and eye color;

(3) the person's date of birth;

(4) the person's social security number;

(5) the person's signature;

(6) a consent to release the person's driving record information;

(7) certification by the applicant that the commercial motor vehicle used for the knowledge and skills test for driving a motor vehicle is in the class of commercial motor vehicles for which the person has applied for a commercial motor vehicle license;

(8) certification by the applicant that the commercial motor vehicle used for the knowledge and skills test for driving a motor vehicle is representative of the endorsement for which the person has applied; and

(9) any other information required by the department.

B. When a licensee changes his name or residence or mailing address, an application for a duplicate license shall be made as provided in Section 66-5-20 NMSA 1978."

Chapter 312 Section 6 Laws 2005

Section 6. Section 66-5-66 NMSA 1978 (being Laws 1989, Chapter 14, Section 15) is amended to read:

"66-5-66. APPLICANT RECORD INFORMATION--INFORMATION EXCHANGE.-

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A. Before issuing a commercial driver's license, the division shall obtain pertinent driving record information from each state where the applicant has been licensed, through a multistate database, or from each state.

B. The department shall have the authority to exchange commercial driver's license information as it deems necessary to carry out the provisions of the New Mexico Commercial Driver's License Act.

C. The department shall provide to the commercial driver's license information system information on a conviction, disqualification, change in applicant status, change in the state of record or any other information concerning a holder of a commercial driver's license within ten days of receipt of that information. The secretary may adopt regulations to administer the requirement set forth pursuant to this subsection.

D. In determining whether a violation of law has occurred for the purpose of issuance, administration or revocation of a commercial driver's license, the department shall use information received from the commercial driver's license information system in the same manner as information received from the state or any of its agencies, instrumentalities or political subdivisions."

Chapter 312 Section 7 Laws 2005

Section 7. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for at least thirty days if the federal motor carrier safety administration reports to the division that the person poses an imminent hazard.

B. The department shall disqualify a person who holds a commercial driver's license from driving a commercial motor vehicle for a period of not less than one year, which shall run concurrently with any revocation or suspension action for the same offense, if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act;

(2) is twenty-one years of age or more and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of eight one hundredths or more;

(3) submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of four one hundredths or more if the person is driving a commercial motor vehicle;

(4) is less than twenty-one years of age and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of two one hundredths or more; or

(5) is convicted of a violation of:

(a) driving a commercial motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state;

(c) using a commercial motor vehicle in the commission of a felony;

(d) driving a commercial motor vehicle after the driver's commercial driver's license is revoked, suspended, disqualified or canceled for violations while operating a commercial motor vehicle; or

(e) causing a fatality in the unlawful operation of a motor vehicle pursuant to Section 66-8-101 NMSA 1978.

C. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection B of this section occur while transporting a hazardous material required to be placarded.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection B of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

E. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if

the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

G. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during any

ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

H. The department shall disqualify a person from driving a commercial motor vehicle for sixty days if:

(1) the person has been convicted of two serious traffic violations in separate incidents within a three-year period; and

(2) the second conviction results in revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges for sixty days.

I. The department shall disqualify a person from driving a commercial motor vehicle for one hundred twenty days if:

(1) the person has been convicted of more than two serious traffic violations within a three-year period; and

(2) the third or a subsequent conviction results in the revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges.

J. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without separate proceeding of any kind and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

K. The department shall disqualify a person from driving a commercial motor vehicle for not less than:

(1) sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

L. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

M. The department shall post and enforce any disqualification sent by the federal motor carrier safety administration to the division that indicates that a commercial motor vehicle driver poses an imminent hazard."

Chapter 312 Section 8 Laws 2005

Section 8. Section 66-5-71 NMSA 1978 (being Laws 1998, Chapter 17, Section 5, as amended) is amended to read:

"66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE ORDERS.--

A. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than one thousand one hundred dollars (\$1,100) or more than two thousand seven hundred fifty dollars (\$2,750), in addition to disqualification as provided in Subsection C of this section. The director shall collect the penalty upon conviction.

B. An employer who is convicted of a violation of Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) or more than eleven thousand dollars (\$11,000). The director shall collect the penalty upon conviction.

C. A driver who is convicted of violating an out-of-service order shall be disqualified for:

(1) not less than ninety days or more than one year if the driver is convicted of a first violation of an out-of-service order;

(2) not less than one year or more than five years if, during any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; and

(3) not less than three years or more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents."

Chapter 312 Section 9 Laws 2005

Section 9. Section 66-5-72 NMSA 1978 (being Laws 2003, Chapter 51, Section 7) is amended to read:

"66-5-72. EMPLOYER PENALTIES FOR RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS.--An employer who is convicted of a violation of Subsection D of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. The director shall collect the penalty upon conviction."

Chapter 312 Section 10 Laws 2005

Section 10. Section 66-8-135 NMSA 1978 (being Laws 1978, Chapter 35, Section 543, as amended) is amended to read:

"66-8-135. RECORD OF TRAFFIC CASES.--

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the department an abstract of the record containing:

(1) the name and address of the defendant;

(2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;

(3) the plea, finding of the court and disposition of the charge, including fine or jail sentence or both, forfeiture of bail or dismissal of the charge;

(4) an itemization of costs assessed to the defendant;

(5) the date of the hearing;

(6) the court's name and address;

(7) whether the defendant was a first or subsequent offender; and

(8) whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required by Subsection B of this section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the department.

E. Every court of record shall also forward a like report to the department upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the department, the information required by this subsection may be submitted electronically to the department. The report shall be forwarded to the department within ten days of the final decision of the court or of any higher court that reviews the matter and from which the decision of no appeal or review is successfully taken.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

G. The department shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the department except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until fifty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country."

Chapter 312 Section 11 Laws 2005

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 243, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 313

AN ACT

RELATING TO STATE HEALTH INSTITUTIONS; CHANGING THE NAME OF THE NEW MEXICO STATE HOSPITAL TO THE NEW MEXICO BEHAVIORAL HEALTH INSTITUTE AT LAS VEGAS.

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

Chapter 313 Section 1 Laws 2005

Section 1. Section 6-13-2 NMSA 1978 (being Laws 1949, Chapter 121, Section 1) is amended to read:

"6-13-2. STATE INSTITUTIONS.-- The state institutions, within the meaning of Chapter 6, Article 13 NMSA 1978, are the university of New Mexico, the New Mexico state university, the New Mexico institute of mining and technology, the New Mexico military institute, the New Mexico highlands university, the western New Mexico university, the northern New Mexico state school, the New Mexico school for the deaf, the New Mexico school for the blind and visually impaired, the eastern New Mexico university, the Los Lunas medical center, the penitentiary of New Mexico, the New Mexico behavioral health institute at Las Vegas, the New Mexico boys' school and the miners' hospital."

Chapter 313 Section 2 Laws 2005

Section 2. Section 19-1-17 NMSA 1978 (being Laws 1917, Chapter 115, Section 1) is amended to read:

"19-1-17. PERMANENT, INCOME AND CURRENT FUNDS--CREATING DEPOSITS.--

A. The following funds are created.

B. To the credit of these funds, in the respective proportions to which they are by law entitled, all money derived from state lands shall be deposited by the commissioner with the state treasurer, as nearly as possible, on the first day of each calendar month. The commissioner shall keep an accurate record of all such deposits. The funds are:

- (1) common school current fund;
- (2) common school permanent fund;
- (3) university income fund;
- (4) university permanent fund;
- (5) university saline income fund;
- (6) New Mexico state university income fund;
- (7) New Mexico state university permanent fund;
- (8) western New Mexico university income fund;
- (9) western New Mexico university permanent fund;
- (10) New Mexico highlands university income fund;
- (11) New Mexico highlands university permanent fund;
- (12) northern New Mexico state school income fund;
- (13) northern New Mexico state school permanent fund;
- (14) eastern New Mexico university income fund;
- (15) eastern New Mexico university permanent fund;
- (16) New Mexico institute of mining and technology income fund;
- (17) New Mexico institute of mining and technology permanent fund;
- (18) New Mexico military institute income fund;
- (19) New Mexico military institute permanent fund;
- (20) New Mexico boys' school income fund;

(21) New Mexico boys' school permanent fund;

(22) miners' hospital income fund;

(23) miners' hospital permanent fund;

(24) New Mexico behavioral health institute at Las Vegas income fund;

(25) New Mexico behavioral health institute at Las Vegas permanent fund;

(26) penitentiary income fund;

(27) penitentiary permanent fund;

(28) state charitable, penal and reformatory institutions income fund;

(29) state charitable, penal and reformatory institutions permanent fund;

to be equally distributed among the institutions as defined in Article 14, Section 1 of the constitution of New Mexico;

(30) New Mexico school for the blind and visually impaired income fund;

(31) New Mexico school for the blind and visually impaired permanent fund;

(32) New Mexico school for the deaf income fund;

(33) New Mexico school for the deaf permanent fund;

(34) permanent reservoirs for irrigation purposes income fund;

(35) permanent reservoirs for irrigation purposes permanent fund;

(36) improvement of Rio Grande income fund;

(37) improvement of Rio Grande permanent fund;

(38) public buildings at capital income fund;

(39) public buildings at capital permanent fund;

(40) Santa Fe and Grant county railroad bond fund, to be applied as provided by Article 9, Section 4 of the constitution of New Mexico; and

(41) state lands maintenance fund."

Chapter 313 Section 3 Laws 2005

Section 3. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement;

B. "commission" means the public education commission;

C. "department" means the public education department;

D. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;

G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other person having custody and control of a school-age person;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;

O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as a resident of a state institution;

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public education;

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, New Mexico girls' school, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program;

AA. "certified school instructor" means a teacher or instructional support provider; and

BB. "certified school employee" or "certified school personnel" means a licensed school employee."

Chapter 313 Section 4 Laws 2005

Section 4. Section 23-1-12 NMSA 1978 (being Laws 1977, Chapter 253, Section 42) is amended to read:

"23-1-12. TRANSFER OF EXISTING INSTITUTIONS.--

A. All property, appropriations and cash balances now held in the name of the following institutional facilities, or by any state agency for the indicated facilities, the use of which is not limited by the terms of any trust or constitutional provision, are transferred to the department of health:

- (1) New Mexico behavioral health institute at Las Vegas;
- (2) Los Lunas medical center;
- (3) Fort Bayard medical center veterans' unit;
- (4) Villa Solano;
- (5) Fort Stanton hospital;
- (6) Turquoise lodge; and

(7) Pecos lodge.

B. The secretary of health may delegate the authority for the supervision and operation of any of the institutional facilities transferred under Subsection A of this section to any of the organizational units within the department of health."

Chapter 313 Section 5 Laws 2005

Section 5. Section 23-1-13 NMSA 1978 (being Laws 1970, Chapter 45, Section 1) is amended to read:

"23-1-13. NEW MEDICAL CENTER NAMES.--

A. Henceforth, the New Mexico state hospital at Las Vegas and the meadows home for the aged will be known as the "New Mexico behavioral health institute at Las Vegas". This center may offer general hospital care, extended care, intermediate care, skilled nursing services and out-patient care, as well as services now required by statute.

B. Henceforth, the Los Lunas hospital and training school at Los Lunas will be known as the "Los Lunas medical center". This center may offer general hospital care, extended care, skilled nursing services and out-patient care, as well as services now required by statute.

C. Henceforth, the Fort Bayard hospital will be known as the "Fort Bayard medical center". This center may offer general hospital care, extended care, skilled nursing services and out-patient care, as well as services now required by statute."

Chapter 313 Section 6 Laws 2005

Section 6. Section 23-5-1 NMSA 1978 (being Laws 1959, Chapter 360, Section 1) is amended to read:

"23-5-1. OBJECT.--The object of the New Mexico behavioral health institute at Las Vegas is the observation, diagnosis, treatment, care and maintenance of the mentally ill."

Chapter 313 Section 7 Laws 2005

Section 7. 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 blind and visually impaired, 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 New Mexico behavioral health institute at Las Vegas 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."

Chapter 313 Section 8 Laws 2005

Section 8. Section 31-14-6 NMSA 1978 (being Laws 1929, Chapter 69, Section 6) is amended to read:

"31-14-6. ORDER OF COURT COMMITTING INSANE PERSON TO HOSPITAL.--The court shall make and cause to be entered an order reciting the fact of such inquiry and the result thereof. When it is found that the defendant is insane, the order shall direct that the defendant be taken to the New Mexico behavioral health institute at Las Vegas, and there kept in safe confinement until his reason is restored."

Chapter 313 Section 9 Laws 2005

Section 9. Section 31-14-7 NMSA 1978 (being Laws 1929, Chapter 69, Section 7) is amended to read:

"31-14-7. DEFENDANT FOUND TO BE SANE--DUTY OF WARDEN.--If it is found that the defendant is sane, the warden shall proceed to execute the judgment as specified in the warrant. If it is found that the defendant is insane, the warden shall suspend the execution and transmit a certified copy of the order mentioned in Section 31-14-6 NMSA 1978 to the governor, and deliver the defendant, together with a certified copy of such order, to the superintendent of the New Mexico behavioral health institute at Las Vegas. When the defendant recovers his reason, the superintendent of the institute shall certify that fact to the governor who shall thereupon issue to the warden his warrant, appointing a day for the execution of the judgment."

Chapter 313 Section 10 Laws 2005

Section 10. Section 31-21-11 NMSA 1978 (being Laws 1959, Chapter 30, Section 1, as amended) is amended to read:

"31-21-11. PAROLE TO DETAINERS TO SERVE ANOTHER SENTENCE OR FOR HOSPITALIZATION AND TREATMENT.--Prisoners who are otherwise eligible for parole may be paroled to detainers to serve another sentence within the penitentiary or to the forensic treatment or alcohol treatment unit of the New Mexico behavioral health institute at Las Vegas or to any other specific hospital or residential treatment program determined necessary by the board."

Chapter 313 Section 11 Laws 2005

Section 11. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

"43-1-3. DEFINITIONS.--As used in the Mental Health and Developmental Disabilities Code:

A. "aversive stimuli" means anything which, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications which are not used for purposes of punishment;

B. "client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental disabilities facility by his parent or guardian or by any court order;

C. "code" means the Mental Health and Developmental Disabilities Code;

D. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the client, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the client;

(2) involve no restrictions on physical movement and no requirement for residential care except as reasonably necessary for the administration of treatment or for the protection of the client or others from physical injury; and

(3) are conducted at the suitable available facility closest to the client's place of residence;

E. "convulsive treatment" means any form of mental health treatment which depends upon creation of a convulsion by any means, including but not limited to electroconvulsive treatment and insulin coma treatment;

F. "court" means a district court of New Mexico;

G. "department" or "division" means the behavioral health services division of the department of health;

H. "developmental disability" means a disability of a person which is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction which requires treatment or habilitation similar to that provided to persons with mental retardation;

I. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available, including the New Mexico behavioral health institute at Las Vegas, the Los Lunas medical center or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a certified psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

J. "experimental treatment" means any mental health or developmental disabilities treatment which presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;

K. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

L. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled client in acquiring and maintaining those skills and behaviors which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes but is not limited to programs of formal, structured education and treatment;

M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including but not limited to grave passive neglect;

N. "likelihood of serious harm to others" means that it is more likely than not that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

O. "mental disorder" means the substantial disorder of the person's emotional processes, thought or cognition which grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

P. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with individuals with mental disorders or developmental disabilities;

Q. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

R. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

"Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

S. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution or supervisory residence or nursing home when the individual resides on the premises; and

T. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client."

SENATE BILL 883, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 314

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING NEW MEXICO HISTORY AS PART OF THE UNITS REQUIRED FOR GRADUATION.

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

Chapter 314 Section 1 Laws 2005

Section 1. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the

student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan and is reasonably informed about:

- (1) curricular and course options;
- (2) opportunities available that lead to different post-high-school options; and
- (3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

- (1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;
- (2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;
- (3) monitor compliance with the requirements of this section; and
- (4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

- (1) four units in English, with major emphasis on grammar and literature;
- (2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical education;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English;

(7) one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and

(8) nine elective units and seven and one-half elective units for students entering the ninth grade in the 2005-2006 school year that meet state board content and performance standards. Student service learning shall be offered as an elective.

G. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

H. Final examinations shall be administered to all students in all classes offered for credit.

I. A student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, math, writing, science and social science. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student 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 the student takes and passes the state graduation examination, the student may receive a high school diploma.

J. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent or guardian and school counselor or other school official charged with coursework planning for the student.

K. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

HOUSE BILL 139

Approved April 7, 2005

LAWS 2005, CHAPTER 315

AN ACT

RELATING TO EDUCATION; CLARIFYING, CORRECTING AND RECONCILING SECTIONS OF THE PUBLIC SCHOOL CODE TO COMPLY WITH THE EDUCATION REFORM OF 2003; DEFINING "TEACHER"; PROVIDING FOR SCREENING, MONITORING AND DIAGNOSTIC TESTING OF READING FOR KINDERGARTEN THROUGH GRADE TWO; EXTENDING THE TIME OF A LEVEL ONE LICENSE; PROVIDING FOR MENTORING FOR LEVEL THREE TEACHERS; CLARIFYING THAT SCHOOL BOARDS APPROVE ANNUAL BUDGETS; REQUIRING HEALTH EDUCATION AND PHYSICAL EDUCATION IN CERTAIN GRADES; DECLARING AN EMERGENCY.

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

Chapter 315 Section 1 Laws 2005

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement;

B. "commission" means the public education commission;

C. "department" means the public education department;

D. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;

G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other person having custody and control of a school-age person;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;

O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution;

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public education;

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, Las Vegas medical center and any other state agency responsible for educating resident children;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum

development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

AA. "certified school instructor" means a teacher or instructional support provider; and

BB. "certified school employee" or "certified school personnel" means a licensed school employee."

Chapter 315 Section 2 Laws 2005

Section 2. Section 22-2C-4 NMSA 1978 (being Laws 2003, Chapter 153, Section 13, as amended) is amended to read:

"22-2C-4. STATEWIDE ASSESSMENT AND ACCOUNTABILITY SYSTEM--INDICATORS--REQUIRED TESTS--ALTERNATIVE TESTS--LIMITS ON ALTERNATIVES TO ENGLISH LANGUAGE READING TEST.--

A. The department shall establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards and that measures adequate yearly progress for each student, public school and school district. Adequate yearly progress shall be determined primarily by student academic achievement, as demonstrated by statewide standards-based academic performance tests; however, the department may include other indicators of adequate yearly progress, including graduation rates for high schools and attendance for elementary and middle schools.

B. The academic assessment program for adequate yearly progress shall test student achievement as follows by the school year indicated:

(1) for grades three through nine and for grade eleven, standards-based academic performance tests in mathematics, reading and language arts and social studies by the 2005-2006 school year; provided that testing in ninth grade and testing in social studies shall not occur until the legislature has provided funding for test development and implementation;

(2) for grades three through nine, standards-based academic performance writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced tests by the 2005-2006 school year; and

(3) for one of grades three through five and six through nine and for grade eleven, standards-based academic performance tests in science by the 2007-2008 school year.

C. The department shall involve appropriate licensed school employees in the development of the standards-based academic performance tests.

D. All students shall participate in the academic assessment program. The department shall adopt standards for reasonable accommodations in academic testing for students with disabilities and limited English proficiency, including when and how accommodations may be applied. The legislative education study committee shall review the standards prior to adoption by the department.

E. Students who have been determined to be limited English proficient may be allowed to take the standards-based academic performance test in their primary language. A student who has attended school for three consecutive years in the United States shall participate in the English language reading test unless granted a waiver by the department based on criteria established by the department. An English language reading test waiver may be granted only for a maximum of two additional years and only on a case-by-case basis."

Chapter 315 Section 3 Laws 2005

Section 3. Section 22-5-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 28, as amended) is amended to read:

"22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local school board shall have the following powers or duties:

A. subject to the rules of the department, develop educational policies for the school district;

B. employ a local superintendent for the school district and fix the superintendent's salary;

C. review and approve the annual school district budget;

D. acquire, lease and dispose of property;

E. have the capacity to sue and be sued;

F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code;

G. issue general obligation bonds of the school district;

H. provide for the repair of and maintain all property belonging to the school district;

I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;

J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;

K. adopt rules pertaining to the administration of all powers or duties of the local school board;

L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;

M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and

N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency."

Chapter 315 Section 4 Laws 2005

Section 4. Section 22-10A-4 NMSA 1978 (being Laws 2003, Chapter 153, Section 35) is amended to read:

"22-10A-4. TEACHERS AND SCHOOL ADMINISTRATORS--PROFESSIONAL STATUS--LICENSURE LEVELS--SALARY ALIGNMENT.--

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the department has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed department-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of the teacher's career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of the 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses."

Chapter 315 Section 5 Laws 2005

Section 5. Section 22-10A-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 38) is amended to read:

"22-10A-7. LEVEL ONE LICENSURE.--

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

(1) holds a baccalaureate degree from an accredited educational institution;

(2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;

(3) has passed the New Mexico teacher assessments examination; and

(4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special education and vocational education.

G. Beginning with the 2003-2004 school year, with the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be thirty thousand dollars (\$30,000) for a standard nine and one-half month contract.

H. Teachers who hold level one licenses on the effective date of the 2003 act must be evaluated by the end of the 2006-2007 school year."

Chapter 315 Section 6 Laws 2005

Section 6. Section 22-10A-9 NMSA 1978 (being Laws 2003, Chapter 153, Section 40) is amended to read:

"22-10A-9. TEACHER MENTORSHIP PROGRAM FOR LEVEL ONE TEACHERS--PURPOSE--DEPARTMENT DUTIES.--

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all level one teachers. The department shall work with licensed school

employees, representatives from teacher preparation programs and the commission on higher education to establish the framework.

C. The framework shall include:

(1) individual support and assistance for each beginning teacher from a designated mentor;

(2) structured training for mentors;

(3) an ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards, school administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

D. The department shall:

(1) require submission and approval of each school district's teacher mentorship program;

(2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place; and

(3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program."

Chapter 315 Section 7 Laws 2005

Section 7. Section 22-10A-10 NMSA 1978 (being Laws 2003, Chapter 153, Section 41) is amended to read:

"22-10A-10. LEVEL TWO LICENSURE.--

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential

competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who successfully completes the level one license or is granted reciprocity as provided by department rules; demonstrates essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications as required by the department.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special education and vocational education.

D. With the adoption by the department of the statewide objective performance evaluation for level two teachers, the minimum salary for a level two teacher for a standard nine and one-half month contract shall be as follows:

(1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);

(2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000); and

(3) for the 2005-2006 school year, forty thousand dollars (\$40,000)."

Chapter 315 Section 8 Laws 2005

Section 8. Section 22-10A-11 NMSA 1978 (being Laws 2003, Chapter 153, Section 42) is amended to read:

"22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS AND SCHOOL ADMINISTRATORS.--

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be as follows:

- (1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
- (2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000);
- (3) for the 2005-2006 school year, forty thousand dollars (\$40,000);
- (4) for the 2006-2007 school year, forty-five thousand dollars (\$45,000); and
- (5) for the 2007-2008 school year, fifty thousand dollars (\$50,000).

D. A level three-B license is a nine-year license granted to a school administrator who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

E. The department shall grant a level three-B license to an applicant who has been a level three-A instructional leader for at least one year, has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program and demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

F. Beginning with the 2005-2006 school year, the standard contract and minimum annual salary for a level three-B school principal shall be based on the size of the school in which the school principal is employed, as follows:

- (1) for school principals of schools with two hundred or fewer students, a minimum salary of fifty-eight thousand dollars (\$58,000) for a standard ten-month contract;

(2) for school principals of schools with two hundred one to four hundred students, a minimum salary of sixty thousand dollars (\$60,000) for a standard ten-month contract;

(3) for school principals of schools with four hundred one to six hundred students, a minimum salary of sixty-two thousand dollars (\$62,000) for a standard ten-month contract;

(4) for school principals of schools with six hundred one to eight hundred students, a minimum salary of sixty-four thousand dollars (\$64,000) for a standard ten-month contract;

(5) for school principals of schools with eight hundred one to one thousand students, a minimum salary of sixty-six thousand dollars (\$66,000) for a standard ten-month contract; and

(6) for school principals of schools with more than one thousand students, a minimum salary of sixty-eight thousand dollars (\$68,000) for a standard ten-month contract."

Chapter 315 Section 9 Laws 2005

Section 9. Section 22-13-1 NMSA 1978 (being Laws 2003, Chapter 153, Section 57) is amended to read:

"22-13-1. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS REQUIRED--ACCREDITATION.--

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music, a language other than English and instruction that meets content and performance standards shall be provided in physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

(1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;

(2) mathematics;

(3) language other than English;

(4) communication skills;

(5) science;

(6) art;

(7) music;

(8) social studies;

(9) New Mexico history;

(10) United States history;

(11) geography;

(12) physical education; and

(13) health education.

E. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education.

F. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education."

Chapter 315 Section 10 Laws 2005

Section 10. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and

shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan and is reasonably informed about:

(1) curricular and course options;

(2) opportunities available that lead to different post-high-school options; and

(3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

(1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;

(2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;

(3) monitor compliance with the requirements of this section; and

(4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical education;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English; and

(7) nine elective units and eight elective units for students entering the ninth grade in the 2005-2006 school year that meet department content and performance standards. Student service learning shall be offered as an elective.

G. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

H. Final examinations shall be administered to all students in all classes offered for credit.

I. A student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student 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 the student takes and passes the state graduation examination, the student may receive a high school diploma.

J. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or

university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student.

K. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

Chapter 315 Section 11 Laws 2005

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 84, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 316

AN ACT

RELATING TO SCHOOL PERSONNEL; GRANTING A FIVE-YEAR LEVEL ONE LICENSE; PROVIDING THAT A LEVEL ONE TEACHER MUST TEACH AT LEVEL ONE FOR AT LEAST THREE FULL YEARS BEFORE APPLYING FOR A LEVEL TWO LICENSE; DECLARING AN EMERGENCY.

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

Chapter 316 Section 1 Laws 2005

Section 1. Section 22-10A-4 NMSA 1978 (being Laws 2003, Chapter 153, Section 35) is amended to read:

"22-10A-4. TEACHERS AND SCHOOL ADMINISTRATORS--PROFESSIONAL STATUS--LICENSURE LEVELS--SALARY ALIGNMENT.--

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the department has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed department-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of the teacher's career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of the 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses."

Chapter 316 Section 2 Laws 2005

Section 2. Section 22-10A-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 38) is amended to read:

"22-10A-7. LEVEL ONE LICENSURE.--

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal

mentorship program and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section

22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

(1) holds a baccalaureate degree from an accredited educational institution;

(2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;

(3) has passed the New Mexico teacher assessments examination;
and

(4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special education and vocational education.

G. Beginning with the 2003-2004 school year, with the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be

thirty thousand dollars (\$30,000) for a standard nine and one-half month contract.

H. Teachers who hold level one licenses on the effective date of the 2003 act must be evaluated by the end of the 2006-2007 school year."

Chapter 316 Section 3 Laws 2005

Section 3. Section 22-10A-9 NMSA 1978 (being Laws 2003, Chapter 153, Section 40) is amended to read:

"22-10A-9. TEACHER MENTORSHIP PROGRAM FOR LEVEL ONE TEACHERS--PURPOSE--DEPARTMENT DUTIES.--

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all level one teachers. The department shall work with licensed school employees, representatives from teacher preparation programs and the commission on higher education to establish the framework.

C. The framework shall include:

(1) individual support and assistance for each beginning teacher from a designated mentor;

(2) structured training for mentors;

(3) an ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards, school administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

D. The department shall:

(1) require submission and approval of each school district's teacher mentorship program;

(2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place; and

(3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program."

Chapter 316 Section 4 Laws 2005

Section 4. Section 22-10A-10 NMSA 1978 (being Laws 2003, Chapter 153, Section 41) is amended to read:

"22-10A-10. LEVEL TWO LICENSURE.--

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who successfully completes the level one license or is granted reciprocity as provided by department rules; demonstrates essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications as required by the department.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special education and vocational education.

D. With the adoption by the department of the statewide objective performance evaluation for level two teachers, the minimum salary for a level two teacher for a standard nine and one-half month contract shall be as follows:

(1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);

(2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000); and

(3) for the 2005-2006 school year, forty thousand dollars (\$40,000)."

Chapter 316 Section 5 Laws 2005

Section 5. "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS AND SCHOOL ADMINISTRATORS.--

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be as follows:

- (1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
- (2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000);
- (3) for the 2005-2006 school year, forty thousand dollars (\$40,000);
- (4) for the 2006-2007 school year, forty-five thousand dollars (\$45,000); and
- (5) for the 2007-2008 school year, fifty thousand dollars (\$50,000).

D. A level three-B license is a nine-year license granted to a school administrator who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

E. The department shall grant a level three-B license to an applicant who has been a level three-A instructional leader for at least one year, has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program and demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

F. Beginning with the 2007-2008 school year, the standard contract and minimum annual salary for a level three-B school principal shall be based on the size of the school in which the school principal is employed, as follows:

(1) for school principals of schools with two hundred or fewer students, a minimum salary of fifty-eight thousand dollars (\$58,000) for a standard ten-month contract;

(2) for school principals of schools with two hundred one to four hundred students, a minimum salary of sixty thousand dollars (\$60,000) for a standard ten-month contract;

(3) for school principals of schools with four hundred one to six hundred students, a minimum salary of sixty-two thousand dollars (\$62,000) for a standard ten-month contract;

(4) for school principals of schools with six hundred one to eight hundred students, a minimum salary of sixty-four thousand dollars (\$64,000) for a standard ten-month contract;

(5) for school principals of schools with eight hundred one to one thousand students, a minimum salary of sixty-six thousand dollars (\$66,000) for a standard ten-month contract; and

(6) for school principals of schools with more than one thousand students, a minimum salary of sixty-eight thousand dollars (\$68,000) for a standard ten-month contract."

Chapter 316 Section 6 Laws 2005

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

SENATE BILL 662, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 317

AN ACT

RELATING TO HEALTH; PROVIDING THAT THE DEPARTMENT OF HEALTH MAY CONTRACT WITH AN INDEPENDENT CONTRACTOR TO OPERATE FORT BAYARD MEDICAL CENTER OR TO PROVIDE FOR A REPLACEMENT FACILITY TO BE LOCATED IN GRANT COUNTY; PROVIDING OPTIONS FOR CURRENT EMPLOYEES AT FORT BAYARD MEDICAL CENTER; DECLARING AN EMERGENCY.

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

Chapter 317 Section 1 Laws 2005

Section 1. A new section of the Department of Health Act, Section 9-7-6.5 NMSA 1978, is enacted to read:

"9-7-6.5. AGREEMENTS FOR OPERATION OF OR CONSTRUCTION OF A REPLACEMENT FACILITY FOR FORT BAYARD MEDICAL CENTER.--

A. Notwithstanding any other provision of state law or rule, the secretary may:

(1) enter into an agreement, including an agreement with an independent contractor, to operate Fort Bayard medical center or a replacement for Fort Bayard medical center in Grant county; or

(2) in conjunction with the property control division of the general services department, the state land office or other appropriate state agency, enter into a lease or other long-term use agreement of not more than twenty-five years with an independent contractor or the owner of the facility for the provision and operation of a facility to be located in Grant county to replace Fort Bayard medical center.

B. The provisions of the Procurement Code shall not apply to the procurement of an agreement entered into by the secretary pursuant to this section.

C. An agreement entered into pursuant to this section shall include provisions for the continued employment of all current and future Fort Bayard medical center employees, excluding management employees of the contractor, as state employees, entitled and subject to all the rights and responsibilities of state employees. Under the terms of the agreement and the overall direction of the department, the independent contractor shall provide management and supervision to state employees

at Fort Bayard medical center, including the provision of work assignments, evaluations and promotional and disciplinary actions."

Chapter 317 Section 2 Laws 2005

Section 2. 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 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;

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;

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;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or 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, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000); and

Y. procurement of an agreement, pursuant to Section 9-7-6.5 NMSA 1978, to operate Fort Bayard medical center or to provide and operate in Grant county a replacement facility for Fort Bayard medical center."

Chapter 317 Section 3 Laws 2005

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

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 1055, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 318

AN ACT

RELATING TO PROCUREMENT; EXEMPTING FROM THE PROCUREMENT CODE CONTRACTS FOR FINANCIAL ADVISOR SERVICES ENTERED INTO BY THE EDUCATIONAL RETIREMENT BOARD, THE STATE INVESTMENT OFFICER OR THE RETIREMENT BOARD CREATED PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

Chapter 318 Section 1 Laws 2005

Section 1. 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 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;

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;

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;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or 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, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation; projects and initiatives designed to improve outcomes for students with disabilities; and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000); and

Y. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act."

Chapter 318 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 61

Approved April 7, 2005

LAWS 2005, CHAPTER 319

AN ACT

RELATING TO PUBLIC FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE CERTAIN ADDITIONAL REVENUE BONDS FOR THE UNIVERSITY OF NEW MEXICO HOSPITAL AND THE CANCER RESEARCH AND TREATMENT CENTER AT THE UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 319 Section 1 Laws 2005

Section 1. Laws 2003, Chapter 341, Section 3 is amended to read:

"Section 2. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act for a term not exceeding twenty years in an amount not exceeding sixty million dollars (\$60,000,000) for the purpose of designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center.

B. The New Mexico finance authority may issue and sell additional revenue bonds in compliance with the New Mexico Finance Authority Act for a term not exceeding twenty years in an amount not exceeding fifteen million dollars (\$15,000,000) for the purpose of supplementing the proceeds of the bonds issued pursuant to Subsection A of this section to design, construct, equip and furnish additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center.

C. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the vice president for health sciences of the university of New Mexico certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the health sciences center of the university of New Mexico for the purposes described in Subsections A and B of this section.

D. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 shall be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds.

E. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 shall be deposited each month in a separate fund or account of the authority. Money in the separate fund or account in excess of the monthly amount necessary for immediate payment or designation for payment of principal and interest due on the bonds is appropriated to the university of New Mexico health sciences center and shall be transferred each month to the university of New Mexico health sciences center.

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 secretary of taxation and revenue that all obligations for the bonds issued pursuant to this section have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection E of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

G. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage

for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

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 authority.

I. The New Mexico finance authority may purchase revenue bonds issued pursuant to this section with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978."

Chapter 319 Section 2 Laws 2005

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

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 935, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 320

AN ACT

RELATING TO PUBLIC PROPERTY; AUTHORIZING THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO EXPEND CERTAIN BOND PROCEEDS TO PLAN, DESIGN, CONSTRUCT AND EQUIP A PARKING STRUCTURE IN SANTA FE AND TO ACQUIRE LAND AND PLAN, DESIGN, CONSTRUCT AND EQUIP A STATE LABORATORY FACILITY IN BERNALILLO COUNTY; EXPANDING THE PURPOSES OF THE STATE BUILDING BONDING ACT; AUTHORIZING REVENUE BONDS PURSUANT TO THAT ACT; AUTHORIZING REVENUE BONDS FROM CIGARETTE TAX DISTRIBUTIONS FOR THE STATE LABORATORY FACILITY AND FOR IMPROVEMENTS AT CERTAIN DEPARTMENT OF HEALTH FACILITIES; MAKING APPROPRIATIONS.

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

Chapter 320 Section 1 Laws 2005

Section 1. Laws 2001, Chapter 166, Section 1, as amended by Laws 2004, Chapter 123, Section 6, is amended to read:

"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 within or in close proximity to the public safety campus as set out in the capitol buildings master plan developed by the capitol buildings planning commission; provided that no land shall be purchased pursuant to this paragraph that does not have, in place, water, sewer, electricity and other necessary infrastructure.

B. In addition to the acquisitions authorized in Subsection A of this section, the property control division of the general services department may:

(1) in cooperation with the New Mexico legislative council, pursuant to the capitol buildings master plan developed by the capitol buildings planning commission and after review by the commission plan, design, construct and equip a parking structure in the central capitol campus in Santa Fe. Upon completion of the parking structure, the property control division shall transfer the parking structure and associated real estate to the New Mexico legislative council. After the transfer, the legislative council shall operate and maintain the parking structure; and

(2) expend up to eighteen million one hundred thousand dollars (\$18,100,000) of the net proceeds from state office building tax revenue bonds to acquire land and plan, design, construct and equip a state laboratory facility in Bernalillo county.

C. 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."

Chapter 320 Section 2 Laws 2005

Section 2. Section 6-21C-2.1 NMSA 1978 (being Laws 2004, Chapter 123, Section 1) is amended to read:

"6-21C-2.1. 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 and related facilities. Further, in anticipation of the state's future office space needs, the legislature finds it prudent to establish an office acquisition program.

B. The legislature also finds that, in extreme circumstances, it is advantageous for the state to fund certain critical facilities to avoid the need for leasing or paying emergency rents.

C. The purpose of the State Building Bonding Act is to acquire additional state office buildings and related facilities, or critical facilities located within the master planning jurisdiction of the capitol buildings planning commission, by issuing bonds paid for with distributions of gross receipts tax revenue that reflect a portion of the savings that will result from the conversion to more state-owned facilities."

Chapter 320 Section 3 Laws 2005

Section 3. Section 6-21C-4 NMSA 1978 (being Laws 2001, Chapter 199, Section 4, as amended) is amended to read:

"6-21C-4. NEW MEXICO FINANCE AUTHORITY SHALL ISSUE BUILDING BONDS--APPROPRIATION OF PROCEEDS.--

A. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state office building tax revenue bonds", payable solely from the state building bonding fund, in compliance with the State Building Bonding Act for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning

commission when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the property control division of the general services department has certified the need for the issuance of the bonds.

B. The net proceeds from the building bonds are appropriated to the property control division of the general services department for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission, the acquisition of which shall be consistent with the State Building Bonding Act and the authorizing legislation."

Chapter 320 Section 4 Laws 2005

Section 4. Laws 2001, Chapter 166, Section 2, as amended by Laws 2004, Chapter 123, Section 7, is amended to read:

"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 Building 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 for one or more of the purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Section 1 of this 2005 act. The authority shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible. Except as provided in Subsection C of this section, net 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 purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Section 1 of this 2005 act.

B. The New Mexico finance authority may also issue and sell additional state office building tax revenue bonds in compliance with the State Building Bonding Act in a total amount not to exceed fifteen million dollars (\$15,000,000) 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 for one or more of the purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Section 1 of this 2005 act. The authority shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible. Net proceeds from the sale of the bonds are appropriated to the property control division of the general services department for expenditure in fiscal year 2005 and subsequent fiscal years for the purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Section 1 of this 2005 act.

C. Two hundred fifty thousand dollars (\$250,000) of the proceeds from the bonds issued pursuant to Subsection A of this section are appropriated to the legislative council service for expenditure in fiscal years 2004 through 2008 for the purpose of providing funding for the capitol buildings planning commission, master planning process for state facilities and for annual updates to master plans, but excluding any payments for salaries, benefits and costs of state employees. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the state building bonding fund."

Chapter 320 Section 5 Laws 2005

Section 5. Section 6-21-6.7 NMSA 1978 (being Laws 2003, Chapter 341, Section 5) is amended to read:

"6-21-6.7. CREDIT ENHANCEMENT ACCOUNT CREATED--USE OF ACCOUNT--RELEASE OF MONEY TO THE GENERAL FUND.--

A. The credit enhancement account is created as a separate account within the authority for use only as provided in this section.

B. All cigarette tax proceeds distributed each month to the authority pursuant to Subsection G of Section 7-1-6.11 NMSA 1978 shall be deposited in the credit enhancement account.

C. Amounts deposited in the credit enhancement account may be pledged irrevocably as additional security for the payment of the principal, interest, premiums and expenses on bonds issued by the authority for:

(1) designing, constructing, equipping and furnishing additions and improvements to the university of New Mexico hospital and the cancer research and treatment center at the university of New Mexico health sciences center; and

(2) land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

D. The authority shall determine monthly upon receipt of cigarette tax proceeds if the individual amounts of cigarette tax proceeds distributed pursuant to Subsection E or Subsection F, respectively, of Section 7-1-6.11 NMSA 1978 are sufficient to meet the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds additionally secured by the credit enhancement account. Any insufficient amount shall be paid immediately from the credit enhancement account. A payment from the credit enhancement account shall be reimbursed in succeeding months from the individual amount of cigarette tax proceeds distributed pursuant to Subsection E or Subsection F, as applicable, of Section 7-1-6.11 NMSA 1978 in excess of the amount required for immediate payment or designation for payment of principal, interest, premiums and

expenses on bonds. All money in the credit enhancement account in excess of the monthly amount required for immediate payment or designation for payment of principal, interest, premiums and expenses on bonds shall be transferred monthly by the authority to the general fund.

E. Upon payment of all principal, interest, premiums and expenses on bonds additionally secured by a pledge of amounts deposited in the credit enhancement account, the authority shall certify to the secretary of taxation and revenue that all obligations for bonds have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection G of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax proceeds distributed to the credit enhancement account, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge."

Chapter 320 Section 6 Laws 2005

Section 6. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is amended to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to one and thirty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to two and seventy-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer research and treatment center at the university of New Mexico health sciences center in an amount equal to one and thirty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to two and four-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fourteen and fifty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made, on behalf of and for the benefit of the university of New Mexico health sciences center, to the New Mexico finance authority.

F. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to six and eleven-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

G. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fifteen and ninety-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority."

Chapter 320 Section 7 Laws 2005

Section 7. Laws 2003, Chapter 341, Section 4 is amended to read:

"Section 4. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--
DEPARTMENT OF HEALTH FACILITIES--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act for projects authorized specifically by law for land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the secretary of finance and administration certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the capital program fund administered by the property control division of the general services department for the purposes described in Subsection A of this section.

C. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 shall be pledged irrevocably for the payment of the principal, interest, premiums and related expenses on the bonds and for payment of the expenses incurred by the New Mexico finance authority related to the issuance, sale and administration of the bonds.

D. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 shall be deposited each month in a separate fund or account of the authority. Money in the separate fund or account in excess of the combined total of the principal, interest and other expenses

or obligations related to the bonds coming due in that fiscal year is appropriated to and shall be transferred to the capital program fund for capital improvements to department of health facilities recommended by the secretary of health and approved by the secretary of finance and administration.

E. Upon payment of all principal, interest and other expenses or obligations related to the bonds, the New Mexico finance authority shall certify to the secretary of taxation and revenue that all obligations for the bonds issued pursuant to this section have been fully discharged and shall direct the secretary of taxation and revenue and the state treasurer to cease distributing cigarette tax proceeds to the authority pursuant to Subsection F of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

G. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the authority.

H. The New Mexico finance authority may purchase revenue bonds issued pursuant to this section with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978."

Chapter 320 Section 8 Laws 2005

Section 8. AUTHORIZATION FOR REVENUE BONDS--DEPARTMENT OF HEALTH FACILITIES.--Pursuant to Laws 2003, Chapter 341, Section 4, as amended by Section 7 of this 2005 act, the New Mexico finance authority may issue and sell revenue bonds in compliance with the provisions of that section and the provisions of the New Mexico Finance Authority Act in an amount not exceeding thirty-nine million dollars (\$39,000,000) plus an amount equal to the costs of issuing the revenue bonds for the following purposes in the following amounts:

A. ten million three hundred thousand dollars (\$10,300,000) for improvements at the southern New Mexico rehabilitation center;

B. eleven million dollars (\$11,000,000) for improvements at the Las Vegas medical center;

C. four million dollars (\$4,000,000) for improvements at Fort Bayard medical center; and

D. thirteen million seven hundred thousand dollars (\$13,700,000) for use by the property control division of the general services department for land acquisition and the planning, designing, construction and equipping of a state laboratory facility in Bernalillo county for use by the department of health.

SENATE BILL 289, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 321

AN ACT

RELATING TO HEALTH; ELIMINATING THE HEALTH PROFESSION ADVISORY COMMITTEE, THE HEALTH INFORMATION SYSTEM ADVISORY COMMITTEE, THE ADULT PROTECTIVE SERVICES ADVISORY BOARD AND THE HEALTH INFORMATION ALLIANCE.

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

Chapter 321 Section 1 Laws 2005

Section 1. Section 21-22-2 NMSA 1978 (being Laws 1975, Chapter 244, Section 2, as amended) is amended to read:

"21-22-2. PURPOSE.--The purpose of the Medical Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of medical doctors and physician assistants in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for medical and physician assistant students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice of medicine within one of the areas of the state designated by the commission."

Chapter 321 Section 2 Laws 2005

Section 2. Section 21-22-6 NMSA 1978 (being Laws 1975, Chapter 244, Section 6, as amended) is amended to read:

"21-22-6. MEDICAL STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining a medical education at any reputable and accredited medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed physician or physician assistant in areas of New Mexico designated as not being adequately served by medical practitioners.

B. The loans shall not exceed the necessary expenses incurred while attending a medical school or college and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their medical education shall become due, together with interest, immediately upon termination of their medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the commission as not being adequately served by medical practitioners. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest

shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of medical student loans in annual or other periodic installments."

Chapter 321 Section 3 Laws 2005

Section 3. Section 21-22A-2 NMSA 1978 (being Laws 1978, Chapter 109, Section 2, as amended) is amended to read:

"21-22A-2. PURPOSE.--The purpose of the Osteopathic Medical Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of osteopathic medical doctors and osteopathic physician's assistants in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for osteopathic medical students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice as an osteopathic physician or osteopathic physician's assistant within one of the areas of the state designated by the commission."

Chapter 321 Section 4 Laws 2005

Section 4. Section 21-22A-6 NMSA 1978 (being Laws 1978, Chapter 109, Section 6, as amended) is amended to read:

"21-22A-6. OSTEOPATHIC MEDICAL STUDENT LOANS--CONTRACT TERMS-

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REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining an osteopathic medical education at any reputable and accredited osteopathic medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed osteopathic physician or osteopathic physician's assistant in areas of New Mexico designated as not being adequately served by osteopathic medical practitioners.

B. The loan shall not exceed the necessary expenses incurred while attending an osteopathic medical school or college or osteopathic physician's assistant program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his osteopathic medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an osteopathic medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after the completion of osteopathic medical school or an osteopathic physician's assistant program and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's osteopathic medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their osteopathic medical education shall become due, together with interest, immediately upon termination of their osteopathic medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed osteopathic physician or osteopathic physician's assistant in areas approved by the commission as not being adequately served by osteopathic medical practitioners. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this section.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of osteopathic medical student loans in annual or other periodic installments."

Chapter 321 Section 5 Laws 2005

Section 5. Section 21-22B-2 NMSA 1978 (being Laws 1987, Chapter 299, Section 2, as amended) is amended to read:

"21-22B-2. PURPOSE.--The purpose of the Nursing Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of nurses in the underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for nursing students. The program will require as a condition of each loan that the student declare intent prior to the granting of the loan that the nurse will practice nursing within one of the areas of the state designated as an underserved area by the commission."

Chapter 321 Section 6 Laws 2005

Section 6. Section 21-22B-6 NMSA 1978 (being Laws 1987, Chapter 299, Section 6, as amended) is amended to read:

"21-22B-6. NURSING STUDENT LOANS--CONTRACT TERMS--REPAYMENT.-

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts for such periods as determined by the commission, with which to defray expenses incurred in obtaining a nursing education; provided that the applicant files with the commission a declaration of intent to practice as a licensed nurse in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending a program of nursing and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his nursing education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a nursing education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of a nursing program. The contract shall further provide that immediately upon completion or termination of the student's nursing education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their nursing education shall become due, together with interest, immediately upon termination of nursing education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms with the commission.

E. The contract shall provide that the commission may forgive a portion of the loan principal and interest for each year that a loan recipient practices nursing in areas approved by the commission. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of nursing student loans in annual or other periodic installments."

Chapter 321 Section 7 Laws 2005

Section 7. Section 21-22C-1 NMSA 1978 (being Laws 1994, Chapter 57, Section 3) is amended to read:

"21-22C-1. SHORT TITLE.--Chapter 21, Article 22C NMSA 1978 may be cited as the "Allied Health Student Loan for Service Act"."

Chapter 321 Section 8 Laws 2005

Section 8. Section 21-22C-2 NMSA 1978 (being Laws 1994, Chapter 57, Section 4, as amended) is amended to read:

"21-22C-2. PURPOSE.--The purpose of the Allied Health Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of allied health professionals in underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for allied health students. Each applicant shall declare his intent to practice his allied health profession within one of the areas of the state designated as an underserved area by the commission."

Chapter 321 Section 9 Laws 2005

Section 9. Section 21-22C-6 NMSA 1978 (being Laws 1994, Chapter 57, Section 8, as amended) is amended to read:

"21-22C-6. ALLIED HEALTH STUDENT LOANS--CONTRACT

TERMS--REPAYMENT.--

A. Prior to receiving a loan, each applicant approved for a loan shall file with the commission a declaration of intent to practice as a licensed allied health professional in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending an allied health profession program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his allied health profession education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an allied health profession education and shall be conditioned on the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of an allied health profession education. The contract shall further provide that immediately upon completion or termination of the student's allied health profession education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their allied health profession education shall become due, together with interest, immediately upon termination of that education. The commission, in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices an allied health profession in areas approved by the commission. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of

service, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve the required number of years in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of allied health student loans in annual or other periodic installments."

Chapter 321 Section 10 Laws 2005

Section 10. Section 21-22D-1 NMSA 1978 (being Laws 1995, Chapter 144, Section 16) is amended to read:

"21-22D-1. SHORT TITLE.--Chapter 21, Article 22D NMSA 1978 may be cited as the "Health Professional Loan Repayment Act"."

Chapter 321 Section 11 Laws 2005

Section 11. Section 21-22D-6 NMSA 1978 (being Laws 1995, Chapter 144, Section 21) is amended to read:

"21-22D-6. AWARD CRITERIA--CONTRACT TERMS--PAYMENT.--

A. Prior to receiving an award, the health professional shall file with the commission a declaration of intent to practice as a health professional in areas of New Mexico designated as underserved by the commission.

B. Award criteria shall provide that:

(1) amounts shall be dependent upon the location of the practice, the applicant's total health professional education indebtedness and characteristics of the practice;

(2) preference in making awards shall be to individuals who have graduated from a New Mexico public post-secondary educational institution;

(3) recruitment awards shall be made to eligible participants who agree to relocate to an approved designated area;

(4) highest priority shall be given to participants in practices in which health profession vacancies are difficult to fill, practices that require after hours call at least every other night and practices that have heavy obstetrical responsibilities;

(5) award amounts may be modified based upon available funding or other special circumstances; and

(6) an award shall not exceed the total medical education indebtedness of any participant.

C. The following education debts are not eligible for repayment pursuant to the Health Professional Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from friends or relatives; and

(4) loans that exceed individual standard school expense levels.

D. The loan repayment award shall be evidenced by a contract between the health professional and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the health professional's debtors and shall state the obligations of the health professional under the program, including a minimum two-year period of service, quarterly reporting requirements and other policies established by the commission.

E. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. If a health professional does not comply with the terms of the contract, the commission shall assess a penalty of up to three times the amount of award disbursed plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the health professional cannot serve or comply with the terms of the contract. If the commission does not find acceptable extenuating circumstances for the health professional's failure to comply with the contract, the commission shall require immediate repayment plus the amount of the penalty.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the disbursement of loan repayment awards to the lenders of health professionals in annual or other periodic installments."

Chapter 321 Section 12 Laws 2005

Section 12. Section 24-14A-3 NMSA 1978 (being Laws 1989, Chapter 29, Section 3, as amended) is amended to read:

"24-14A-3. HEALTH INFORMATION SYSTEM--CREATION--DUTIES OF COMMISSION.--

A. The "health information system" is created for the purpose of assisting the commission, legislature and other agencies and organizations in the state's efforts in collecting, analyzing and disseminating health information to assist:

(1) in the performance of health planning and policymaking functions, including identifying personnel, facility, education and other resource needs and allocating financial, personnel and other resources where appropriate;

and (2) consumers in making informed decisions regarding health care;

and (3) in administering, monitoring and evaluating a statewide health plan.

B. In carrying out its powers and duties pursuant to the Health Information System Act, the commission shall not duplicate databases that exist in the public sector or databases in the private sector to which it has electronic access. Every governmental entity shall provide the commission with access to its health-related data as needed by the commission. The commission shall collect data from data sources in the most cost-effective and efficient manner.

C. The commission shall establish, operate and maintain the health information system.

D. In establishing, operating and maintaining the health information system, the commission shall:

- (1) obtain information on the following health factors:
- (a) mortality and natality, including accidental causes of death;
 - (b) morbidity;

(c) health behavior;

(d) disability;

(e) health system costs, availability, utilization and revenues;

(f) environmental factors;

(g) health personnel;

(h) demographic factors;

(i) social, cultural and economic conditions affecting health;

(j) family status; and

(k) medical and practice outcomes as measured by nationally accepted standards and quality of care;

(2) give the highest priority in data gathering to information needed to implement and monitor progress toward achievement of the state health policy, including determining where additional health resources such as personnel, programs and facilities are most needed, what those additional resources should be and how existing resources should be reallocated;

(3) standardize collection and specific methods of measurement across databases and use scientific sampling or complete enumeration for collecting and reporting health information;

(4) take adequate measures to provide health information system security for all health data acquired under the Health Information System Act and protect individual patient and provider confidentiality. The right to privacy for the individual shall be a major consideration in the collection and analysis of health data and shall be protected in the reporting of results;

(5) adopt and promulgate regulations necessary to establish and administer the provisions of the Health Information System Act, including an appeals process for data sources and procedures to protect data source proprietary information from public disclosure;

(6) establish definitions, formats and other common information standards for core health data elements of the health information system in order to provide an integrated financial, statistical and clinical health information system, including a geographic information system, that allows data sharing and linking across databases maintained by data sources and federal, state and local public agencies;

(7) develop and maintain health and health-related data inventories and technical documentation on data holdings in the public and private sectors;

(8) collect, analyze and make available health data to support preventive health care practices and to facilitate the establishment of appropriate benchmark data to measure performance improvements over time;

(9) establish and maintain a systematic approach to the collection and storage of health data for longitudinal, demographic and policy impact studies;

(10) use expert system-based protocols to identify individual and population health risk profiles and to assist in the delivery of primary and preventive health care services;

(11) collect health data sufficient for consumers to be able to evaluate health care services, plans, providers and payers and to make informed decisions regarding quality, cost and outcome of care across the spectrum of health care services, providers and payers;

(12) collect comprehensive information on major capital expenditures for facilities, equipment by type and by data source and significant facility capacity reductions; provided that for the purposes of this paragraph and Section 24-14A-5 NMSA 1978, "major capital expenditure" means purchases of at least one million dollars (\$1,000,000) for construction or renovation of facilities and at least five hundred thousand dollars (\$500,000) for purchase or lease of equipment, and "significant facility capacity reductions" means those reductions in facility capacities as defined by the commission;

(13) serve as a health information clearinghouse, including facilitating private and public collaborative, coordinated data collection and sharing and access to appropriate data and information, maintaining patient and client confidentiality in accordance with state and federal requirements; and

(14) collect data in the most cost-efficient and effective method feasible and adopt regulations that place a limit on the maximum amount of unreimbursed costs that a data source can incur in any year for the purposes of complying with the data requirements of the Health Information System Act."

Chapter 321 Section 13 Laws 2005

Section 13. Section 24-14A-4.1 NMSA 1978 (being Laws 1994, Chapter 59, Section 11) is amended to read:

"24-14A-4.1. ANNUAL REVIEW OF DATA NEEDS.--At least once each year, the commission shall review its data collection requirements to determine the relevancy of the data elements on which it collects data and review its regulations and procedures

for collecting, analyzing and reporting data for efficiency, effectiveness and appropriateness. The review shall consider the cost incurred by data sources to collect and submit data."

Chapter 321 Section 14 Laws 2005

Section 14. REPEAL.--Sections 21-1-26.8, 24-14A-3.1, 24-14A-3.2 and 27-7-18 NMSA 1978 (being Laws 1995, Chapter 144, Section 1, Laws 1994, Chapter 59, Sections 13 and 14 and Laws 1989, Chapter 389, Section 5, as amended) are repealed.

HOUSE BILL 1008, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 322

AN ACT

RELATING TO HEALTH DISPARITIES AND DATA COLLECTION; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 322 Section 1 Laws 2005

Section 1. Section 24-14A-3 NMSA 1978 (being Laws 1989, Chapter 29, Section 3, as amended) is amended to read:

"24-14A-3. HEALTH INFORMATION SYSTEM--CREATION--DUTIES OF COMMISSION.--

A. The "health information system" is created for the purpose of assisting the commission, legislature and other agencies and organizations in the state's efforts in collecting, analyzing and disseminating health information to assist:

(1) in the performance of health planning and policymaking functions, including identifying personnel, facility, education and other resource needs and allocating financial, personnel and other resources where appropriate;

(2) consumers in making informed decisions regarding health care;

and

(3) in administering, monitoring and evaluating a statewide health plan.

B. In carrying out its powers and duties pursuant to the Health Information System Act, the commission shall not duplicate databases that exist in the public sector or databases in the private sector to which it has electronic access. Every governmental entity shall provide the commission with access to its health-related data as needed by the commission. The commission shall collect data from data sources in the most cost-effective and efficient manner.

C. The commission shall establish, operate and maintain the health information system.

D. In establishing, operating and maintaining the health information system, the commission shall:

(1) obtain information on the following health factors:

- (a) mortality and natality, including accidental causes of death;
- (b) morbidity;
- (c) health behavior;
- (d) disability;
- (e) health system costs, availability, utilization and revenues;
- (f) environmental factors;
- (g) health personnel;
- (h) demographic factors;
- (i) social, cultural and economic conditions affecting health, including language preference;
- (j) family status;
- (k) medical and practice outcomes as measured by nationally accepted standards and quality of care; and
- (l) participation in clinical research trials;

(2) give the highest priority in data gathering to information needed to implement and monitor progress toward achievement of the state health policy, including determining where additional health resources such as personnel, programs and facilities are most needed, what those additional resources should be and how existing resources should be reallocated;

(3) standardize collection and specific methods of measurement across databases and use scientific sampling or complete enumeration for collecting and reporting health information;

(4) take adequate measures to provide health information system security for all health data acquired under the Health Information System Act and protect individual patient and provider confidentiality. The right to privacy for the individual shall be a major consideration in the collection and analysis of health data and shall be protected in the reporting of results;

(5) adopt and promulgate rules necessary to establish and administer the provisions of the Health Information System Act, including an appeals process for data sources and procedures to protect data source proprietary information from public disclosure;

(6) establish definitions, formats and other common information standards for core health data elements of the health information system in order to provide an integrated financial, statistical and clinical health information system, including a geographic information system, that allows data sharing and linking across databases maintained by data sources and federal, state and local public agencies;

(7) develop and maintain health and health-related data inventories and technical documentation on data holdings in the public and private sectors;

(8) collect, analyze and make available health data to support preventive health care practices and to facilitate the establishment of appropriate benchmark data to measure performance improvements over time;

(9) establish and maintain a systematic approach to the collection and storage of health data for longitudinal, demographic and policy impact studies;

(10) use expert system-based protocols to identify individual and population health risk profiles and to assist in the delivery of primary and preventive health care services;

(11) collect health data sufficient for consumers to be able to evaluate health care services, plans, providers and payers and to make informed decisions regarding quality, cost and outcome of care across the spectrum of health care services, providers and payers;

(12) collect comprehensive information on major capital expenditures for facilities, equipment by type and by data source and significant facility capacity reductions; provided that for the purposes of this paragraph and Section 24-14A-5 NMSA 1978, "major capital expenditure" means purchases of at least one million dollars (\$1,000,000) for construction or renovation of facilities and at least five hundred thousand dollars (\$500,000) for purchase or lease of equipment, and "significant facility capacity reductions" means those reductions in facility capacities as defined by the advisory committee established by the commission;

(13) serve as a health information clearinghouse, including facilitating private and public collaborative, coordinated data collection and sharing and access to appropriate data and information, maintaining patient and client confidentiality in accordance with state and federal requirements;

(14) collect data in the most cost-efficient and effective method feasible and adopt regulations, after receiving recommendations from the advisory committee, that place a limit on the maximum amount of unreimbursed costs that a data source can incur in any year for the purposes of complying with the data requirements of the Health Information System Act; and

(15) identify disparities in health care access and quality by aggregating the information collected pursuant to Paragraph (1) of Subsection D of this section by population subgroups to include race, ethnicity, gender and age."

SENATE BILL 786

Approved April 7, 2005

LAWS 2005, CHAPTER 323

AN ACT

RELATING TO EDUCATION; CHANGING THE CALCULATION OF INTEREST CHARGES FOR CERTAIN HIGHER EDUCATION LOAN PAYBACK PROGRAMS.

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

Chapter 323 Section 1 Laws 2005

Section 1. Section 21-22-6 NMSA 1978 (being Laws 1975, Chapter 244, Section 6, as amended) is amended to read:

"21-22-6. MEDICAL STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining a medical education at any reputable and accredited medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed physician or physician assistant in areas of New Mexico designated as not being adequately served by medical practitioners.

B. The loans shall not exceed the necessary expenses incurred while attending a medical school or college and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Medical Student Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's medical education prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to serve in a health professional shortage area; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-22-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a medical education and shall be conditioned upon the repayment of the loan to the state over a period established by the commission in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education.

E. Loans made to students who fail to complete their medical education shall become due immediately upon termination of their medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission shall forgive a portion of the loan for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the health profession advisory committee as not being adequately served by medical practitioners. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

H. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of medical student loans in annual or other periodic installments."

Chapter 323 Section 2 Laws 2005

Section 2. Section 21-22A-6 NMSA 1978 (being Laws 1978, Chapter 109, Section 6, as amended) is amended to read:

"21-22A-6. OSTEOPATHIC MEDICAL STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining an osteopathic medical education at any reputable and accredited osteopathic medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed osteopathic physician or osteopathic physician's assistant in

areas of New Mexico designated as not being adequately served by osteopathic medical practitioners.

B. The loan shall not exceed the necessary expenses incurred while attending an osteopathic medical school or college or osteopathic physician's assistant program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his osteopathic medical education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Osteopathic Medical Student Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's osteopathic medical education prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to serve in an area of New Mexico designated as not being adequately served by osteopathic medical practitioners; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-22A-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an osteopathic medical education and shall be conditioned upon the repayment of the loan to the state over a period established by the commission in consultation with the student after the completion of osteopathic medical school or an osteopathic physician's assistant program and any period of internship or residency required to complete the student's education.

E. Loans made to students who fail to complete their osteopathic medical education shall become due immediately upon termination of their osteopathic medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission shall forgive a portion of the loan for each year that a loan recipient practices his profession as a licensed osteopathic physician or osteopathic physician's assistant in areas approved by the health profession advisory committee as not being adequately served by osteopathic medical practitioners. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

H. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this section.

I. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of osteopathic medical student loans in annual or other periodic installments."

Chapter 323 Section 3 Laws 2005

Section 3. Section 21-22B-6 NMSA 1978 (being Laws 1987, Chapter 299, Section 6, as amended) is amended to read:

"21-22B-6. NURSING STUDENT LOANS--CONTRACT TERMS--REPAYMENT.-

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A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts for such periods as determined by the commission, with which to defray expenses incurred in obtaining a nursing education; provided that the applicant files with the commission a declaration of intent to practice as a licensed nurse in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending a program of nursing and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his nursing education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Nursing Student Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's nursing education prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to practice nursing in areas approved by the health profession advisory committee; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-22B-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a nursing education and shall be conditioned upon the repayment of the loan to the state over a period negotiated between the student and the commission after completion of a nursing program.

E. Loans made to students who fail to complete their nursing education shall become due immediately upon termination of nursing education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms with the commission.

F. The contract shall provide that the commission may forgive a portion of the loan for each year that a loan recipient practices nursing in areas approved by the health profession advisory committee. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of nursing student loans in annual or other periodic installments."

Chapter 323 Section 4 Laws 2005

Section 4. Section 21-22C-6 NMSA 1978 (being Laws 1994, Chapter 57, Section 8, as amended) is amended to read:

"21-22C-6. ALLIED HEALTH STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Prior to receiving a loan, each applicant approved for a loan shall file with the commission a declaration of intent to practice as a licensed allied health professional in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending an allied health profession program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his allied health profession education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Allied Health Student Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's allied health profession education prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed allied health professional in areas of New Mexico designated as underserved; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-22C-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an allied health profession education and shall be conditioned on the repayment of the loan to the state over a period negotiated between the student and the commission after completion of an allied health profession education.

E. Loans made to students who fail to complete their allied health profession education shall become due immediately upon termination of that education. The commission, in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

F. The contract shall provide that the commission shall forgive a portion of the loan for each year that a loan recipient practices an allied health profession in areas approved by the health profession advisory committee. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

H. If a loan recipient completes his professional education and does not serve the required number of years in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of allied health student loans in annual or other periodic installments."

Chapter 323 Section 5 Laws 2005

Section 5. Section 21-22E-6 NMSA 1978 (being Laws 2001, Chapter 288, Section 6) is amended to read:

"21-22E-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 F of this section; or

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Teacher Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's teacher preparation program prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed teacher in New Mexico; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-22E-9 NMSA 1978.

D. 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 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.

E. A loan made to a recipient who fails to complete his teacher preparation program shall become due 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.

F. The contract shall provide that the commission shall forgive a portion of the loan for each year that the loan recipient practices his profession as a licensed teacher in New Mexico. The loan 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 loan 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 loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. 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.

H. 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 loan plus the amount of any interest and penalty assessed pursuant to this section.

I. 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."

Chapter 323 Section 6 Laws 2005

Section 6. Section 21-29-3 NMSA 1978 (being Laws 1997, Chapter 126, Section 3) is amended to read:

"21-29-3. STUDENT EXCHANGE PROGRAM--TERMS OF STUDENT LOANS--PAYBACK REQUIREMENTS.--

A. Financial assistance by the state for the student exchange program of the western interstate commission for higher education shall be through a loan program established pursuant to this section.

B. A student may receive a loan of tuition assistance on the following terms:

(1) the loan shall not exceed an amount equivalent to the negotiated support fee for the graduate or professional program; and

(2) the loan shall bear interest at the rate of:

(a) eighteen percent per year if the student completes his education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(b) seven percent per year in all other cases.

C. Loans made pursuant to the WICHE Loan for Service Act shall not accrue interest until:

(1) the commission determines the loan recipient has terminated the recipient's professional education program prior to completion;

(2) the commission determines the loan recipient has failed to fulfill the recipient's obligation to practice the recipient's profession in New Mexico; or

(3) the commission cancels a contract between a student and the commission pursuant to Section 21-29-6 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the cost of tuition assistance and shall be conditioned on the repayment of the loan to the state over a period established by the commission.

E. Loans made to a student who fails to complete his education shall become due immediately upon termination of his education. The commission shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission shall forgive a portion of the loan for each year that a loan recipient practices his profession in New Mexico. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice for each year of the loan. Upon completion of service, one hundred percent of the loan 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 loan shall be forgiven; upon completion of the second year of service, the remainder of the loan shall be forgiven;

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service; and

(4) the commission may establish other forgiveness terms for professionals providing service in serious shortage areas.

G. Loan recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

H. If a student completes his professional education and does not return to New Mexico to practice his profession, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to practice his profession in New Mexico, the commission shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission may provide by regulation for the repayment of student exchange program loans in annual or other periodic installments."

HOUSE BILL 774

Approved April 7, 2005

LAWS 2005, CHAPTER 324

AN ACT

RELATING TO MOTOR VEHICLES; CREATING AN AUTO RECYCLER LICENSE TO REPLACE A WRECKER OF VEHICLES LICENSE; DISTINGUISHING BETWEEN SALVAGE AND NONREPAIRABLE VEHICLES FOR TITLE PURPOSES; LIMITING SALE OF NONREPAIRABLE VEHICLES TO CERTAIN LICENSED ENTITIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 324 Section 1 Laws 2005

Section 1. Section 66-1-4.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 2, as amended) is amended to read:

"66-1-4.1. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "abandoned vehicle" means a vehicle or motor vehicle that has been determined by a New Mexico law enforcement agency:

(1) to have been left unattended on either public or private property for at least thirty days;

(2) not to have been reported stolen;

(3) not to have been claimed by any person asserting ownership;
and

(4) not to have been shown by normal record checking procedures to be owned by any person;

B. "access aisle" means a space designed to allow a person with severe mobility impairment to safely exit and enter a motor vehicle and that is immediately adjacent to a designated disabled parking space and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked with blue striping;

C. "additional place of business", for dealers and auto recyclers, means locations in addition to an established place of business as defined in Section 66-1-4.5 NMSA 1978 and meeting all the requirements of an established place of business, except Paragraph (5) of Subsection B of Section 66-1-4.5 NMSA 1978, but "additional place of business" does not mean a location used solely for storage and that is not used for wrecking, dismantling, sale or resale of vehicles;

D. "alcoholic beverages" means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol but excluding medicinal bitters;

E. "authorized emergency vehicle" means any fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico state police division of the department of public safety or local authorities; and

F. "auto recycler" means a person engaged in this state in an established business that includes acquiring vehicles that are required to be registered under the Motor Vehicle Code for the purpose of dismantling, wrecking, shredding, compacting, crushing or otherwise destroying vehicles for reclaimable parts or scrap material to sell."

Chapter 324 Section 2 Laws 2005

Section 2. Section 66-1-4.5 NMSA 1978 (being Laws 1990, Chapter 120, Section 6) is amended to read:

"66-1-4.5. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "essential parts" means all integral and body parts of a vehicle of a type required to be registered by the provisions of the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation;

B. "established place of business", for a dealer or auto recycler, means a place:

(1) devoted exclusively to the business for which the dealer or auto recycler is licensed and related business;

(2) identified by a prominently displayed sign giving the dealer's or auto recycler's trade name used by the business;

(3) of sufficient size or space to permit the display of one or more vehicles or to permit the parking or storing of vehicles to be dismantled or wrecked for recycling;

(4) on which there is located an enclosed building on a permanent foundation, which building meets the building requirements of the community and is large enough to accommodate the office or offices of the dealer or auto recycler and large enough to provide a safe place to keep the books and records of the dealer or auto recycler;

(5) where the principal portion of the business of the dealer or auto recycler is conducted and where the books and records of the business are kept and maintained; and

(6) where vehicle sales are of new vehicles only, such as a department store or a franchisee of a department store, as long as the department store or franchisee keeps the books and records of its vehicle business in a general office location at its place of business; as used in this paragraph, "department store" means a business that offers a variety of merchandise other than vehicles, and sales of the

merchandise other than vehicles constitute at least eighty percent of the gross sales of the business; and

C. "explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb."

Chapter 324 Section 3 Laws 2005

Section 3. Section 66-1-4.12 NMSA 1978 (being Laws 1990, Chapter 120, Section 13) is amended to read:

"66-1-4.12. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "nonrepairable vehicle" means a vehicle of a type otherwise subject to registration that:

(1) has no resale value except as a source of parts or scrap metal or that the owner irreversibly designates as a source of parts or scrap metal or for destruction;

(2) has been substantially stripped as a result of theft or is missing all of the bolts on sheet metal body panels, all of the doors and hatches, substantially all of the interior components and substantially all of the grill and light assemblies and has little or no resale value other than its worth as a source of a vehicle identification number that could be used illegally; or

(3) is a substantially burned vehicle that has burned to the extent that there are no more usable or repairable body or interior components, tires and wheels or drive train components or that the owner irreversibly designates for destruction or as having little or no resale value other than its worth as a source of scrap metal or as a source of a vehicle identification number that could be used illegally;

B. "nonrepairable vehicle certificate" means a vehicle ownership document conspicuously labeled "NONREPAIRABLE" issued to the owner of the nonrepairable vehicle;

C. "nonresident" means every person who is not a resident of this state;

D. "nonresident commercial driver's license" means a commercial driver's license issued by a state defined within "state" to an individual who resides in another state or foreign jurisdiction; and

E. "nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state."

Chapter 324 Section 4 Laws 2005

Section 4. Section 66-1-4.16 NMSA 1978 (being Laws 1990, Chapter 120, Section 17, as amended) is amended to read:

"66-1-4.16. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials constructed, treated or combined with other materials to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;

B. "safety zone" means the area or space that is officially set apart within a highway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

C. "salvage vehicle" means a vehicle:

(1) other than a nonrepairable vehicle, of a type subject to registration that has been wrecked, destroyed or damaged excluding, pursuant to rules issued by the department, hail damage, to the extent that the owner, leasing company, financial institution or the insurance company that insured or is responsible for repair of the vehicle considers it uneconomical to repair the vehicle and that is subsequently not repaired by or for the person who owned the vehicle at the time of the event resulting in damage; or

(2) that was determined to be uneconomical to repair and for which a total loss payment is made by an insurer, whether or not the vehicle is subsequently repaired, if, prior to or upon making payment to the claimant, the insurer obtained the agreement of the claimant to the amount of the total loss settlement and informed the claimant that, pursuant to rules of the department, the title must be branded and submitted to the department for issuance of a salvage certificate of title for the vehicle;

D. "school bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events, but not including a vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of students;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of students; or

(3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978;

E. "seal" means the official seal of the taxation and revenue department as designated by the secretary;

F. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3 and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

G. "semitrailer" means a vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;

H. "sidewalk" means a portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;

I. "slow-moving vehicle" means a vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;

J. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;

K. "special mobile equipment" means a vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;

L. "specially constructed vehicle" means a vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;

M. "state" means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada;

N. "state highway" means a public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of transportation;

O. "stop", when required, means complete cessation from movement;

P. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

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

R. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug that rendered the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

S. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn."

Chapter 324 Section 5 Laws 2005

Section 5. Section 66-1-4.19 NMSA 1978 (being Laws 1990, Chapter 120, Section 20) is amended to read:

"66-1-4.19. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "validating sticker" means the tab or sticker issued by the division to signify, upon a registration plate, renewed registration;

B. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks; and

C. "vehicle-business number" means the distinctive registration number given by the division to any manufacturer, auto recycler or dealer."

Chapter 324 Section 6 Laws 2005

Section 6. Section 66-1-4.20 NMSA 1978 (being Laws 1990, Chapter 120, Section 21) is amended to read:

"66-1-4.20. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "wholesaler" means any person, except a person making a casual sale of the person's own vehicle, who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer who is licensed under the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer; provided, however, that if any person except a person making a casual sale of the person's own vehicle also sells a vehicle at retail, that person shall be deemed to be a dealer and is subject to the dealer-licensing provisions of the Motor Vehicle Code; and

B. "written clearance from a law enforcement agency" means any written statement signed by a full-time, salaried law enforcement officer stating that a check has been made of the law enforcement agency's records and the computerized records of the national crime information center and that the check of records indicates that the vehicle or motor vehicle in question has not been reported stolen."

Chapter 324 Section 7 Laws 2005

Section 7. 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--NONREPAIRABLE VEHICLE CERTIFICATE.--

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, number of cylinders, type of fuel used, serial number of the vehicle, odometer reading, engine or other identification number provided by the manufacturer of the vehicle, whether new or used and, if a vehicle not previously registered, 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 that has never been registered in this state and that 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.

D. Prior to the sale or disposal of a nonrepairable vehicle, the owner, owner's agent or salvage pool shall obtain a properly endorsed nonrepairable vehicle certificate from the department and deliver it to the purchaser within twenty days after payment in full for the nonrepairable vehicle and shall also comply with Section 66-3-10.1 NMSA 1978. The department shall accept the endorsed nonrepairable vehicle certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees as may be required by the department. A vehicle for which a nonrepairable vehicle certificate has been issued shall not be titled or registered for use on the highways of this state.

E. If an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent or salvage pool, the insurance company or an authorized agent of the insurance company shall:

(1) stamp the face of the title or manufacturer's certificate of origin with the word "NONREPAIRABLE", in letters no less than one-half inch high, at an angle of approximately forty-five degrees to the text of the title or manufacturer's certificate of origin; and

(2) within twenty days after receipt of title by the insurer, free and clear of all liens, submit a copy of the branded title or manufacturer's certificate of title to the department together with documents explaining the reason for branding, and shall forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

F. If an owner of a nonrepairable vehicle elects to retain possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this section. The owner shall, within twenty days from the date of settlement of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

G. If a nonrepairable vehicle is not the subject of an insurance settlement, the owner shall, within twenty days from the date of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

H. The department shall not issue a new registration card and certificate of ownership pursuant to Subsection A, B or C of this section on a vehicle that has been issued a nonrepairable vehicle certificate pursuant to Subsections E, F and G of this section."

Chapter 324 Section 8 Laws 2005

Section 8. Section 66-3-10.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 24) is repealed and a new Section 66-3-10.1 NMSA 1978 is enacted to read:

"66-3-10.1. SALVAGE VEHICLES--NONREPAIRABLE VEHICLES--
CERTIFICATE OF TITLE--TRANSFER OF OWNERSHIP.--

A. It is unlawful for a person to sell or otherwise convey ownership of a salvage or nonrepairable vehicle unless the certificate of title or ownership is branded or a comparable title, certificate or ownership document has been issued by another state or jurisdiction.

B. An owner of a nonrepairable vehicle shall sell or otherwise convey that vehicle only to a licensed wrecker of vehicles or a person licensed by a jurisdiction outside of this state to process vehicles by dismantling, wrecking, shredding, crushing or selling motor vehicle parts or scrap material or otherwise disposing of motor vehicles.

C. A nonrepairable vehicle shall not be repaired, reconstructed or restored for operation on the roads or highways of this state.

D. This section does not apply to:

(1) a person whose motor vehicle has been stolen or taken without that person's consent unless, if the motor vehicle is recovered, it is a salvage or nonrepairable vehicle; or

(2) a person conveying ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement. For the purpose of this paragraph, "total loss insurance settlement" means the transfer of ownership of a motor vehicle by a person to an insurance company as a result of a settlement in which the motor vehicle is determined to be salvage or nonrepairable."

Chapter 324 Section 9 Laws 2005

Section 9. Section 66-3-401 NMSA 1978 (being Laws 1978, Chapter 35, Section 80, as amended) is amended to read:

"66-3-401. OPERATION OF VEHICLES UNDER SPECIAL DEALER PLATES.--

A. Any vehicle that is required to be registered pursuant to the Motor Vehicle Code and that is included in the inventory of an auto recycler or dealer may be operated or moved upon the highways for any purpose, provided that the vehicle display in the manner prescribed in Section 66-3-18 NMSA 1978 a special plate issued to the dealer or auto recycler as provided in Section 66-3-402 NMSA 1978. This subsection shall not be construed as limiting the use of temporary permits issued to dealers pursuant to Section 66-3-6 NMSA 1978.

B. The provisions of this section do not apply to work or service vehicles used by an auto recycler or dealer. For the purposes of this subsection, "work or service vehicle" includes any vehicle used substantially as a:

- (1) parts or delivery vehicle;
- (2) vehicle used to tow another vehicle;
- (3) courtesy shuttle; or
- (4) vehicle loaned to customers for their convenience.

C. Each vehicle included in a dealer's inventory required to be registered pursuant to the provisions of Subsection A of this section must conform to the registration provisions of the Motor Vehicle Code, but is not required to be titled pursuant to the provisions of that code. When a vehicle is no longer included in a dealer's inventory, and is not sold or leased to an unrelated entity, the dealer must title the vehicle and pay the motor vehicle excise tax that would have been due when the vehicle was first registered by the dealer.

D. In lieu of the use of special dealer plates pursuant to this section, a dealer or auto recycler may register and title a vehicle included in a dealer's inventory in the name of the dealer or auto recycler upon payment of the registration fee applicable to that vehicle, but without payment of the motor vehicle excise tax, provided the vehicle is subsequently sold or leased in the ordinary course of business in a transaction subject to the motor vehicle excise tax or the leased vehicle gross receipts tax."

Chapter 324 Section 10 Laws 2005

Section 10. Section 66-3-402 NMSA 1978 (being Laws 1978, Chapter 35, Section 81, as amended) is amended to read:

"66-3-402. APPLICATION FOR SPECIAL DEALER PLATES.--

A. An auto recycler or dealer may apply to the department upon the appropriate form for one or more special dealer plates. The applicant shall submit proof of being a bona fide auto recycler or dealer as may reasonably be required by the department.

B. The maximum number of special dealer plates for which a dealer of new or used motor vehicles or motorcycles may apply pursuant to this section shall be:

(1) for a dealer who sold in the previous calendar year five or more but fewer than fifty vehicles, one plate;

(2) for a dealer who sold in the previous calendar year more than fifty but fewer than one hundred vehicles, three plates;

(3) for a dealer who sold in the previous calendar year more than one hundred but fewer than five hundred vehicles, five plates; and

(4) for a dealer who sold in the previous calendar year five hundred or more vehicles, ten plates.

C. The maximum number of special dealer plates for which an auto recycler may apply pursuant to this section shall be:

(1) for an auto recycler who wrecked or dismantled three or more but fewer than fifty vehicles, one plate;

(2) for an auto recycler who wrecked or dismantled fifty or more but fewer than one hundred vehicles, three plates;

(3) for an auto recycler who wrecked or dismantled one hundred or more but fewer than five hundred vehicles, five plates; and

(4) for an auto recycler who wrecked or dismantled five hundred vehicles or more, ten plates.

D. A dealer or auto recycler shall be entitled to five plates in the first calendar year in which it begins business. A dealer or auto recycler who is licensed pursuant to the provisions of Section 66-4-1 NMSA 1978 on or after August 1 of any calendar year shall also be entitled to five plates in the calendar year following the year in which it is first licensed to do business.

E. The department upon granting application shall issue to the applicant a certificate containing the applicant's name and address and the numbers of the special dealer plates assigned to the applicant."

Chapter 324 Section 11 Laws 2005

Section 11. Section 66-3-404 NMSA 1978 (being Laws 1978, Chapter 35, Section 83, as amended) is amended to read:

"66-3-404. SPECIAL VEHICLE-BUSINESS PLATES NOT TRANSFERABLE.--

A. Special vehicle-business plates issued to a manufacturer, auto recycler or dealer are not transferable.

B. Whenever the holder of special vehicle-business plates ceases operation for any reason, the current special vehicle-business plates issued to him shall be surrendered to the division."

Chapter 324 Section 12 Laws 2005

Section 12. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WHOLESALERS AND DISTRIBUTORS OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED--PRESUMPTION OF CONDUCTING BUSINESS.--

A. A person, unless licensed to do so by the department, shall not carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code, including:

(a) trailers, but not trailers sold as kits;

(b) recreational vehicles designed to be towed; and

(c) motorcycles over fifty-five cubic centimeters;

(2) wholesaling of vehicles. Any person who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed pursuant to the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer shall be presumed to be conducting the business of wholesaling;

(3) distributing of vehicles. Any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer shall be presumed to be conducting the business of distributing vehicles; or

(4) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

C. To ensure that a dealer, wholesaler, distributor or title service company complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in

business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978."

Chapter 324 Section 13 Laws 2005

Section 13. A new section of the Motor Vehicle Code, Section 66-4-1.1 NMSA 1978, is enacted to read:

"66-4-1.1. AUTO RECYCLER LICENSE--PRESUMPTION OF CONDUCTING BUSINESS.--

A. A person desiring to engage in the business of wrecking or dismantling vehicles for the purpose of reselling parts or scrap material shall apply to the department for an auto recycler license. A person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles who regularly sells or offers for sale used vehicle parts or vehicle scrap material within the period of one year shall be presumed to be conducting business as an auto recycler.

B. An auto recycler licensee shall not sell motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code.

C. Application for an auto recycler license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

D. To ensure that an auto recycler complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978."

Chapter 324 Section 14 Laws 2005

Section 14. Section 66-4-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 215, as amended) is amended to read:

"66-4-2. DEPARTMENT TO ISSUE LICENSE.--

A. The department, upon receiving application accompanied by the required fee and when satisfied that the applicant is of good character and, so far as can be ascertained, has complied with and will comply with the laws of this state with reference to the registration of vehicles and certificates of title and the provisions of the Motor Vehicle Code, shall issue to the applicant a license that entitles the licensee to carry on and conduct the business of a dealer, auto recycler or title service company, as the case may be, during the period for which the license is issued. The license shall expire on the last day of the period for which it is issued and may be renewed upon application and payment of the fee required by law.

B. A dealer or auto recycler licensee, before moving any one or more of the licensee's places of business or opening any additional place of business, shall apply to the department for and obtain a supplemental license for which no fee shall be charged. No supplemental license shall be issued to a dealer, other than a dealer in motorcycles, for an additional place of business unless:

(1) the place of business is an established place of business; or

(2) the majority of dealers, other than dealers in motorcycles, in the county in which the proposed additional place of business would be located have been offered the opportunity, in documentation acceptable to the department, to offer vehicles for sale at the proposed additional place of business by the applicant; provided that the offer shall be for sale of vehicles at all times at which the applicant proposes to sell vehicles and shall not be conditioned upon the payment of any fee by any dealer to whom it is addressed greater than a fair share of the actual expenses incurred.

C. A person to whom the department has issued a license to conduct the business of a dealer in motorcycles is deemed a wrecker of motorcycles without additional license.

D. The department is authorized to establish a staggered system for licensing of dealers, wholesalers, distributors and auto recyclers and of title service companies, provided that any license issued shall expire on the last day of a month. During the initial adjustment period of July 1, 1999 through December 31, 2000, the department may issue licenses for periods less than twelve months or up to twenty-one months to establish a more uniform monthly pattern of expirations. For any license issued for a period other than twelve months during the initial adjustment period, the fee imposed pursuant to Section 66-6-18 NMSA 1978 shall be adjusted accordingly. After the initial adjustment period, licenses issued shall be issued for a period of twelve months.

E. On or after July 1, 2005, the holder of a wrecker of vehicles license desiring to renew the license shall apply for an auto recycler license, pursuant to the provisions of the Motor Vehicle Code, at the time the holder would have otherwise applied to renew the wrecker of vehicles license."

Chapter 324 Section 15 Laws 2005

Section 15. Section 66-4-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 218, as amended) is amended to read:

"66-4-5. RECORDS OF PURCHASES, OF SALES AND OF VEHICLES DISMANTLED.--

A. A dealer licensee shall maintain a record in a form prescribed by the department of every vehicle of a type subject to registration pursuant to the provisions of the Motor Vehicle Code that is bought, sold or exchanged by the licensee or received by the licensee for sale or exchange.

B. An auto recycler licensee shall maintain a record in a form prescribed by the department of:

(1) every vehicle of a type subject to registration pursuant to the provisions of the Motor Vehicle Code that is bought, exchanged or received and dismantled or otherwise destroyed by the licensee; and

(2) every motor vehicle body, chassis or engine that is sold or otherwise disposed of by the licensee.

C. Every record required to be maintained pursuant to Subsection A of this section shall state the name and address of the person from whom the vehicle was purchased or acquired and the date of the purchase and the name and address of the person to whom the vehicle or the motor vehicle body, chassis or engine was sold or otherwise disposed of and the date of the sale or disposition and a sufficient description of every vehicle or motor vehicle body, chassis or engine by name and identifying numbers sufficient to identify the vehicle or motor vehicle body, chassis or engine.

D. A title service company licensee shall maintain a record of:

(1) every temporary registration plate issued;

(2) every title and registration application accepted for processing;

and

(3) any other information prescribed by the department.

E. Every record required to be maintained pursuant to the provisions of this section shall be retained for a period of three years from the end of the year in which the record was created and shall be open to inspection by any peace officer or officer of the department during reasonable business hours. If the licensee fails to maintain the records required or to permit their inspection during reasonable business hours, the license becomes invalid."

Chapter 324 Section 16 Laws 2005

Section 16. Section 66-4-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 219, as amended) is amended to read:

"66-4-6. PLACE OF BUSINESS.--

A. No license shall be issued to a dealer or auto recycler unless an established place of business as defined in the Motor Vehicle Code is maintained by the dealer or auto recycler. Each license to carry on or conduct the business of a dealer or auto recycler becomes invalid when the licensee fails to maintain an established place of business as defined in the Motor Vehicle Code.

B. No license shall be issued to a title service company unless that company maintains a physical place of business accessible to the public and provides the department with the physical address of that place of business. A place of business shall be open to inspection by a peace officer or the department during reasonable business hours. The license of the title service company may be suspended or canceled if the title service company fails to maintain a place of business accessible to the public or does not allow inspection during reasonable business hours by a peace officer or the department."

Chapter 324 Section 17 Laws 2005

Section 17. Section 66-4-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 220, as amended) is amended to read:

"66-4-7. DEALERS, WHOLESALERS, DISTRIBUTORS AND AUTO RECYCLERS--TITLE SERVICE COMPANIES--DEALERS OF MOTORCYCLES ONLY--BOND.--

A. Before issuance of any dealer's license, wholesaler's license, distributor's license, auto recycler's license or title service company license, the applicant shall procure and file with the department a corporate surety bond in the amount of fifty thousand dollars (\$50,000). An applicant for a dealer's license for motorcycles only shall procure and file with the department a corporate surety bond in the amount of twelve thousand five hundred dollars (\$12,500). The corporate surety shall be licensed by the public regulation commission or a successor entity to do business in this state as a surety and the form of the bond shall be approved by the attorney general. The bond shall be payable to the state for the use and benefit of the purchaser and the purchaser's vendees, conditioned upon payment of any loss, damage and expense sustained by the purchaser or the purchaser's vendees, or both, by reason of failure of the title of the vendor, by any fraudulent misrepresentations or by any breach of warranty as to freedom from liens on the motor vehicle or motorcycle sold by the dealer, wholesaler, distributor, dealer of motorcycles only or auto recycler. The bond shall be continuous in form and limited to the payment of fifty thousand dollars

(\$50,000) in total aggregate liability on a dealer's license, wholesaler's license, distributor's license, auto recycler's license or a title service company license and twelve thousand five hundred dollars (\$12,500) on a dealer's license for motorcycles only.

B. No applicant for a dealer's license, wholesaler's license, distributor's license or dealer's license for motorcycles only who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of wrecking or dismantling motor vehicles or motorcycles. Conversely, no applicant for an auto recycler's license who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of dealer, distributor, wholesaler or dealer of motorcycles only.

C. In lieu of the bond required in this section, the dealer, wholesaler, distributor, auto recycler or dealer of motorcycles only may elect to file with the department the equivalent amount of cash or bonds of the United States or New Mexico or of any political subdivision of the state.

D. The license of a dealer, wholesaler, distributor or auto recycler or of a title service company may be suspended or canceled if the dealer, wholesaler, distributor, auto recycler or title service company fails to have in effect the required bond or other security."

Chapter 324 Section 18 Laws 2005

Section 18. Section 66-6-17 NMSA 1978 (being Laws 1978, Chapter 35, Section 352, as amended) is amended to read:

"66-6-17. SPECIAL DEALER PLATE FEES.--

A. Except as provided otherwise in Subsection C of this section, every dealer or auto recycler, except a dealer in motorcycles only, shall pay each license year fifty dollars (\$50.00) for each special dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer or auto recycler for that license year.

B. Except as provided otherwise in Subsection C of this section, every dealer in motorcycles only shall pay each license year ten dollars (\$10.00) for each special dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer for that license year.

C. In the event a special dealer plate is lost, mutilated or becomes illegible, a dealer, auto recycler or dealer in motorcycles only shall obtain a replacement plate pursuant to the provisions of Section 66-3-24 NMSA 1978. The fee for a replacement special dealer plate shall be fifty dollars (\$50.00) for a dealer or auto recycler and ten dollars (\$10.00) for a dealer in motorcycles only."

Chapter 324 Section 19 Laws 2005

Section 19. Section 66-6-18 NMSA 1978 (being Laws 1978, Chapter 35, Section 353, as amended) is amended to read:

"66-6-18. LICENSE FEE FOR DEALERS, WHOLESALERS, DISTRIBUTORS, AUTO RECYCLERS AND TITLE SERVICE COMPANIES.--For a license to do business as a dealer, wholesaler, distributor or any combination of the foregoing or as an auto recycler or as a title service company, there shall be paid a fee of fifty dollars (\$50.00) for each license year or portion thereof."

Chapter 324 Section 20 Laws 2005

Section 20. Section 66-8-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 503) is amended to read:

"66-8-5. SUSPENDING OR REVOKING CERTIFICATE OR SPECIAL PLATES OF A MANUFACTURER, DEALER OR AUTO RECYCLER.--The division may suspend or revoke a certificate or the special plate issued to a manufacturer, dealer or auto recycler upon determining that the person is not lawfully entitled thereto or has made or knowingly permitted any illegal use of such plate or has committed fraud in the registration of vehicles."

Chapter 324 Section 21 Laws 2005

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 441, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 325

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING OFF-HIGHWAY MOTOR VEHICLE REGISTRATION FEES; REQUIRING NONRESIDENT OFF-HIGHWAY MOTOR VEHICLE PERMITS; IMPOSING SAFETY REQUIREMENTS; CREATING THE OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD; CREATING THE TRAIL SAFETY FUND; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Chapter 325 Section 1 Laws 2005

Section 1. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle safety board;

B. "division" means the motor vehicle division;

C. "fund" means the trail safety fund;

D. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control; or

(3) "snowmobile", which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

E. "staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

F. "unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public."

Chapter 325 Section 2 Laws 2005

Section 2. Section 66-3-1003 NMSA 1978 (being Laws 1978, Chapter 35, Section 199, as amended) is amended to read:

"66-3-1003. OFF-HIGHWAY MOTOR VEHICLES--REGISTRATION.-- Unless exempted from the provisions of the Off-Highway Motor Vehicle Act, a person shall not

operate an off-highway motor vehicle unless the off-highway motor vehicle has been registered in accordance with Chapter 66, Article 3 NMSA 1978. The owner shall affix the validating sticker as provided in Chapter 66, Article 3 NMSA 1978."

Chapter 325 Section 3 Laws 2005

Section 3. Section 66-3-1004 NMSA 1978 (being Laws 1978, Chapter 35, Section 200, as amended) is amended to read:

"66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT PERMIT FEES--RENEWAL.--

A. The fees for registering an off-highway motor vehicle are:

(1) seventeen dollars (\$17.00) for each off-highway motor vehicle;
and

(2) an amount determined by rule of the tourism department not to exceed thirty dollars (\$30.00) for an off-highway user fee for each off-highway motor vehicle.

B. Upon a change of ownership, the new owner shall make application and pay registration fees of:

(1) seventeen dollars (\$17.00) in the same manner as provided by rules of the division for original registration; and

(2) an amount determined by rule of the tourism department not to exceed thirty dollars (\$30.00) for an off-highway user fee for each off-highway motor vehicle.

C. The fees for a nonresident permit of an off-highway motor vehicle are either:

(1) seventeen dollars (\$17.00) for each off-highway motor vehicle that is not registered in another state; and

(2) an amount determined by rule of the tourism department not to exceed thirty dollars (\$30.00) for an off-highway user fee for each off-highway motor vehicle that is not currently in compliance with a similar off-highway user fee law or rule in another state; or

(3) seventeen dollars (\$17.00) for a ninety-day permit to include both the off-highway motor vehicle not otherwise registered and the off-highway user fee.

D. Except as provided in Paragraph (3) of Subsection C of this section, each registration certificate and nonresident permit shall be:

(1) good for two years after the month in which the off-highway motor vehicle is registered or the permit is issued; and

(2) renewed every two years.

E. The off-highway user fee for each off-highway motor vehicle shall be paid upon obtaining and renewing each registration certificate or nonresident permit.

F. Duplicate registration certificates and nonresident permits shall be issued upon payment of a seven-dollar-fifty-cent (\$7.50) fee.

G. A fee of one dollar (\$1.00) on registration certificates and nonresident permits shall be collected for the New Mexico clean and beautiful program.

H. The tourism department, in conjunction with the division and the department of game and fish, may establish and maintain sites to collect fees and issue permits for residents and nonresidents."

Chapter 325 Section 4 Laws 2005

Section 4. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"FEES--DISPOSITION.--

A. Except as provided in Subsection B of this section, fees collected pursuant to Section 66-3-1004 NMSA 1978 shall be distributed as follows:

(1) of each seventeen dollars (\$17.00) collected pursuant to Paragraph (1) of Subsection A, Paragraph (1) of Subsection B or Paragraph (1) of Subsection C of Section 66-3-1004 NMSA 1978, five dollars (\$5.00) to the division, and the money is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars (\$12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978;

(2) fees collected pursuant to Paragraph (2) of Subsection A, Paragraph (2) of Subsection B or Paragraph (2) of Subsection C of Section 66-3-1004 NMSA 1978 to the fund;

(3) fees collected pursuant to Subsection F of Section 66-3-1004 NMSA 1978 to the division, and the money is appropriated to the division to defray the

cost of making and issuing duplicate registration certificates and nonresident permits for off-highway motor vehicles;

(4) of each seventeen dollars (\$17.00) collected pursuant to Paragraph (3) of Subsection C of Section 66-3-1004 NMSA 1978, five dollars (\$5.00) to the division, and the money is appropriated to the division to defray the costs of making and issuing nonresident permits. The remaining twelve dollars (\$12.00) shall be deposited in the fund; and

(5) fees collected pursuant to Subsection G of Section 66-3-1004 NMSA 1978 to the tourism department for the New Mexico clean and beautiful program.

B. If fees are collected by the department of game and fish pursuant to Paragraph (1) of Subsection A, Paragraph (1) of Subsection B or Paragraphs (1) and (3) of Subsection C of Section 66-3-1004 NMSA 1978, seven dollars (\$7.00) shall be deposited in the game protection fund, five dollars (\$5.00) to the division, and the money is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles, and the remaining five dollars (\$5.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978."

Chapter 325 Section 5 Laws 2005

Section 5. Section 66-3-1005 NMSA 1978 (being Laws 1978, Chapter 35, Section 201, as amended) is amended to read:

"66-3-1005. EXEMPTIONS.--The provisions of the Off-Highway Motor Vehicle Act shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

A. owned and operated by an agency or department of the United States, this state or a political subdivision of this state;

B. operated exclusively on lands privately held; provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees;

C. owned by nonresidents and used in this state only for organized and endorsed competition purposes; provided that the use is not on a rental basis;

D. brought into this state by manufacturers or distributors for wholesale purposes and not used for demonstrations;

E. in the possession of dealers as stock-in-trade and not used for demonstration purposes;

F. farm tractors, as defined in Section 66-1-4.6 NMSA 1978, special mobile equipment, as defined in Section 66-1-4.16 NMSA 1978, or off-highway motor vehicles being used for agricultural operations; or

G. used exclusively on private closed courses, whether owned by the rider or another person; provided that, if applicable, the excise tax and registration fees have been paid and are current."

Chapter 325 Section 6 Laws 2005

Section 6. Section 66-3-1006 NMSA 1978 (being Laws 1978, Chapter 35, Section 202, as amended) is amended to read:

"66-3-1006. GROUNDS FOR REFUSING REGISTRATION OR CERTIFICATE OF TITLE.--The division may refuse registration or issuance of a certificate of title or any transfer of a registration certificate if:

A. the division has reasonable grounds to believe that the application contains any false or fraudulent statement or that the applicant has failed to furnish the required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration certificate of the off-highway motor vehicle under the Motor Vehicle Code or laws of this state;

B. the division has reasonable grounds to believe that the off-highway motor vehicle is stolen or embezzled or that the granting of a registration certificate or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having a valid lien upon the off-highway motor vehicle;

C. the division has reasonable grounds to believe that a nonresident applicant is not entitled to registration issuance under the laws of the nonresident applicant's state of residence;

D. the required fees have not been paid; or

E. the motor vehicle excise tax has not been paid pursuant to Chapter 7, Article 14 NMSA 1978."

Chapter 325 Section 7 Laws 2005

Section 7. Section 66-3-1007 NMSA 1978 (being Laws 1978, Chapter 35, Section 203, as amended) is amended to read:

"66-3-1007. EVIDENTIARY VALUE OF CERTIFICATE OF

TITLE.--A certificate of title issued by the division for an off-highway motor vehicle shall be received as prima facie evidence of the ownership of the off-highway motor vehicle named in the certificate and as prima facie evidence of all liens and encumbrances against the off-highway motor vehicle appearing on the certificate."

Chapter 325 Section 8 Laws 2005

Section 8. Section 66-3-1008 NMSA 1978 (being Laws 1978, Chapter 35, Section 204, as amended) is amended to read:

"66-3-1008. VALIDATING STICKERS TO BE FURNISHED BY DIVISION.--The division, upon registering an off-highway motor vehicle, shall issue to the owner validating stickers as provided in Section 66-3-14 NMSA 1978."

Chapter 325 Section 9 Laws 2005

Section 9. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATION--APPROVAL AND CERTIFICATION.--

A. An off-highway motor vehicle safety training organization that offers and conducts an off-highway motor vehicle safety training course shall be approved and certified by the board. Applicants for approval and certification shall submit an application to the board for consideration.

B. The board may approve and certify an organization that meets the minimum criteria established by the board for an off-highway motor vehicle safety training organization. Each approval and certification shall be renewed annually."

Chapter 325 Section 10 Laws 2005

Section 10. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--REQUIREMENTS--ISSUANCE.--A person under the age of eighteen shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the board. Upon successful completion of the course, the person shall receive an off-highway motor vehicle safety permit issued by the organization."

Chapter 325 Section 11 Laws 2005

Section 11. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"OPERATION AND EQUIPMENT--SAFETY REQUIREMENTS.--

A. A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling, unless the person operates the vehicle on a closed course or track;

(5) unless in possession of the person's registration certificate or nonresident permit;

(6) unless the vehicle is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(7) when conditions such as darkness limit visibility to five hundred feet or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty feet; and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet under normal atmospheric conditions; or

(8) that produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287.

B. A person under the age of eighteen shall not operate an off-highway motor vehicle:

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the board;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

C. A person under the age of eighteen but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen who has a valid driver's license. This subsection shall not apply to a person who is at least:

(1) thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle is an age-appropriate size-fit vehicle established by rule of the board; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the board.

E. The requirements of Subsections C and D of this section do not apply to a person who is part of an organized tour under the guidance or direction of a guide certified by the board.

F. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition."

Chapter 325 Section 12 Laws 2005

Section 12. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"SAFETY HELMET--CIVIL LIABILITY.--Failure by a passenger or driver to use a safety helmet while on an off-highway motor vehicle shall not in any instance constitute fault or negligence and shall not limit or apportion damages."

Chapter 325 Section 13 Laws 2005

Section 13. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"REQUIREMENTS OF DEALERS TO DISTRIBUTE SAFETY INFORMATION.--A dealer selling off-highway motor vehicles shall distribute information recommended by the board to off-highway motor vehicle purchasers on state laws, safety requirements, training programs, operating characteristics and potential risk of injury associated with off-highway motor vehicles."

Chapter 325 Section 14 Laws 2005

Section 14. Section 66-3-1011 NMSA 1978 (being Laws 1975, Chapter 240, Section 11, as amended) is amended to read:

"66-3-1011. OPERATION ON STREETS OR HIGHWAYS--PROHIBITED AREAS.--

A. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) any paved street or highway except as provided in Subsection B of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

C. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

D. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources."

Chapter 325 Section 15 Laws 2005

Section 15. Section 66-3-1012 NMSA 1978 (being Laws 1978, Chapter 35, Section 208, as amended) is amended to read:

"66-3-1012. DRIVING OF OFF-HIGHWAY MOTOR VEHICLES ADJACENT TO HIGHWAY.--

A. Off-highway motor vehicles issued a validating sticker or nonresident permit may be driven adjacent to a highway, yielding to all vehicles entering or exiting the highway, in a manner so as not to interfere with traffic upon the highway, only for the purpose of gaining access to or returning from areas designed for the operation of off-highway motor vehicles by the shortest possible route and when no other route is available or when the area adjacent to a highway is being used as a staging area. Such use must occur between the highway and fencing that separates the highway from private or public lands.

B. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a highway, parallel, but not closer than ten feet, to the inside of the plow bank."

Chapter 325 Section 16 Laws 2005

Section 16. Section 66-3-1013 NMSA 1978 (being Laws 1975, Chapter 240, Section 13, as amended) is amended to read:

"66-3-1013. LIABILITY--LOCAL REGISTRATION PROHIBITED.--

A. A landowner shall not be held liable for damages arising out of off-highway motor vehicle-related accidents or injuries occurring on the landowner's lands in which the landowner is not directly involved unless the entry on the lands is subject to payment of a fee.

B. It is unlawful to operate an off-highway motor vehicle on private lands or roads except with the express permission of the landowner or leaseholder of the lands."

Chapter 325 Section 17 Laws 2005

Section 17. Section 66-3-1014 NMSA 1978 (being Laws 1975, Chapter 240, Section 14, as amended) is amended to read:

"66-3-1014. ACCIDENTS AND ACCIDENT REPORTS.--The driver of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of a person or resulting in damage to public or private property to the extent of five hundred dollars (\$500) or more shall immediately notify a law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of eighteen,

the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident."

Chapter 325 Section 18 Laws 2005

Section 18. Section 66-3-1015 NMSA 1978 (being Laws 1978, Chapter 35, Section 211, as amended) is amended to read:

"66-3-1015. ENFORCEMENT.--A wildlife conservation officer, state police officer or peace officer of this state or any of its political subdivisions, upon displaying the officer's badge of office, has the authority to enforce the provisions of the Off-Highway Motor Vehicle Act and may:

A. require an off-highway motor vehicle operator to produce:

(1) the registration certificate or nonresident permit;

(2) proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the board, when required by Section 10 of this 2005 act; and

(3) the personal identification of the operator; and

B. issue citations for violations of the provisions of the Off-Highway Motor Vehicle Act."

Chapter 325 Section 19 Laws 2005

Section 19. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD CREATED--MEMBERS--COMPENSATION.--

A. The "off-highway motor vehicle safety board" is created. The board consists of the following nine ex-officio members or their designees and seventeen appointed members:

(1) the director of the department of game and fish;

(2) the director of the motor vehicle division;

(3) the secretary of transportation;

(4) the secretary of public safety;

(5) the commissioner of public lands;

(6) the secretary of energy, minerals and natural resources;

(7) the secretary of tourism;

(8) the secretary of health;

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

(10) one member of the New Mexico department of agriculture appointed by the board of regents of New Mexico state university;

(11) one representative from each of the state's six tourism regions with expertise in off-highway motor vehicle safety or motorized and non-motorized recreation, two of whom are appointed by the secretary of health, two of whom are appointed by the secretary of tourism and two of whom are appointed by the secretary of energy, minerals and natural resources, to include at least one member of:

(a) a recognized off-highway motorcycle user group;

(b) an all-terrain vehicle user group; and

(c) a snowmobile user group;

(12) three representatives from local law enforcement agencies appointed by the secretary of public safety;

(13) two representatives from a conservation or environmental organization appointed by the secretary of energy, minerals and natural resources;

(14) two off-highway motor vehicle dealers appointed by the secretary of tourism;

(15) one health professional with expertise in injury prevention or treatment appointed by the secretary of health;

(16) one representative from the United States bureau of land management appointed by the governor; and

(17) one representative from the United States forest service appointed by the governor.

B. The board shall select a chairperson, a vice chairperson and other officers as it deems necessary.

C. The board shall meet at the call of the chairperson but not less than twice annually. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of the quorum present shall be necessary for an action to be taken by the board.

D. Members shall be appointed to staggered terms of two years each; provided that no more than nine terms expire in any one year. The ex-officio board members shall select by lot nine appointed members to serve initial terms of three years each. A vacancy shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

E. Appointed members, except for representatives of federal agencies, of the board are entitled to reimbursement for attending meetings of the board as provided for nonsalaried officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Chapter 325 Section 20 Laws 2005

Section 20. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"BOARD--POWERS AND DUTIES.--

A. The board may cooperate with appropriate federal agencies, public and private organizations and corporations and local government units to implement the provisions of the Off-Highway Motor Vehicle Act.

B. The board shall:

(1) accept and evaluate all applications for approval and certification of an off-highway motor vehicle safety training organization and approve and certify those that meet the minimum criteria;

(2) notify the division of the off-highway motor vehicle safety training organizations that have received approval and certification;

(3) establish minimum criteria, by January 1, 2007, to approve and certify an off-highway motor vehicle safety training organization. The criteria shall include requirements for curriculum and materials for:

(a) training instructors to teach off-highway motor vehicle safety;

(b) training the public about off-highway motor vehicle safety and age-appropriate size-fit use of off-highway motor vehicles; and

(c) teaching responsible use of off-highway motor vehicles with respect to environmental considerations, private property restrictions, off-highway motor vehicle operating laws and prohibitions against operating off-highway motor vehicles under the influence of alcohol or drugs;

(4) implement, by January 1, 2007, a state off-highway motor vehicle safety training and certification program;

(5) adopt and promulgate rules regarding the:

(a) age-appropriate size-fit use of off-highway motor vehicles;

(b) acceptance or accreditation of instruction or safety courses provided by other states; and

(c) standards covering the specifications of eye protection and safety helmets;

(6) recommend, with public participation and input, off-highway motor vehicle park, facility and trail locations to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the park, facility or trail is located. The board shall establish criteria to recommend locations that include consideration of off-highway motor vehicle operating laws and effects on:

(a) wildlife and the environment;

(b) adjacent state, county, federal, tribal and private property;

(c) other recreational and nonrecreational uses on the same or adjacent lands; and

(d) archaeological, cultural and historic resources;

(7) recommend restoration or, if deemed necessary, closure of off-highway motor vehicle tracks or trails to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the tracks or trails are located if they pose significant or irreversible environmental damage, a danger to users or a public nuisance as determined by the board. The board shall consider the construction of alternative tracks or trails as part of the closure process;

(8) accept and evaluate all applications for grants from the fund and make recommendations to the tourism department. The board shall establish criteria for grants from the fund that include consideration of the:

- (a) applicant's financial and legal status;
 - (b) applicant's management plan, including specific measures to avoid or minimize environmental damage to public and private lands and danger to users and spectators;
 - (c) operating budget for the park, trail, facility or staging area;
 - (d) availability of matching funds; and
 - (e) public participation and input; and
- (9) certify tour guides."

Chapter 325 Section 21 Laws 2005

Section 21. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"FUND CREATED--DISPOSITION.--

A. The "trail safety fund" is created in the state treasury. The fund is a nonreverting fund, and income from investment of the fund shall be credited to the fund. The fund shall be administered by the tourism department, and money in the fund is appropriated to the tourism department to carry out the purposes of the Off-Highway Motor Vehicle Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary of tourism or the secretary's authorized representative.

B. The tourism department, upon recommendation by the board, shall make distributions from the fund to develop and maintain trails, build and maintain staging areas, market safety programs and promote safety for off-highway motor vehicles."

Chapter 325 Section 22 Laws 2005

Section 22. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"PENALTIES.--

A. Unless the violation is declared a felony, a petty misdemeanor or a citation under the Motor Vehicle Code, a person who violates the provisions of the Off-Highway Motor Vehicle Act is guilty of a misdemeanor pursuant to Section 66-8-7 NMSA 1978.

B. When a person is convicted of a felony or misdemeanor committed while operating an off-highway motor vehicle, the court may order the person to complete a board-certified safety training course."

Chapter 325 Section 23 Laws 2005

Section 23. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED-- PRESUMPTION OF CONDUCTING BUSINESS.--

A. A person, unless licensed to do so by the department, shall not carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code, including:

(a) trailers, but not trailers sold as kits;

(b) recreational vehicles designed to be towed;

(c) motorcycles over fifty-five cubic centimeters; and

(d) off-highway motor vehicles pursuant to the Off-Highway

Motor Vehicle Act;

(2) dismantling any vehicle for the resale of the parts. Any person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used vehicle part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts;

(3) wholesaling of vehicles. Any person who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed pursuant to the Motor Vehicle Code or who is franchised by

a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer shall be presumed to be conducting the business of wholesaling;

(4) distributing of vehicles. Any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer shall be presumed to be conducting the business of distributing vehicles; or

(5) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or wrecker of vehicles license or a title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

C. A metal processor or dealer in scrap who dismantles, processes for scrap, shreds, compacts, crushes or otherwise destroys more than three vehicles within a period of one year shall be licensed pursuant to the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978.

D. To ensure that a dealer, wholesaler, distributor, wrecker of vehicles or title service company complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978.

E. Upon application to a court for the issuance of an injunction against an unlicensed person, the court may issue an order temporarily restraining that person from doing business. The court shall hear the matter within three days and, upon a showing by the preponderance of the evidence that the person is operating without a license and that the person has been given notice of the hearing as required by law, the court may enjoin the person from engaging in business in New Mexico until the person ceases to be unlicensed. Upon issuing an injunction, the court may also order the business premises of the person to be sealed by the sheriff and may allow the person access thereto only upon approval of the court.

F. A temporary restraining order shall not be issued against a person who has complied with the provisions of this section. Upon a showing to the court by a person against whom a temporary restraining order has been issued that the person has a license in accordance with the provisions of this section, the court shall dissolve or set aside the temporary restraining order."

Chapter 325 Section 24 Laws 2005

Section 24. Section 66-6-22.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 34, as amended) is amended to read:

"66-6-22.1. MOTOR VEHICLE SUSPENSE FUND CREATED--RECEIPTS--DISBURSEMENTS.--

A. There is created in the state treasury a fund to be known as the "motor vehicle suspense fund".

B. The fees collected under the provisions of Sections 66-1-1 through 66-6-19 NMSA 1978 shall be paid to the state treasurer for the credit of the motor vehicle suspense fund not later than the close of the second business day after their receipt, except as otherwise provided by the Off-Highway Motor Vehicle Act.

C. Money deposited to the credit of or disbursed from the motor vehicle suspense fund shall be accounted for as provided by law or rule of the secretary of finance and administration. Disbursements from the motor vehicle suspense fund shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary of finance and administration or the secretary's delegate.

D. The balance of the motor vehicle suspense fund is appropriated for the purpose of making refunds, distributions and other disbursements authorized or required by law to be made from the motor vehicle suspense fund, provided that no distribution shall be made to a municipality, county or fee agent operating a motor vehicle field office with respect to money collected and remitted to the department by that municipality, county or fee agent until the report of the municipality, county or fee agent is audited and accepted by the department."

Chapter 325 Section 25 Laws 2005

Section 25. REPEAL.--Sections 66-9-1, 66-9-2, 66-9-4, 66-9-8, 66-9-9 and 66-9-11 through 66-9-13 NMSA 1978 (being Laws 1971, Chapter 177, Sections 1 and 2, Laws 1973, Chapter 86, Section 1 and Laws 1971, Chapter 177, Sections 7, 8, 10, 11 and 12, as amended) are repealed.

Chapter 325 Section 26 Laws 2005

Section 26. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006.

Approved April 7, 2005

LAWS 2005, CHAPTER 326

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR LICENSE APPLICATIONS TO BE ACCEPTED OVER THE INTERNET; PROVIDING FOR ELECTRONIC APPLICATIONS FOR HUNTING LICENSE DRAWINGS; PROVIDING A PENALTY FOR A NONRESIDENT TO POSSESS A RESIDENT LICENSE.

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

Chapter 326 Section 1 Laws 2005

Section 1. Section 17-3-5 NMSA 1978 (being Laws 1923, Chapter 129, Section 1, as amended) is amended to read:

"17-3-5. APPLICATION FOR HUNTING OR FISHING LICENSES--CONTENTS--
FILING.--

A. The director of the department of game and fish shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within the state. Except as provided in Subsection B or E of this section, each person, before receiving any fishing or hunting license, shall make application on a blank so provided. Among other matters that may be shown by the application shall be a statement showing the exact residence of the applicant. Except as provided in Subsection B or E of this section, the application shall be signed by the applicant. All applications for licenses shall be filed with and issued by license vendors appointed by the director. All fishing and hunting licenses and the applications therefor shall contain the place of residence of the person to whom any license may be issued.

B. License vendors, as authorized by the director of the department of game and fish, shall be allowed to take applications for hunting and fishing licenses or authorizations via telephone or the internet. The vendor or applicant shall fill out a license application with the same information as required for other applications. The vendor shall mail the license to the applicant, and the license shall be in the possession of the hunter or angler unless otherwise provided in Chapter 17 NMSA 1978. All money collected through telephone or internet sales shall be remitted to the director by the tenth day of the month following the sale. An individual receiving a license pursuant to this subsection is not required to sign an application prior to issuance of the license; provided, however, that such individual is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the individual had signed an application for license.

C. Upon request, an applicant for a fishing or small game license shall receive an authorization number as assigned by the director of the department of game and fish through the vendor. The authorization number may be used in lieu of the actual license only by the individual who applies and meets the requirements for a license. The authorization number shall serve as a license for the purposes of Sections 17-3-1 and 17-3-17 NMSA 1978. It is a misdemeanor to hunt or fish with an invalid authorization number or a number issued to another person.

D. Each license vendor authorized to sell licenses via telephone or internet may collect the actual cost, not to exceed five dollars (\$5.00), of shipping and handling the application and license issuance.

E. The director of the department of game and fish may prepare and furnish an electronic application for all persons applying for hunting license drawings. A person making an electronic application is not required to sign an application prior to issuance of the license; provided that the person is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the person had signed an application."

Chapter 326 Section 2 Laws 2005

Section 2. Section 17-3-6 NMSA 1978 (being Laws 1923, Chapter 129, Section 2, as amended) is amended to read:

"17-3-6. FALSE STATEMENTS--USING LICENSE ISSUED TO ANOTHER--HUNTING WITHOUT LICENSE LAWFULLY PROCURED--ALTERING LICENSES.--
It is a misdemeanor:

A. to certify or sign any false or fraudulent statement relative to the residence of any applicant for a hunting or fishing license or permit;

B. for any nonresident of New Mexico, for the purpose of securing a New Mexico hunting or fishing license, to make or cause to be made any false or fraudulent statements or representations to any person issuing hunting and fishing licenses in this state;

C. to use a hunting or fishing license issued to or in the name of any other person or in the name of any fictitious person;

D. to hunt game or fish in New Mexico without a license lawfully procured;

E. for any license vendor or any licensee to alter or predate or postdate any license, certificate or permit; or

F. for any nonresident to possess a resident hunting, fishing or trapping license issued in the nonresident's name pursuant to a telephone, electronic or hard copy application."

HOUSE BILL 37

Approved April 7, 2005

LAWS 2005, CHAPTER 327

AN ACT

RELATING TO CRIMINAL LAW; CREATING A CRIMINAL OFFENSE OF SIMULATING LEGAL PROCESS.

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

Chapter 327 Section 1 Laws 2005

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

"SIMULATING LEGAL PROCESS.--

A. Simulating legal process consists of knowingly issuing or delivering to a person a document that falsely simulates civil or criminal process. "Civil or criminal process" means a document or order, including but not limited to a summons, lien, complaint, warrant, injunction, writ, notice, pleading or subpoena.

B. Whoever commits simulating legal process is guilty of a misdemeanor."

HOUSE BILL 255, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 328

AN ACT

RELATING TO EDUCATION; MAKING THE PUBLIC EDUCATION COMMISSION THE GOVERNING AUTHORITY AND SOLE STATE AGENCY FOR THE SUPERVISION OF THE STATE PLAN RELATING TO VOCATIONAL EDUCATION.

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

Chapter 328 Section 1 Laws 2005

Section 1. Section 22-14-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 192) is amended to read:

"22-14-2. VOCATIONAL EDUCATION--STATE GOVERNING AUTHORITY.--

A. The commission is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education unless otherwise provided by law.

B. The commission is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or for any federal aid funds, except as may otherwise be provided by law.

C. The commission may delegate to the department its administrative functions relating to vocational education."

Chapter 328 Section 2 Laws 2005

Section 2. A new section of the Public School Code, Section 22-14-2.1 NMSA 1978, is enacted to read:

"22-14-2.1. VOCATIONAL REHABILITATION--STATE GOVERNING AUTHORITY.--

A. The department is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational rehabilitation, unless otherwise provided by law.

B. The department is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law."

Chapter 328 Section 3 Laws 2005

Section 3. Section 22-14-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 193) is amended to read:

"22-14-3. STATE AGENCY FOR VOCATIONAL EDUCATION--AUTHORITY.--
The commission is the sole agency of the state for the supervision of the administration of federal aid funds relating to vocational education. The commission may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the commission or the department from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds;

G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds;

H. coordinate as required by the federal agency with the state workforce development board; and

I. as required by the federal agency, make available a list of all school dropout, post-secondary and adult programs assisted pursuant to the state plan."

Chapter 328 Section 4 Laws 2005

Section 4. A new section of the Public School Code, Section 22-14-3.1 NMSA 1978, is enacted to read:

"22-14-3.1. STATE AGENCY FOR VOCATIONAL REHABILITATION--
AUTHORITY.--The department is the sole agency of the state for the administration or the supervision of the administration of any federal aid funds pertaining to vocational rehabilitation. The department may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the department from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds; and

G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds."

Chapter 328 Section 5 Laws 2005

Section 5. Section 22-14-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 195, as amended) is amended to read:

"22-14-5. INSTRUCTIONAL SUPPORT AND VOCATIONAL EDUCATION DIVISION--POWERS--DUTIES.--Subject to the policies of the commission, the instructional support and vocational education division of the department shall:

A. provide vocational education to qualified persons;

B. act as the representative of the commission in administering any state plan or federal aid funds relating to vocational education;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;

D. enter into reciprocal agreements with other states to provide vocational education;

E. accept gifts or grants to be used for vocational education;

F. enforce rules for the administration of laws relating to vocational education; and

G. conduct research and compile statistics relating to vocational education."

Chapter 328 Section 6 Laws 2005

Section 6. Section 22-14-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 196) is amended to read:

"22-14-7. VOCATIONAL REHABILITATION DIVISION--DIRECTOR.--

A. The "vocational rehabilitation division" is created within the department.

B. The secretary shall appoint a director of the vocational rehabilitation division to be known as the "director of vocational rehabilitation"."

Chapter 328 Section 7 Laws 2005

Section 7. Section 22-14-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 198) is amended to read:

"22-14-9. CUSTODY OF FUNDS--BUDGETS--DISBURSEMENTS.--

A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.

B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the instructional support and vocational education division or the director's authorized representative.

C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the vocational rehabilitation division or the director's authorized representative.

D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received."

Chapter 328 Section 8 Laws 2005

Section 8. Section 22-14-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 199) is amended to read:

"22-14-11. VOCATIONAL REHABILITATION--ELIGIBILITY.--Vocational rehabilitation shall be provided to any person who:

A. is a resident of the state at the time of filing an application for vocational rehabilitation; and

B. qualifies for eligibility under a vocational rehabilitation program established by the state; or

C. qualifies for eligibility under the terms of an agreement that the state has with the federal government or with another state."

Chapter 328 Section 9 Laws 2005

Section 9. REPEAL.--Section 22-14-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 194) is repealed.

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 176

Approved April 7, 2005

LAWS 2005, CHAPTER 329

AN ACT

RELATING TO TRUSTS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE UNIFORM PRINCIPAL AND INCOME ACT.

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

Chapter 329 Section 1 Laws 2005

Section 1. Section 46-3A-102 NMSA 1978 (being Laws 2001, Chapter 113, Section 102) is amended to read:

"46-3A-102. DEFINITIONS.--As used in the Uniform Principal and Income Act:

A. "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;

B. "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;

C. "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;

D. "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 of the Uniform Principal and Income Act;

E. "income beneficiary" means a person to whom net income of a trust is or may be payable;

F. "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;

G. "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;

H. "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;

I. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity;

J. "principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates;

K. "qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) is a distributee or a permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal if the interest of the distributees described in Paragraph (1) of this subsection terminated on that date; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

L. "remainder beneficiary" means a person entitled to receive principal when an income interest ends;

M. "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;

N. "total return trust" means a trust that is converted to a total return trust pursuant to Section

46-3A-105 NMSA 1978 or a trust the terms of which manifest the settlor's intent that the trustee will administer the trust in accordance with Section 46-3A-106 NMSA 1978; and

O. "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court."

Chapter 329 Section 2 Laws 2005

Section 2. Section 46-3A-104 NMSA 1978 (being Laws 2001, Chapter 113, Section 104) is amended to read:

"46-3A-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 Subsection (a) of Section 46-3A-103 NMSA 1978, that the trustee is unable to comply with Subsection (b) of Section 46-3A-103 NMSA 1978.

(b) In deciding whether and to what extent to exercise the power conferred by Subsection (a) of this section, 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;

(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly; or

(9) if the trust is a total return trust.

(d) If Paragraph (5), (6), (7) or (8) of Subsection (c) of this section applies to a trustee and there is more than one trustee, a co-trustee 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) of this section 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 Paragraphs (1) through (6) or Paragraph (8) of Subsection (c) of this section 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) of this section. 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) of this section."

Chapter 329 Section 3 Laws 2005

Section 3. A new section of the Uniform Principal and Income Act, Section 46-3A-105 NMSA 1978, is enacted to read:

"46-3A-105. CONVERSION TO TOTAL RETURN TRUST.--

A. Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust as provided in Section 46-3A-104 NMSA 1978 or convert a trust to a total return trust as provided in this section if all of the following apply:

(1) the trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a total return trust will enable the trustee to better carry out the purposes of the trust;

(2) the trustee provides a written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion that may not be sooner than sixty days after the notice is provided to the

qualified beneficiaries, determined as of the date the notice is provided and assuming nonexercise of all powers of appointment;

(3) there are one or more legally competent beneficiaries as provided in Paragraph (1) of Subsection K of Section 46-3A-102 NMSA 1978 and one or more legally competent remainder beneficiaries described in either Paragraph (1) or (2) of Subsection K of Section 46-3A-102 NMSA 1978, determined as of the date the notice is provided; and

(4) no beneficiary has objected in writing to the conversion to a total return trust and noticed the objection to the trustee within sixty days after the notice was provided.

B. Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent.

C. The trustee may elect to petition the court to order conversion to a total return trust, including the reason that conversion under Subsection A of this section is unavailable because:

(1) a beneficiary timely objects to the conversion to a total return trust;

(2) there are no legally competent beneficiaries described in Paragraph (1) of Subsection K of Section 46-3A-102 NMSA 1978; or

(3) there are no legally competent beneficiaries described in Paragraph (1) or (2) of Subsection K of Section 46-3A-102 NMSA 1978.

D. A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this section. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

E. The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

F. In a judicial proceeding instituted under this section, the trustee may present information concerning:

(1) the trustee's support for, or opposition to, a conversion to a total return trust, a reconversion from a total return trust or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(2) any other matter relevant to the proposed conversion, reconversion or adjustment of the distribution percentage.

G. A trustee's actions undertaken in accordance with this section shall not be determined improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

H. The court may order conversion to a total return trust, reconversion prospectively from a total return trust or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

I. If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

(1) pursuant to a subsequent court order; or

(2) by filing with the court an agreement made pursuant to Subsection B of this section to reconvert to an income trust.

J. Upon a reconversion, the power to adjust, as described in Section 46-3A-104 NMSA 1978 and as it existed before the conversion, shall be revived.

K. An action may be taken under this section no more frequently than every three years, unless the court for good cause orders otherwise."

Chapter 329 Section 4 Laws 2005

Section 4. A new section of the Uniform Principal and Income Act, Section 46-3A-106 NMSA 1978, is enacted to read:

"46-3A-106. ADMINISTRATION OF TOTAL RETURN TRUST.--

A. During the period that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this section unless otherwise expressly provided by the terms of the trust.

B. The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal.

C. The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section.

D. The distribution percentage for any trust converted to a total return trust by a trustee in accordance with Subsection A of Section 46-3A-105 NMSA 1978 shall be four percent, unless a different percentage has been determined in an agreement made pursuant to Subsection B of Section

46-3A-105 NMSA 1978 or ordered by the court pursuant to Subsection C of Section 46-3A-105 NMSA 1978.

E. The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(1) an amount equal to the difference between the amount properly payable and the amount actually paid; and

(2) interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs; provided that accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

F. As used in Sections 46-3A-105 through 46-3A-113 NMSA 1978:

(1) "income" as the term appears in the governing instrument means the distribution amount;

(2) "distribution amount" means the annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets; and

(3) "average net fair market value of the trust's assets" means the net fair market value of the trust's assets averaged over the lesser of the three preceding years or the period during which the trust has been in existence."

Chapter 329 Section 5 Laws 2005

Section 5. A new section of the Uniform Principal and Income Act, Section 46-3A-107 NMSA 1978, is enacted to read:

"46-3A-107. DETERMINATION OF MATTERS IN ADMINISTRATION.--

A. The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

(1) the effective date of a conversion to a total return trust pursuant to Section 46-3A-105 NMSA 1978;

(2) the manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year, the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

(3) whether distributions are made in cash or in-kind;

(4) the manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

(5) whether to value the trust's assets annually or more frequently;

(6) which valuation dates to use and how many valuation dates to use; and

(7) valuation decisions concerning any asset for which there is no readily available market value, including:

(a) how frequently to value the asset;

(b) whether and how often to engage a professional appraiser to value the asset; and

(c) whether to exclude the value of the asset from the net fair market value of the trust's assets for purposes of determining the distribution amount.

B. For purposes of this section, any asset excluded pursuant to Subparagraph (c) of Paragraph (7) of Subsection A of this section shall be referred to as an "excluded asset" and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(1) the trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors, including the best interests of the beneficiaries;

(2) if tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset;

(3) assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller;

(4) assets for which there is no readily available market value include stocks, bonds and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market or otherwise; real property; tangible personal property; and artwork and other collectibles."

Chapter 329 Section 6 Laws 2005

Section 6. A new section of the Uniform Principal and Income Act, Section 46-3A-108 NMSA 1978, is enacted to read:

"46-3A-108. DISTRIBUTION OF TOTAL RETURN TRUST.--

A. Expenses, taxes and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

B. Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(1) net income determined as if the trust were not a total return trust;

(2) other ordinary income as determined for federal income tax purposes;

(3) net realized short-term capital gains as determined for federal income tax purposes;

(4) net realized long-term capital gains as determined for federal income tax purposes;

(5) trust principal comprising assets for which there is a readily available market value; and

(6) other trust principal."

Chapter 329 Section 7 Laws 2005

Section 7. A new section of the Uniform Principal and Income Act, Section 46-3A-109 NMSA 1978, is enacted to read:

"46-3A-109. RESTRICTIONS ON DISTRIBUTIONS.--

A. The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of Sections 46-3A-105 through 46-3A-113 NMSA 1978, for a trust that was exempt, in whole or in part, from generation-skipping transfer tax on July 1, 2005 by reason of any effective date or transition rule.

B. Conversion to a total return trust shall not affect any provisions in the governing instrument:

(1) that directs or authorizes the trustee to distribute principal;

(2) that directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(3) that authorizes a beneficiary to withdraw a portion or all of the principal; or

(4) that in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside."

Chapter 329 Section 8 Laws 2005

Section 8. A new section of the Uniform Principal and Income Act, Section 46-3A-110 NMSA 1978, is enacted to read:

"46-3A-110. LIMITATIONS ON CONVERSION.--If a trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that trustee may not participate as a trustee in the exercise of the conversion power, except that:

A. the trustee may petition the court under Subsection C of Section 46-3A-105 NMSA 1978 to order conversion in accordance with this section; and

B. a co-trustee or co-trustees to whom this section does not apply may convert the trust to a total return trust in accordance with Sections 46-3A-105 and 46-3A-106 NMSA 1978."

Chapter 329 Section 9 Laws 2005

Section 9. A new section of the Uniform Principal and Income Act, Section 46-3A-111 NMSA 1978, is enacted to read:

"46-3A-111. RELEASE.--A trustee may irrevocably release the power granted by the provisions of Sections 46-3A-105 through 46-3A-113 NMSA 1978 if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual."

Chapter 329 Section 10 Laws 2005

Section 10. A new section of the Uniform Principal and Income Act, Section 46-3A-112 NMSA 1978, is enacted to read:

"46-3A-112. REMEDIES.--

A. A trustee who reasonably and in good faith takes any action or omits to take any action pursuant to Sections 46-3A-105 through 46-3A-113 NMSA 1978 is not liable to any person interested in the trust.

B. If a trustee reasonably and in good faith takes or omits to take any action pursuant to Sections 46-3A-105 through 46-3A-113 NMSA 1978 and a person interested in the trust opposes the act or omission, in addition to any other remedy otherwise provided or available by law, the person may seek an order of the court directing the trustee to:

- (1) convert the trust to a total return trust;
- (2) reconvert from a total return trust;
- (3) change the distribution percentage; or

(4) order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

C. A claim for relief pursuant to Subsection B of this section that is not barred by adjudication, consent or limitation is nevertheless barred as to any beneficiary who has received a written notice fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement."

Chapter 329 Section 11 Laws 2005

Section 11. A new section of the Uniform Principal and Income Act, Section 46-3A-113 NMSA 1978, is enacted to read:

"46-3A-113. APPLICABILITY.--

A. Sections 46-3A-105 through 46-3A-113 NMSA 1978 shall apply to trusts in existence on July 1, 2005 and to trusts created on or after that date.

B. Sections 46-3A-105 through 46-3A-113 NMSA 1978 shall be construed to apply to the administration of a trust that is administered in New Mexico under New Mexico law or that is governed by New Mexico law with respect to the meaning and effect of its terms unless:

(1) the trust is a trust described in Section 170(f)(2)(B), 664(d), 2702(a)(3) or 2702(b) of the federal Internal Revenue Code of 1986;

(2) the governing instrument expressly prohibits the use of Sections 46-3A-105 through 46-3A-113 NMSA 1978 by specific reference to one or more provisions of those sections; or

(3) the terms of a trust in existence on July 1, 2005 incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may adopt provisions in Sections 46-3A-105 through 46-3A-113 NMSA 1978 that do not contradict provisions in the governing instrument."

Chapter 329 Section 12 Laws 2005

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

HOUSE BILL 659, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 330

AN ACT

RELATING TO LOBBYISTS; AUTHORIZING THE ELECTRONIC AUTHORIZATION OF ELECTRONICALLY FILED LOBBYIST REPORTS.

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

Chapter 330 Section 1 Laws 2005

Section 1. Section 2-11-6 NMSA 1978 (being Laws 1977, Chapter 261, Section 6, as amended) is amended to read:

"2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--REPORTING PERIODS.--

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

- (a) meals and beverages;
- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. If the expenditure report is filed electronically, the report shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

E. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

F. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

G. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

H. An organization of two or more persons, including an individual who holds himself out as an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying

shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars (\$2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses and occupations of the contributors, to the secretary of state on a prescribed form."

HOUSE BILL 660

Approved April 7, 2005

LAWS 2005, CHAPTER 331

AN ACT

RELATING TO GAMBLING; CONDUCTING A GAMBLING ADDICTION STUDY TO DETERMINE THE INCIDENCE OF SUICIDES AND BANKRUPTCIES IN WHICH GAMBLING DEBT IS INVOLVED.

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

Chapter 331 Section 1 Laws 2005

Section 1. GAMBLING ADDICTION DATA COLLECTION.--

A. The department of health shall begin an ongoing process of gathering data on gambling addiction in New Mexico. The department shall establish standards to determine what constitutes a compulsive or problem gambler and collect data on the percent of the population who are active gamblers or compulsive gamblers and the number of gamblers who seek treatment.

B. The department of health shall adopt rules requiring that all suicide deaths or attempted suicides identified by law enforcement agencies or medical personnel be investigated to determine if the victim had gambling debts or compulsive gambling behaviors that may have been a factor in the cause of the suicide or the attempted suicide.

C. The department of health shall coordinate with the bankruptcy court in New Mexico to obtain data on compulsive gambling behavior or gambling debt that is found by the court to be a factor in all bankruptcies filed in New Mexico.

D. Beginning in fiscal year 2007, the department shall make reports at five-year intervals to an appropriate legislative interim committee no later than August on its findings regarding gambling addiction and the incidence of suicides and bankruptcies that involve gambling debt or compulsive gambling behavior in New Mexico. Two copies of the gambling report shall be filed with the legislative council service library every five years beginning in August 2007.

HOUSE BILL 684, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 332

AN ACT

RELATING TO GAME AND FISH; PROVIDING THAT THE STATE GAME COMMISSION MAY APPOINT CERTAIN ADVISORY COMMITTEES.

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

Chapter 332 Section 1 Laws 2005

Section 1. Section 17-2-1 NMSA 1978 (being Laws 1931, Chapter 117, Section 3, as amended) is amended to read:

"17-2-1. COMMISSION POWERS.--The state game commission, in addition to the powers now vested in it and not as a limitation of those powers, is expressly authorized and empowered by regulation adopted and promulgated in the manner provided in Chapter 17 NMSA 1978 to:

- A. define game birds, game animals and game fish;
- B. establish open and closed seasons for the killing or taking of all kinds of game animals, game birds and game fish and to change such open seasons from year to year and to fix different seasons for different parts of the state;
- C. establish bag limits covering all kinds of game animals, game birds and game fish and the numbers thereof which may be killed or taken by any one person during any one day or during any one open season;
- D. authorize or prohibit the killing or taking of any game animals, game birds or game fish of any kind or sex;

E. prescribe the manner, methods and devices which may be used in hunting, taking or killing game animals, game birds and game fish;

F. prescribe rules and regulations to prohibit any vehicle or vehicles used in transporting persons engaged in hunting, taking or killing game animals, game birds and game fish from leaving established roadways; and

G. appoint one or more advisory committees to furnish advice, evaluations and recommendations for wildlife management projects utilizing revenue derived from the sale of public land management stamps. The advisory committees shall be created pursuant to the procedures of Section 9-1-9 NMSA 1978, provided that the restrictions on the life of advisory committees contained in Subsection F of that section shall not be applicable."

House Bill 704

Approved April 7, 2005

LAWS 2005, CHAPTER 333

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING THAT, UNDER CERTAIN CIRCUMSTANCES, A NEW PUBLIC EMPLOYER MAY BE CONSIDERED AN AFFILIATED PUBLIC EMPLOYER PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING THE PUBLIC EMPLOYEE BARGAINING ACT TO PROVIDE THAT CERTAIN OBLIGATIONS ARE BINDING ON NEW ENTITIES.

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

Chapter 333 Section 1 Laws 2005

Section 1. Section 10-7E-1 NMSA 1978 (being Laws 2003, Chapter 4, Section 1 and Laws 2003, Chapter 5, Section 1) is amended to read:

"10-7E-1. SHORT TITLE.--Chapter 10, Article 7E NMSA 1978 may be cited as the "Public Employee Bargaining Act"."

Chapter 333 Section 2 Laws 2005

Section 2. A new section of the Public Employee Bargaining Act is enacted to read:

"CERTAIN NEW ENTITIES CREATED BY STATUTE.--A new entity, created by or pursuant to statute, that encompasses the same powers and duties as a previous public employer and uses essentially the same employees as the previous public employer shall be treated as if it were that previous public employer for purposes of the Public Employee Bargaining Act, including the continued applicability of existing ordinances or resolutions pursuant to Section 10-7E-26 NMSA 1978 and of existing collective bargaining units pursuant to Section 10-7E-24 NMSA 1978."

Chapter 333 Section 3 Laws 2005

Section 3. Section 10-11-122 NMSA 1978 (being Laws 1987, Chapter 253, Section 122) is amended to read:

"10-11-122. PUBLIC EMPLOYER AFFILIATION.--

A. A public employer who is an affiliated public employer on the effective date of the Public Employees Retirement Act shall continue to be an affiliated public employer.

B. A public employer who is not an affiliated public employer on the effective date of the Public Employees Retirement Act may become an affiliated public employer by resolution or ordinance adopted by its governing body. Affiliation shall be effective the first day of the month following completion of each of the following requirements:

(1) the public employer files a certified copy of the resolution or ordinance with the association; and

(2) the public employer furnishes the association with all information requested by the association.

C. An affiliated public employer may adopt a coverage plan by resolution or ordinance of its governing body, unless a procedure for adopting the change is otherwise provided in the Public Employees Retirement Act. The change shall be effective the first day of the month following completion of each of the following requirements:

(1) the public employer files a certified copy of the resolution or ordinance with the association; and

(2) the public employer furnishes the association with all information requested by the association.

D. A public employer created by one of the methods specified in this subsection shall be an affiliated public employer with the coverage plan that provides

the highest pension applicable to any of the groups of members brought under its employment.

(1) This subsection applies to a public employer created:

(a) by a merger of two or more affiliated public employers;

(b) pursuant to a joint powers agreement between two or more affiliated public employers;

(c) pursuant to a statute that authorizes two or more affiliated public employers to jointly create the public employer; or

(d) pursuant to a statute that creates the public employer by expanding the jurisdiction or assuming the powers and duties of an existing affiliated public employer.

(2) The public employer shall be an affiliated public employer on the first day of the month following the later of:

(a) the date that the public employer files with the association a certified copy of the statute, ordinance, resolution or joint powers agreement under which the public employer is created; or

(b) the date that the public employer furnishes the association with all information requested by the association."

HOUSE BILL 1080

Approved April 7, 2005

LAWS 2005, CHAPTER 334

AN ACT

RELATING TO PERSONS WITH DISABILITIES; CREATING THE STATE USE ACT; ESTABLISHING THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES; PROVIDING A RULEMAKING PROCESS TO IDENTIFY SERVICES TO BE PURCHASED FROM COMMUNITY REHABILITATION PROGRAMS OR QUALIFYING INDIVIDUALS WITH DISABILITIES AT FAIR MARKET PRICES BY STATE AGENCIES AND LOCAL PUBLIC BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 334 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "State Use Act".

Chapter 334 Section 2 Laws 2005

Section 2. PURPOSE.--The purpose of the State Use Act is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.

Chapter 334 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the State Use Act:

A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders for the services of:

(1) qualified individuals; and

(2) community rehabilitation programs;

B. "community rehabilitation program" means a nonprofit entity:

(1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities and operated so that no part of the income of which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services, whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the provision of services;

C. "council" means the New Mexico council for purchasing from persons with disabilities;

D. "direct labor" means all work directly relating to the provision of services, but not work required for or relating to supervision, administration or inspection;

E. "local public body" means a political subdivision of the state and the political subdivision's agencies, instrumentalities and institutions;

F. "persons with disabilities" means persons who have a mental or physical impairment that constitutes or results in a substantial impediment to employment as defined by the federal Rehabilitation Act of 1973;

G. "qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies. A person who is receiving services pursuant to an individualized plan of employment from the vocational rehabilitation division of the public education department or from the commission for the blind shall be presumed to be a person with disability, as shall a person who is receiving supplemental security income or social security benefits based on disability;

H. "state agency" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of government of this state; and

I. "state purchasing agent" means the director of the purchasing division of the general services department.

Chapter 334 Section 4 Laws 2005

Section 4. COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES--APPOINTMENT--ORGANIZATION.--

A. The "New Mexico council for purchasing from persons with disabilities" is created. The council shall be composed of the following nine members:

(1) the state purchasing agent or the agent's designee;

(2) two persons, appointed by the governor, who represent state agencies that purchase significant amounts of goods and services from the private sector, or their designees;

(3) a person, appointed by the governor, who is a state-employed vocational rehabilitation counselor and who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services; and

(4) two persons with disabilities, a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of

goods and services and two persons who represent community rehabilitation programs that provide employment services to persons with disabilities, all selected by mutual agreement of the persons appointed in Paragraphs (1), (2) and (3) of this subsection.

B. Council members shall be appointed for three-year terms. Vacancies shall be filled in the same manner as for original appointments. A member appointed to fill a vacancy shall serve for the remainder of the term for that vacancy. Council members shall continue to serve beyond the expiration of their terms until new members are appointed.

C. The council shall elect a chair from among its members. Seven members of the council shall constitute a quorum in order to conduct the council's business.

D. Except for the regular pay of public employee members, council members shall serve without compensation or cost reimbursement.

Chapter 334 Section 5 Laws 2005

Section 5. AUTHORITY AND DUTIES OF THE COUNCIL--RULES.--

A. The council shall adopt rules in accordance with the procedure set out in Subsection E of Section 9-1-5 NMSA 1978 that:

(1) determine which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies;

(2) establish, maintain and publish a list of all the services identified in Paragraph (1) of this subsection. The council shall periodically review and revise this list as products or services are added or removed. The council shall make the list available to all purchasing officials of state agencies and local public bodies;

(3) verify the fair market prices of the services identified in Paragraph (1) of this subsection and periodically revise the fair market prices in accordance with changing market conditions to ensure that services offer the best value for state agencies and local public bodies. In verifying the fair market value of services, the council shall consider amounts being paid for similar services purchased by the federal government, the state and local public bodies and by private businesses, and the actual cost of performing the services at a community rehabilitation program, taking into consideration the benefits associated with employing persons with disabilities;

(4) establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies that will be placed on the list established in Paragraph (2) of this subsection;

(5) establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies;

(6) establish procedures for the operation of the approved central nonprofit agency, including a fee structure for its services;

(7) address any other matter necessary to the proper administration of the State Use Act; and

(8) ensure that the work provides opportunities for integration with nondisabled persons, fair pay and adds value to the service provided.

B. The council shall, not later than one hundred eighty days following the close of each fiscal year, submit to the governor, the legislature and each community rehabilitation program a report that includes the names of the council members serving during the preceding fiscal year, the dates of council meetings during that year and any recommendations for changes to the State Use Act.

Chapter 334 Section 6 Laws 2005

Section 6. EXISTING VENDOR EXCLUSION.--Services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from the State Use Act.

Chapter 334 Section 7 Laws 2005

Section 7. PROCUREMENT BY STATE AGENCIES AND LOCAL PUBLIC BODIES--COOPERATIVE AGREEMENTS.--

A. A state agency or local public body intending to procure a service on a list published by the council shall, in accordance with rules of the council, procure the service at the price established by the council if the service is available within the period required by the state agency or local public body. Procurement pursuant to the State Use Act is exempt from the provisions of the Procurement Code.

B. The council and a state agency or local public body may enter into a cooperative agreement for effective coordination of the objectives of the State Use Act and any other law requiring procurement of services from a state agency or local public body.

Chapter 334 Section 8 Laws 2005

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 rules 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 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;

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;

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;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or 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, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement by or through the public education department from the federal department of education relating to parent training and information centers

designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);

Y. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act; and

Z. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973."

HOUSE BILL 498, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 335

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTIONS OF THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO PROVIDE FOR THE STATE RURAL UNIVERSAL SERVICE FUND.

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

Chapter 335 Section 1 Laws 2005

Section 1. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--ESTABLISHMENT.--

A. No later than January 1, 2000, the commission shall implement a "state rural universal service fund" to maintain and support at affordable rates those public telecommunications services as are determined by the commission. All of the balances in the existing New Mexico universal service fund as of July 1, 1999 shall be transferred into the state rural universal service fund.

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose

of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers, including commercial mobile radio services, at a competitively and technologically neutral rate or rates to be determined by the commission. In prescribing competitively and technologically neutral surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require all carriers subject to the surcharge to apply uniform surcharge rates for the same or comparable services. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply this surcharge to a private telecommunications network; to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; or to an Indian nation, tribe or pueblo.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that reduces intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensures universal service in the state.

D. The commission shall:

(1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of service at affordable rates. The eligibility criteria shall not restrict or limit an eligible telecommunications carrier from receiving federal universal service support;

(2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;

(3) determine those services requiring support from the fund;

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and

(5) establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the fund. The process for determining subsequent adjustments to the benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and competitive carriers already designated as eligible telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier

status to a competitive carrier in a rural area upon a finding that granting the application is in the public interest. In making a public interest finding, the commission shall consider at least the following items:

- (1) whether granting eligible carrier status to multiple carriers in a designated area is likely to result in more customer choice;
- (2) the impact of designation of an additional eligible carrier on the size of the fund;
- (3) the unique advantages and disadvantages of the competitor's service offering;
- (4) any commitments made regarding the quality of telephone service; and
- (5) the competitive carrier's willingness and ability to offer service throughout the designated service areas within a reasonable time frame.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section no later than November 1, 2005.

G. The commission shall, upon implementation of the fund, select a neutral third party administrator to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to established criteria and rules promulgated by the commission. The administrator may be reasonably compensated for the specified services from the surcharge proceeds to be received by the fund pursuant to Subsection B of this section. For purposes of this subsection, the commission shall not be a neutral third party administrator.

H. The fund established by the commission shall ensure the availability of local telecommunications service as determined by the commission at affordable rates in rural high cost areas of the state.

I. Beginning April 1, 2006, the commission shall commence the phase-in of reductions in intrastate switched access charges. By May 1, 2008, the commission shall ensure that intrastate switched access charges are equal to interstate switched access charges established by the federal communications commission as of January 1, 2006. Nothing in this section shall preclude the commission from considering further adjustments to intrastate switched access charges based on changes to interstate switched access charges after May 1, 2008.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge to be paid by the end-user customer will be held to a minimum, no later than November 1, 2005, the

commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

K. The commission shall authorize payments from the fund to incumbent local exchange carriers in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates, in an amount equal to the reduction in revenues that occurs as a result of reduced intrastate switched access charges. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status. Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico.

L. In a rate proceeding filed pursuant to Subsection F of Section 63-9H-7 NMSA 1978, the commission may also authorize payments from the fund to incumbent rural telecommunications carriers serving in high-cost areas of the state that have reduced access charges upon a finding by the commission that such payments are needed to ensure the widespread availability and affordability of residential local exchange service.

M. By December 1, 2008, the fund administrator shall make a report to the commission and the legislature. The report shall include the effects of access reductions. The report shall also make recommendations for any changes to the structure, size or purposes of the fund."

Chapter 335 Section 2 Laws 2005

Section 2. Section 63-9H-7 NMSA 1978 (being Laws 1999, Chapter 295, Section 7) is amended to read:

"63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIER.--

A. Rates for retail rural public telecommunications services provided by an incumbent rural telecommunications carrier shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent rural telecommunications carrier shall file tariffs for all retail public telecommunications services, other than residential local exchange service, which shall be effective after ten days' notice to the commission and publication in a local newspaper in the incumbent service area. An incumbent rural telecommunications carrier shall remain subject to complaint by an interested party subject to Section 63-9H-10 NMSA 1978.

C. Rates for residential local exchange service may be increased by an incumbent rural telecommunications carrier only after sixty days' notice to all affected subscribers. The notice of increase shall include:

- (1) the reasons for the rate increase;
- (2) a description of the affected service;
- (3) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase;
- (4) a list of local exchange areas that are affected by the proposed rate increase; and
- (5) the dates, times and places for the public informational meetings required by this section.

D. An incumbent rural telecommunications carrier may increase its rates for residential local exchange service in the manner otherwise provided in this section as necessary to recover a reasonable allocation of costs incurred due to requirements imposed by any federal or state law or rule. An incumbent rural telecommunications carrier that proposes to increase its rates for residential local exchange service shall hold at least one public informational meeting in each public regulation commissioner's district as established by the Public Regulation Commission Apportionment Act in which there is a local exchange area affected by the rate change.

E. Residential local exchange service rates increased by an incumbent rural telecommunications carrier pursuant to Subsection D of this section shall be reviewed by the commission only upon written protest signed by two and one-half percent of all affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of an incumbent rural telecommunications carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate cost of providing the service, which shall include the cost methodology and rate of return authorized by the federal communications commission. In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the telecommunications carrier in its operations and may include other accounting adjustments authorized by the commission.

F. An incumbent rural telecommunications carrier that serves less than five percent of the state's aggregate statewide subscriber lines may at any time elect to file an application with the commission requesting the commission to prescribe fair, just and reasonable rates for the carrier based on the carrier's revenue, expenses and investment in accordance with traditional rate-making principles.

G. Rates for local exchange, vertical and long distance service to retail end-user customers may be reduced to a level equal to, but not below, the intrastate cost, which shall include the cost methodology and rate of return authorized by the federal communications commission. If an incumbent rural telecommunications carrier loses its exemption pursuant to Section 251 of the federal act, the rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long distance service must also include any interexchange access rates charged to another telecommunications carrier for the service.

H. An incumbent rural telecommunications carrier operating pursuant to this section shall have the ability to offer or discontinue offering special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts."

HOUSE BILL 776, AS AMENDED

Approved April 6, 2005

LAWS 2005, CHAPTER 336

AN ACT

RELATING TO PUBLIC UTILITIES; SETTING THE INTEREST RATE FOR CUSTOMER DEPOSITS.

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

Chapter 336 Section 1 Laws 2005

Section 1. Section 62-13-13 NMSA 1978 (being Laws 1979, Chapter 292, Section 1, as amended) is amended to read:

"62-13-13. DEPOSITS--INTEREST.--Interest on deposits shall be set annually at a rate equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA

1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978."

Chapter 336 Section 2 Laws 2005

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 178

Approved April 7, 2005

LAWS 2005, CHAPTER 337

AN ACT

RELATING TO TAXATION; PROVIDING FOR AN INCOME TAX OR CORPORATE INCOME TAX CREDIT FOR CERTAIN FILM PRODUCTION EXPENDITURES MADE IN NEW MEXICO; DECLARING AN EMERGENCY.

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

Chapter 337 Section 1 Laws 2005

Section 1. NEW MEXICO FILMMAKER TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "New Mexico filmmaker tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to five percent of direct production expenditures:

- (1) that are made in New Mexico;
- (2) that are subject to taxation by the state of New Mexico;
- (3) of which sixty percent of the below-the-line crew payroll are residents of New Mexico;
- (4) are made by residents of New Mexico for the purposes of this section, as defined in Subsection G of this section;

(5) on equipment, goods, services, vehicles or other direct production expenditures provided by individuals or companies paying gross receipts tax in New Mexico for a minimum of two years;

(6) on rental equipment if it is domiciled in New Mexico for a minimum of one hundred eighty-three days per year as defined by the New Mexico film division of the economic development department; and

(7) that are made for the purposes of producing a television series.

B. The New Mexico filmmaker tax credit shall not be claimed with respect to expenditures for which the film production company claiming the credit has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

C. A long-form narrative film production for which the New Mexico filmmaker tax credit is claimed shall contain an acknowledgment that the production was filmed in New Mexico.

D. To be eligible for the New Mexico filmmaker tax credit, a film production company shall submit to the New Mexico film division of the economic development department information required by the division to demonstrate conformity with the requirements of this section. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

E. To receive a New Mexico filmmaker tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification in the amount of direct production expenditures made in accordance with this section with respect to the film production for which the film production company is seeking the New Mexico filmmaker tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the New Mexico filmmaker tax credit and issue a document granting the credit.

F. The film production company may apply for all or a portion of the New Mexico filmmaker tax credit granted against personal income tax liability or corporate income tax liability or any tax liability of a limited liability company. If the amount of the New Mexico filmmaker tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

G. For the purposes of this section:

(1) "direct production expenditure" means an expenditure used in the production of a film for:

- (a) the cost of a story or scenario;
- (b) wages or salaries for talent, management or labor paid to a resident of New Mexico;
- (c) the cost of set construction and operations, wardrobe, accessories and related services;
- (d) the cost of photography, sound synchronization, lighting and related services;
- (e) the cost of editing and related services;
- (f) rental of facilities and equipment;
- (g) leasing of a vehicle;
- (h) the cost of food or lodging;
- (i) travel costs limited to airfare paid to a travel agency or travel company with its primary place of business in New Mexico;
- (j) the cost of insurance and bonding paid to an insurance company or agency with its primary place of business in New Mexico; and
- (k) other direct costs of producing the film;

(2) "film" means a single media or multimedia program, including a national advertising message, that is fixed on film, videotape, computer disc, laser disc or other similar delivery medium, that can be viewed or reproduced and that is:

- (a) exhibited in a theater;
- (b) intended for exhibition by a television station, network or other means;
- (c) intended for the home viewing market; or
- (d) publicly viewed in any other medium;

(3) "film production company" means a company or limited liability company or any entity that produces a film for exhibition in theaters, on television or elsewhere;

(4) "New Mexico resident" means a person whose primary residence has been in the state of New Mexico for the previous two years as defined by

the New Mexico film division of the economic development department in consultation with the taxation and revenue department and as evidenced by a signed residency affidavit;

(5) "New Mexico vehicle" means a vehicle originally titled in New Mexico or continuously titled in New Mexico for a minimum of two years;

(6) "New Mexico vendor" means a vendor who demonstrates significant ownership interest in New Mexico domiciled equipment, as defined by the New Mexico film division of the economic development department, provided for lease to production companies in their New Mexico operation; and

(7) "television series" means one or more productions that may be exhibited by a television station or network.

H. By October 15, 2005 and by October 15 of each year thereafter, the New Mexico film division of the economic development department and the taxation and revenue department shall provide a written report to the legislative finance committee that reviews and assesses the impacts of the New Mexico filmmaker tax credit.

Chapter 337 Section 2 Laws 2005

Section 2. DELAYED REPEAL.--Section 1 of this act is repealed effective January 1, 2009.

Chapter 337 Section 3 Laws 2005

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2005.

Chapter 337 Section 4 Laws 2005

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

SENATE FINANCE COMMITTEE SUBSTITUTE
FOR SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR SENATE BILL Bill 416,
WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 338

AN ACT

RELATING TO TAX RECEIPTS; PROVIDING THAT CERTAIN RECEIPTS DISTRIBUTED TO MUNICIPALITIES BE DISTRIBUTED INSTEAD TO COUNTIES TO OPERATE COUNTY HOSPITALS.

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

Chapter 338 Section 1 Laws 2005

Section 1. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 7-1-6.41 NMSA 1978."

Chapter 338 Section 2 Laws 2005

Section 2. Section 7-20C-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 6, as amended) is amended to read:

"7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the local hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected."

Chapter 338 Section 3 Laws 2005

Section 3. Section 7-24B-3 NMSA 1978 (being Laws 1987, Chapter 45, Section 12, as amended) is amended to read:

"7-24B-3. USE OF PROCEEDS.--The proceeds of the special county hospital gasoline tax shall be used for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose."

Chapter 338 Section 4 Laws 2005

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 604

Approved April 7, 2005

LAWS 2005, CHAPTER 339

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR APPOINTMENT OF RECEIVERS; DEFINING TERMS; MAKING UNAPPROVED SECURITIES VOIDABLE; CHANGING CERTAIN HEARING REQUIREMENTS; CHANGING DUE DATES FOR CERTAIN FEES; PROVIDING FOR SYSTEM RELIABILITY REQUIREMENTS; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 339 Section 1 Laws 2005

Section 1. A new section of the Public Utility Act is enacted to read:

"APPOINTMENT OF RECEIVER.--Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission, the commission may commence an action in the district court of the county where the utility has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon terms and conditions in accordance with the

provisions of the Public Utility Act, commission rules and orders of the court. Upon the order of the court, the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public utility. Unless otherwise provided in the court order, payment of the receiver's certificates is a first lien on the real and personal property of the public utility. The court shall prescribe the certificate's form, term and rate of interest. Receiver's certificates are exempt from the operation of any law that regulates the issuance or sale of securities of public utilities."

Chapter 339 Section 2 Laws 2005

Section 2. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person:

(1) is an officer, director, partner, trustee or person of similar status or function;

(2) owns directly or indirectly or has a beneficial interest in ten percent or more of voting securities of a person;

(3) a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and

(4) instances where the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of ten percent or more of the person's voting securities;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of

the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or similar evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, that nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that the terms "public utility" or "utility" as used in the Public Utility Act do not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act,

requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, the following energy sources: solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility;

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility; and

O. "voting securities" means securities that carry the present right to vote for the election of directors or other members of the governing body ultimately responsible for the management of the organization."

Chapter 339 Section 3 Laws 2005

Section 3. Section 62-6-11 NMSA 1978 (being Laws 1941, Chapter 84, Section 23, as amended) is amended to read:

"62-6-11. SECURITIES VOIDABLE UNLESS APPROVED.--All securities issued, assumed or guaranteed without application to and approval of the commission, except the securities mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978, are voidable with the consent of the commission."

Chapter 339 Section 4 Laws 2005

Section 4. Section 62-8-7.1 NMSA 1978 (being Laws 1985, Chapter 221, Section 3, as amended) is amended to read:

"62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF SMALL WATER AND SEWER UTILITIES.--

A. Whenever there is filed with the commission any schedule proposing any new rates pursuant to Section 62-8-7 NMSA 1978 by any public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978 with equal to or fewer than an aggregate of one thousand five hundred service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the utility without a hearing; provided that the utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of any proposed rates filed by such a utility pursuant to Subsections C and D of Section 62-8-7 NMSA 1978 when a rate increase would have the effect of increasing the rates fifty percent or more in a twelve-month period or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers or twenty-five ratepayers, whichever is more, receiving service from such a utility if the commission determines there is just cause for reviewing the proposed rates. For purposes of this section, a "service connection" means a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system, and each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a utility provides both water and sewer service, the service connection revenues attributable to the provision of water

service only shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a utility from filing for a rate change pursuant to any other rule or procedure of the commission.

B. Whenever there is filed with the commission a schedule proposing new rates pursuant to Section 62-8-7 NMSA 1978 by a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with more than an aggregate of one thousand five hundred service connections and fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the public utility without a hearing; provided that the public utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the public utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of proposed rates filed by such a public utility pursuant to Subsections C and D of Section 62-8-7 NMSA 1978 when a rate increase would have the effect of increasing rates more than eight percent in a twelve-month period, or upon the commission staff's motion or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers receiving service from the public utility, if the commission determines there is just cause for reviewing the proposed rates. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission.

C. Notwithstanding the provisions of Subsections A and B of this section, a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, that is currently in good standing with all applicable requirements of the commission, may adjust its charges for commodity and service by up to two percent in any calendar year without a hearing; provided that the public utility shall not have changed its rates in the prior twelve-month period; and provided further that the public utility shall be required to give written notice of the proposed rate adjustments to the ratepayers receiving service from the public utility prior to its effective date. The

increased rates shall not become effective until at least thirty days after notice and filing with the commission. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to any schedule proposing any new rate or rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to any schedule proposing any new rate or rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission."

Chapter 339 Section 5 Laws 2005

Section 5. Section 62-8-8 NMSA 1978 (being Laws 1967, Chapter 96, Section 6, as amended) is amended to read:

"62-8-8. INSPECTION AND SUPERVISION FEE.--Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates or service regulations shall pay annually to the state a fee for the inspection and supervision of such business in an amount equal to five hundred six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. That sum shall be payable on or before the first day of April in each year. An inspection and supervision fee shall be paid by utilities in addition to all property, franchise, license, intangible and other taxes, fees and charges provided by law. No similar inspection and supervision fee shall be measured by the amount of the gross receipts of such utility for the calendar year next preceding the date fixed in this section for the payment of the fee. In the case of utilities engaged in interstate business, the inspection and supervision fee shall be measured by the gross receipts of those utilities from intrastate business only for that preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. No inspection and supervision fee shall be charged on the gross receipts from the sale of gas, water or electricity to a utility regulated by the commission for resale to the public."

Chapter 339 Section 6 Laws 2005

Section 6. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended) 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, facilities and transmission lines 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. A person, including any municipality, shall not 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. Approval shall not 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 or will unduly impair system reliability. 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 or the operation of the proposed transmission lines will unduly impair power system reliability.

G. An application shall not be approved pursuant to this section if it 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."

Chapter 339 Section 7 Laws 2005

Section 7. Section 63-7-20 NMSA 1978 (being Laws 1951, Chapter 194, Section 1, as amended) is amended to read:

"63-7-20. UTILITY AND CARRIER INSPECTION--FEE.--

A. Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. The fee for carriers shall not exceed two hundred fifty-six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. The fee for utilities shall not exceed five hundred eleven thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on or before April 1 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies but does not include public utilities subject to the Public Utility Act.

B. When a fee is not paid on the date it is due, interest shall be paid to the state on the amount due. The interest on the amount due shall start to accrue on the day following the due date and shall continue to accrue until the total amount due is paid. The rate of interest on a late fee payment shall be fifteen percent per year, computed at the rate of one and one-fourth percent per month.

C. In addition to any interest due on a late fee payment, a penalty shall be paid to the state for failure to pay the fee when it is due. The penalty imposed shall be two percent of the amount of the fee due.

D. The attorney general, in the name of the state, shall bring suit to collect fees, interest and penalties that remain unpaid."

Chapter 339 Section 8 Laws 2005

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 855, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 340

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR SIMULTANEOUS DETERMINATION OF RATEMAKING PRINCIPLES AND PUBLIC CONVENIENCE AND NECESSITY; AUTHORIZING UTILITIES TO FILE APPLICATIONS OF PUBLIC CONVENIENCE AND NECESSITY BEFORE FILING APPLICATIONS FOR LOCATION APPROVAL; ESTABLISHING FACTORS TO BE CONSIDERED WHEN APPROVING APPLICATIONS FOR LOCATION APPROVAL; PROVIDING DEADLINES FOR APPROVAL OF APPLICATIONS; ALLOWING APPROVAL OF APPLICATIONS WITHOUT A FORMAL HEARING; PRESCRIBING USE OF RATEMAKING PRINCIPLES AND TREATMENTS IN ALL PROCEEDINGS.

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

Chapter 340 Section 1 Laws 2005

Section 1. Section 62-9-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that

the commission may extend the time for granting approval for an additional six months for good cause shown.

D. As used in this section, "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

(1) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

(2) the Sanitary Projects Act."

Chapter 340 Section 2 Laws 2005

Section 2. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended) 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. A public utility regulated by the commission

may submit an application pursuant to Section 62-9-1 NMSA 1978 for a certificate of public convenience and necessity prior to filing an application for location approval pursuant to this section in order to determine the need for the generating plant or transmission line prior to determination of the appropriate location.

D. No approval shall be required 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 that 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. A public utility subject to the jurisdiction of the commission may elect to file an application pursuant to this section with the commission for location approval of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of one hundred fifteen kilovolts or more but less than two hundred thirty kilovolts if:

(1) the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any applicable county or municipal land use statute, ordinance or administrative regulation; and

(2) the agency, board or commission of the county or municipality disapproves the application. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within two hundred forty days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within fifteen working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. 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.

J. 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.

K. The commission may approve an application filed pursuant to this section without a formal hearing if no protest is filed within sixty days of the date that notice is given that the application has been filed. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission; provided, however, that:

(1) if a public utility simultaneously files an application for approval of location of a transmission line pursuant to this section and an application for a certificate of public convenience and necessity pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the applications within nine months from the date the applications are filed with the commission; provided, however, that the commission may extend the time for granting approval an additional six months for good cause shown;

(2) if a public utility files an application for approval of location of a transmission line pursuant to this section after its application for a certificate of public convenience and necessity has been approved pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application is filed with the commission; and

(3) if a public utility files an application for approval of location of a transmission line pursuant to this section while its application for a certificate of public convenience and necessity is pending pursuant to Subsection B of Section 62-9-1 NMSA 1978, and the application for a certificate is subsequently approved, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application for certificate of public convenience and necessity is approved.

L. Failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in Subsection J of this section 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 nine months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values.

M. In determining if the proposed location of the transmission line will unduly impair important environmental values, the commission may consider the following factors;

(1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location;

(2) fish, wildlife and plant life;

(3) noise emission levels and interference with communication signals;

(4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;

(5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and

(6) additional factors that require consideration under applicable federal and state laws pertaining to the location."

Chapter 340 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

Signed April 7, 2005

LAWS 2005, CHAPTER 341

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR EXPENDITURES FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT BY PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT; DECLARING AN EMERGENCY.

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

Chapter 341 Section 1 Laws 2005

Section 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Efficient Use of Energy Act".

Chapter 341 Section 2 Laws 2005

Section 2. FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility consumers;

B. energy efficiency and load management in New Mexico are resources that are currently underutilized;

C. public and municipal utility investment in energy efficiency and load management presents opportunities to increase New Mexico's energy security, protect New Mexico energy consumers from price increases, preserve the state's natural resources and pursue an improved environment in New Mexico;

D. investment in energy efficiency and load management by public utilities subject to public regulation commission oversight in accordance with the Efficient Use of Energy Act can bring significant economic benefits to New Mexico;

E. it serves the public interest to support public utility investments in cost-effective energy efficiency and load management by removing any regulatory disincentives that may exist and allowing recovery of costs for reasonable and prudently incurred expenses of energy efficiency and load management programs;

F. investments in energy efficiency and implementation of utility energy efficiency programs for economically disadvantaged New Mexicans, in conjunction with

low-income weatherization programs managed by the state of New Mexico, will reduce the burden of utility costs on

low-income customers;

G. public utility investments in cost-effective energy efficiency and load management can provide significant reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion, and can avoid or delay the need for more expensive generation, transmission and distribution infrastructure;

H. New Mexico should participate in regional efforts to reduce energy consumption by twenty percent by 2020 through programs to reduce energy consumption;

I. public utility resource planning to meet New Mexico's energy service needs should be identified and evaluated on an ongoing basis in accordance with the principles of integrated resource planning; and

J. it is necessary and appropriate to allow distribution cooperative utilities to participate in the implementation of energy efficiency programs in ways that differ from rules applicable to public utilities that are not customer owned.

Chapter 341 Section 3 Laws 2005

Section 3. POLICY.--It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include cost-effective energy efficiency and load management investments in their energy resource portfolios and that any regulatory disincentives that may exist to public utility investments in cost-effective energy efficiency and load management are eliminated.

Chapter 341 Section 4 Laws 2005

Section 4. DEFINITIONS.--As used in the Efficient Use of Energy Act:

A. "commission" means the public regulation commission;

B. "cost-effective" means that the program being evaluated satisfies the total resource cost test;

C. "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 or similarly organized in other states;

D. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in

a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;

E. "large customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility, with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

F. "load management" means measures or programs that target equipment or devices to result in decrease peak electricity demand or shift demand from peak to off-peak periods;

G. "public utility" means a public utility that is not also a distribution cooperative utility; and

H. "total resource cost test" means a standard that is met if, for an investment in energy efficiency or load management, on a life-cycle basis the avoided supply-side monetary costs are greater than the monetary costs of the demand-side programs borne by both the utility and the participants.

Chapter 341 Section 5 Laws 2005

Section 5. COMMISSION--ENERGY EFFICIENCY AND LOAD MANAGEMENT PROGRAMS.--

A. Pursuant to the findings and purpose of the Efficient Use of Energy Act, the commission shall consider public utility investments in cost-effective energy efficiency and load management to be an acceptable use of ratepayer money.

B. The commission shall direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption.

C. Before the commission approves an energy efficiency and load management program for a public utility, it must find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the total resource cost test.

D. The commission shall act expeditiously on public utility requests for approval of energy efficiency or load management programs.

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit non-binding recommendations on the design and

implementation of the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties.

F. The commission shall identify any disincentives or barriers that may exist for public utility expenditures on energy efficiency and load management and, if found, ensure that they are eliminated in order that public utilities are financially neutral in their preference for acquiring demand or supply-side utility resources.

Chapter 341 Section 6 Laws 2005

Section 6. COST RECOVERY.--

A. A public utility that undertakes cost-effective energy efficiency and load management programs shall recover the costs of all the programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider. Program costs may be deferred for future recovery through creation of a regulatory asset, provided that the deferred recovery does not cause the tariff rider to exceed the limits imposed by this section. The tariff rider for any utility customer shall not exceed the lower of one and one-half percent of that customer's bill or seventy-five thousand dollars (\$75,000) per year except that, upon application by a public utility with the advice and consent of the entity designated by law to represent residential and commercial utility customers, the commission may approve a tariff rider in excess of one and one-half percent for customers other than large customers and may approve a tariff rider in excess of the lower of one and one-half percent or seventy-five thousand dollars (\$75,000) per year for a large customer that consents to such a rider. The commission shall approve such applications upon finding that the proposed energy efficiency and load management programs are cost-effective and that the cost recovery proposal is just and reasonable.

B. The tariff rider shall provide for the recovery, on a monthly basis or otherwise, of all reasonable costs of approved energy efficiency and load management programs.

C. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. The commission shall approve utility reconciliations of the tariff rider annually based upon recovery of the reasonable costs of the utility's programs.

D. The commission shall ensure that there are no cross-subsidies between a public utility's energy efficiency and load management activities and the

public utility's supply-side activities and shall ensure that the existence of a tariff rider does not permit a public utility to earn an excessive rate of return.

Chapter 341 Section 7 Laws 2005

Section 7. ALTERNATIVE ENERGY EFFICIENCY PROVIDER.--With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility.

Chapter 341 Section 8 Laws 2005

Section 8. MEASUREMENT AND VERIFICATION.--The public utility shall submit to the commission an annual report, prepared by an independent program evaluator, that provides information relating to the actions taken by the public utility to comply with the standards of the Efficient Use of Energy Act. The reports shall include documentation of program expenditures, measurement and verification of savings resulting from programs, evaluation of the cost-effectiveness of expenditures, evaluation of the cost-effectiveness of self-direct programs and any other information the commission may require pursuant to its rulemaking authority. The commission may direct a utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

Chapter 341 Section 9 Laws 2005

Section 9. SELF-DIRECTED PROGRAMS FOR CUSTOMERS--EXEMPTIONS.-

A. A large customer shall receive approval for a credit for and equal to the expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management. To receive approval, the large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Eligible expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit.

B. A large customer shall receive approval for an exemption to paying seventy percent of the tariff rider if the customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility. As used in this section, "cost-

effective" means all measures with a simple payback period of more than one year but less than seven years.

C. Large customers shall seek and receive approval for credits and exemptions under this provision from the utility or a commission-approved self-direct program administrator. Approvals or disapprovals by the utility or administrator shall be subject to commission review. Any credit not fully utilized in the year it is received shall carry over to subsequent years. Implementation of credits shall be designed to minimize utility administrative costs.

D. Except as otherwise provided in this section, projects, expenditures and exemptions under this section shall be evaluated by an independent program evaluator using the same measurement and verification standards applying to utility programs, subject to appropriate protections for confidentiality, by the utility or a commission-approved self-direct program administrator and reported in the annual report to the commission pursuant to the Efficient Use of Energy Act.

Chapter 341 Section 10 Laws 2005

Section 10. INTEGRATED RESOURCE PLANNING.--Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The preparation of resource plans shall incorporate a public advisory process. Nothing in this section shall prohibit public utilities from implementing cost-effective energy efficiency and load management programs and the commission from approving public utility expenditures on energy efficiency programs and load management programs prior to the commission establishing rules and guidelines for integrated resource planning. The commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this section. The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements. The requirements of this section shall take effect one year following the commission's adoption of rules implementing the provisions of this section.

Chapter 341 Section 11 Laws 2005

Section 11. DISTRIBUTION COOPERATIVE UTILITIES.--

A. Distribution cooperative utilities shall periodically examine the potential to assist their customers in reducing energy consumption or peak electricity demand in

a cost-effective manner. Based on these studies, distribution cooperative utilities shall implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, a report that describes all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of this section a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

Chapter 341 Section 12 Laws 2005

Section 12. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that the terms "public

utility" or "utility" as used in the Public Utility Act do not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county; or

(6) any plant, property or facility for the sale or furnishing to or for the public of goods or services to reduce the consumption of or demand for electricity or natural gas, and is either a public utility under the definitions found in Paragraphs (1) or (2) of this subsection, or is an alternative energy efficiency provider as described in Section 7 of the Efficient Use of Energy Act;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility."

Chapter 341 Section 13 Laws 2005

Section 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 644, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 342

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CREATING THE NEW MEXICO EXPOSITION CENTER AUTHORITY FOR THE PURPOSE OF CREATING, CONSTRUCTING, DEVELOPING, OPERATING AND MANAGING AN EXPOSITION CENTER AND RELATED FUNCTIONS; PROVIDING POWERS AND DUTIES; AUTHORIZING THE ISSUANCE OF BONDS AND OTHER OBLIGATIONS; CREATING THE NEW MEXICO EXPOSITION CENTER AUTHORITY OVERSIGHT COMMITTEE; PROVIDING A PENALTY; DECLARING AN EMERGENCY.

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

Chapter 342 Section 1 Laws 2005

Section 1. SHORT TITLE.--This act may be cited as the "New Mexico Exposition Center Authority Act".

Chapter 342 Section 2 Laws 2005

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. there is a need for appropriate facilities in this state to enhance, foster, aid, provide and promote transportation, economic development, housing, recreation, education, culture, history and sense of place and for governmental operations necessary to support such activities;

B. there is a need for suitable facilities for expositions, conventions, exhibitions, meetings, banquets and related facilities that will enhance or supplement facilities currently available for these activities in order to promote the state and its counties and municipalities as attractive destinations to convention and visitor industry planners;

C. there is a great tradition in the state involving railway transportation that can be integrated with expositions, conventions and exhibitions and planned commuter rail transportation facilities for the mutual benefit of the state and out-of-state visitors participating in expositions, conventions and exhibitions; and

D. private enterprise alone cannot provide facilities of the type and size to achieve a first-class exposition center, but by establishing an authority to plan, develop, manage and operate a suitable exposition center the state can achieve a great public benefit at the least public cost through the use of leases, concessions and other contractual relationships with private enterprise.

Chapter 342 Section 3 Laws 2005

Section 3. DEFINITIONS.--As used in the New Mexico Exposition Center Authority Act:

A. "authority" means the New Mexico exposition center authority;

B. "bond" means a bond, note, certificate 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. "exposition center" means real or personal property, or any combination thereof, that is owned, leased or otherwise controlled or financed by the authority, located in the participating jurisdictions, other than property owned by the state, commonly known as the "state fairgrounds", located within the exterior boundaries of the city of Albuquerque, that is related to, useful for or in furtherance of one or more purposes authorized by the New Mexico Exposition Center Authority Act, including facilities used for expositions, conventions, exhibitions, displays, meetings, banquets, trade shows, sporting events, arena events, museums, excursion trains, commuter and long-distance rail stations, trolleys, hotels, parking facilities, connection walkways, transportation maintenance yards, rail crossings and other light and heavy

rail transportation activities and operations and related facilities, provided such facilities are available for the use by the general public;

E. "participating jurisdiction" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation or educational institution of the state or a political subdivision of the state that is empowered to receive or expend public money, including municipalities and counties;

F. "project" means planning and design work for and development, construction, reconstruction, enlargement, improvement, installation, rehabilitation, remodeling and renovation of the exposition center; and

G. "security" or means bonds, notes or other evidence of indebtedness issued by participating jurisdictions or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with participating jurisdictions 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 participating jurisdictions.

Chapter 342 Section 4 Laws 2005

Section 4. NEW MEXICO EXPOSITION CENTER 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 exposition center authority" for the performance of essential public functions.

B. The authority shall be composed of fifteen members, including the secretary of finance and administration, the secretary of economic development, the secretary of tourism, the chair of the state transportation commission, the secretary of transportation, the executive director of the New Mexico finance authority, the mayor of the city of Albuquerque, the chair of the Bernalillo county board of county commissioners, the mayor of the city of Santa Fe, the chair of the Santa Fe county board of county commissioners, the executive director of the mid-region council of governments and four members who are residents of the state, at least three of whom are nonresidents of Bernalillo or Santa Fe county, appointed by the governor, with the advice and consent of the senate. 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.

An appointed member shall continue to serve beyond the expiration of the member's term until a new member is appointed. Any member shall be eligible for reappointment.

D. Each appointed member before entering upon the member's duties shall take an oath of office to administer the duties of 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 chair. The authority shall elect annually one of its members to serve as vice chair. 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 Exposition Center 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 the 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 chair 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 and to act for that member with the same authority as the member. 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 a 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 Exposition Center 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 may operate the exposition center in the participating jurisdictions in accordance with the purposes expressed in the New Mexico Exposition Center Authority Act.

L. The authority shall be included as a "qualified entity" within the meaning of that term pursuant to the New Mexico Finance Authority Act.

M. The authority shall be included in the definition of "qualifying entity" pursuant to the Local Economic Development Act.

N. The authority shall be included as an "eligible entity" within the meaning of that term pursuant to the Statewide Economic Development Finance Act.

O. The authority is a governmental instrumentality for purposes of the Tort Claims Act.

Chapter 342 Section 5 Laws 2005

Section 5. POWERS OF THE AUTHORITY.--The authority may:

A. sue and be sued;

B. adopt and alter an official seal;

C. make and alter bylaws for its organization and internal management and adopt, subject to the review and approval of the New Mexico exposition center authority oversight committee, rules necessary and appropriate to implement the provisions of the New Mexico Exposition Center Authority Act;

D. appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

E. make, enter into and enforce 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 Exposition Center Authority Act;

F. acquire, construct or improve, grant mortgages of, accept mortgages of, otherwise encumber, sell, lease, convey or dispose of real and personal property for its public uses;

G. acquire, construct, improve or hold land, buildings, improvements and other facilities, including equipment for lease, use or occupancy by private enterprise

and pledge rentals and other revenues derived therefrom to the payment of operating costs and expenses and to the payment of bonds;

H. make grants to participating jurisdictions for a project for the exposition center;

I. make loans to or purchase securities from participating jurisdictions and contract to make loans to or purchase securities from participating jurisdictions for the exposition center;

J. procure insurance to secure payment on a loan, lease or payment owed to the authority from insurers, including the federal government or its agencies or instrumentalities, as it may deem necessary or desirable, and pay any premiums for that insurance;

K. carry out projects for the development of the exposition center in the participating jurisdictions;

L. fix, revise from time to time, charge and collect rents, fees and other charges in connection with the making of loans or leases, or for services provided by the authority;

M. accept, administer, hold and use all funds made available to the authority from any source;

N. borrow money and issue bonds and provide for the rights of bondholders;

O. establish and maintain reserve and sinking fund accounts to ensure that funds will be available for maintenance of debt service accounts;

P. invest and reinvest its funds and take and hold property as security for the investment of such funds as provided by the New Mexico Exposition Center Authority Act;

Q. employ attorneys, accountants, underwriters, financial advisors, trustees, paying agents, architects, engineers, contractors and such other advisors, consultants and agents as may be necessary and fix and pay their compensation;

R. apply for and accept gifts, grants or loans of property, funds, services or aid in any form from the United States or its agencies or instrumentalities, from the state or its agencies or instrumentalities or from a person and comply, subject to the provisions of the New Mexico Exposition Center Authority Act, with the terms and conditions of the gifts, grants or loans, including pledges or guarantees that may be required in connection with the gifts, grants or loans;

S. maintain one or more offices in the participating jurisdictions as it may determine;

T. subject to an agreement with bondholders:

(1) renegotiate a loan, lease, agreement or other obligation;

(2) consent to a modification of the terms of a loan, lease, agreement or other obligation; and

(3) purchase bonds, which may upon purchase be canceled;

U. operate and manage the exposition center in one or more participating jurisdictions and pledge the revenues from the exposition center to the payment of bonds in accordance with the provisions of the New Mexico Exposition Center Authority Act;

V. authorize the engagement of a person, public or private, including an entity engaged in the business of managing exposition and convention centers, as the authority may select upon terms and for periods as the authority may deem appropriate;

W. notwithstanding the provisions of the Procurement Code, enter into contracts to carry out any of its powers granted in the New Mexico Exposition Center Authority Act, including the planning, design, engineering and financing of exhibition center projects, with a master developer, the developer of a specific exhibition center project, contractors, owners or other persons or entities, on terms that the authority shall determine to be appropriate; and

X. do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the New Mexico Exposition Center Authority Act.

Chapter 342 Section 6 Laws 2005

Section 6. PURCHASES IN NAME OF THE AUTHORITY-- DOCUMENTATION.-

A. All tangible and intangible property, real and personal property and securities purchased, held or owned by the authority shall 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 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.

Chapter 342 Section 7 Laws 2005

Section 7. 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 the purposes of the New Mexico Exposition Center Authority Act, including:

- (1) purchase of securities;
- (2) making loans through the purchase of securities;
- (3) making grants for projects from money available to the authority;
- (4) the financing of a project located in whole or in part in a participating jurisdiction for use in connection with the exposition center;
- (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 issued by the authority; and
- (7) the payment of 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 Exposition Center Authority Act, bonds issued by the authority shall be obligations of the authority payable solely from revenues, income, fees, charges or funds of the authority that may, pursuant to the provisions of the New Mexico Exposition Center Authority Act, be pledged to the payment of those obligations, and the bonds shall not create an obligation, debt or liability of the state. No breach of a 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 a 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 may pledge, transfer and assign:

- (1) an obligation that is payable to the authority, including rents, lease payments and other use or occupancy fees or charges owing to the authority in connection with the leasing, use or occupancy of real or personal property;

(2) the revenues of the authority derived from loan payments, rents, fees, charges or other payments, with respect to or derived from any property acquired, constructed, furnished or equipped with the proceeds of bonds after provision for the reasonable cost of operating, maintaining and repairing that property of the authority;

(3) the revenues to meet the costs of operating, maintaining and repairing the real and personal property of the authority and to meet the interest and principal requirements of the bonds issued by the authority and establish and maintain reserves pursuant to covenants of the authority to maintain rates and charges that will produce such revenues;

(4) any grant, subsidy or contribution from the United States or its agencies or instrumentalities; or

(5) any income, revenues, funds or other money of the authority from any other source authorized for that pledge, transfer or assignment.

Chapter 342 Section 8 Laws 2005

Section 8. BONDS--AUTHORIZATION FOR ISSUANCE--TERMS AND CONDITIONS.--

A. Bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the bonds provides. The bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

B. Bonds issued by the authority may be sold at any time at private or public sale at the prices agreed upon by the authority.

C. Bonds of the authority may be issued pursuant to the New Mexico Exposition Center Authority Act without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in the New Mexico Exposition Center Authority Act.

D. Bonds issued by the authority are negotiable instruments for all purposes of the Uniform Commercial Code, subject only to the provisions of the bonds for registrations.

E. A resolution for the issuance of bonds shall provide that each bond authorized shall recite that it is issued by the authority. The recital shall clearly state that the bonds are in full compliance with all the provisions of the New Mexico Exposition Center Authority Act.

Chapter 342 Section 9 Laws 2005

Section 9. BONDS SECURED BY TRUST INDENTURE.--Bonds of the authority may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with safeguards as the authority determines necessary.

Chapter 342 Section 10 Laws 2005

Section 10. PUBLICATION OF NOTICE--VALIDATION--LIMITATION OF ACTION.--

A. After adoption of a resolution authorizing issuance of bonds, the authority shall publish notice of the adoption of the resolution once in a newspaper of general statewide circulation.

B. After the passage of thirty days from the publication required by Subsection A of this section, an action attacking the validity of the proceedings had or taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred.

Chapter 342 Section 11 Laws 2005

Section 11. REFUNDING BONDS.--The authority may issue its bonds for the purpose of refunding bonds then outstanding, including the payment of redemption premiums and interest accrued or to accrue to the date of redemption of the outstanding bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds are applied to the purchase or retirement of the outstanding bonds or the redemption of the outstanding bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on an investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds to be refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, a balance of proceeds and interest, if any, earned or realized on the investments of proceeds and interest may be returned to the authority for use by it in a lawful manner. Refunding bonds shall be issued and secured and shall be subject to the provisions of the New Mexico Exposition Center Authority Act in the same manner and to the same extent as any other bonds issued pursuant to the New Mexico Exposition Center Authority Act.

Chapter 342 Section 12 Laws 2005

Section 12. REMEDIES OF BONDHOLDERS.--A holder of bonds issued by the authority or a trustee under a trust indenture entered into pursuant to the New Mexico Exposition Center Authority Act, except to the extent that its rights are restricted by a bond resolution or trust indenture authorized pursuant to the bond resolution, may protect and enforce, by a suitable form of legal proceedings, rights under the laws of this state or granted by the bond resolution or trust indenture authorized pursuant to the bond resolution. These rights include the right to compel the performance of the duties of the authority required by the New Mexico Exposition Center Authority Act or the bond resolution and to enjoin unlawful activities.

Chapter 342 Section 13 Laws 2005

Section 13. AGREEMENT OF THE STATE.--The state pledges to and agrees with the holder of a bond issued pursuant to the New Mexico Exposition Center Authority Act that the state will not limit or alter the rights vested in the authority to fulfill the terms of agreements made with the bondholder or in any way impair the rights and remedies of that bondholder until the bond together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of that bondholder, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with a bondholder.

Chapter 342 Section 14 Laws 2005

Section 14. BONDS--LEGAL INVESTMENT FOR PUBLIC OFFICERS AND FIDUCIARIES.--Bonds issued by the authority shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

Chapter 342 Section 15 Laws 2005

Section 15. TAX EXEMPTION.--

A. The creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of projects for the exposition center pursuant to the New Mexico Exposition Center Authority Act. These purposes are public purposes and the authority will be performing an essential governmental function in the exercise of its powers with the purchasers and subsequent holders and transferees of bonds issued by the authority, in consideration of the acceptance of and payment for the bonds. Bonds issued pursuant to the New Mexico Exposition Center Authority Act and the income from the bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

B. The property, income and operations of the authority shall be exempt from taxation of every kind and nature.

Chapter 342 Section 16 Laws 2005

Section 16. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--ANNUAL REPORT.--

A. Money of the authority, except as otherwise authorized or provided in the New Mexico Exposition Center Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of this state. Deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies may give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

C. Money held by the authority that is not needed for immediate disbursement, including funds held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if the funds are pledged for or secure payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor or by a certified public accounting firm whose proposal has been reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. Copies of the audit shall be submitted to the governor and the New Mexico exposition center authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year.

Chapter 342 Section 17 Laws 2005

Section 17. CORPORATE EXISTENCE.--The authority and its corporate existence shall continue until terminated by law, provided that no termination by law

shall take effect so long as the authority has bonds or other obligations outstanding, unless adequate provision has been made for the payment of those obligations. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

Chapter 342 Section 18 Laws 2005

Section 18. PROHIBITED ACTIONS.--The authority shall not:

A. deal in securities within the meaning of or subject to securities law, securities exchange law or securities dealer law of the United States or the state or of another state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Exposition Center Authority Act; or

B. 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, a private or commercial banking business, or act as a savings bank or savings and loan association or another kind of financial institution except as authorized in the New Mexico Exposition Center Authority Act.

Chapter 342 Section 19 Laws 2005

Section 19. CONFLICTS OF INTEREST--PENALTY.--

A. If a member, officer or employee of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party, that interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having that interest shall not participate in an action by the authority with respect to that contract.

B. A person who has a conflict of interest as provided in this section and participates in a transaction involving that conflict of interest or fails to notify the authority of the conflict is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term of not more than one year or to the payment of a fine of not more than one thousand dollars (\$1,000), or both.

Chapter 342 Section 20 Laws 2005

Section 20. CUMULATIVE AUTHORITY.--The New Mexico Exposition Center Authority Act shall be deemed to provide an additional and alternative method for the doing of the things it authorizes 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 New Mexico Exposition Center Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds.

Chapter 342 Section 21 Laws 2005

Section 21. NEW MEXICO EXPOSITION AUTHORITY OVERSIGHT COMMITTEE.--There is created a joint interim legislative committee that shall be known as the "New Mexico exposition center authority oversight committee". The New Mexico legislative council shall determine the membership of the committee and shall appoint the members and designate the chair and the vice chair in accordance with council policies. The staff for the committee shall be provided by the legislative council service.

Chapter 342 Section 22 Laws 2005

Section 22. COMMITTEE DUTIES.--The New Mexico exposition center authority oversight committee shall:

- A. monitor and oversee the operation of the authority;
- B. meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Exposition Center Authority Act and to review and approve rules proposed for adoption by the authority;
- C. oversee and monitor proposed projects for the exposition center in participating jurisdictions;
- D. provide advice and assistance to the authority and cooperate with the executive branch of state government and participating jurisdictions on planning, setting priorities for and financing of projects for the exposition center; and
- E. report its findings and recommendations, including recommended legislation, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year.

Chapter 342 Section 23 Laws 2005

Section 23. SEVERABILITY.--If any part or application of the New Mexico Exposition Center Authority Act is held invalid, the remainder or its application to other situations shall not be affected.

Chapter 342 Section 24 Laws 2005

Section 24. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

WITH EMERGENCY CLAUSE

Approved April 7, 2005

LAWS 2005, CHAPTER 343

AN ACT

RELATING TO PUBLIC HOUSING; PROVIDING THAT A REGIONAL HOUSING AUTHORITY AND A MUNICIPAL OR COUNTY HOUSING AUTHORITY OR AGENCY MAY EACH EXERCISE JURISDICTION OVER COMMON AREAS, PURSUANT TO A RESOLUTION ENACTED BY A MUNICIPALITY OR COUNTY.

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

Chapter 343 Section 1 Laws 2005

Section 1. Section 11-3A-5 NMSA 1978 (being Laws 1994, Chapter 132, Section 5, as amended) is amended to read:

"11-3A-5. JURISDICTION.--A regional authority created by the Regional Housing Law shall operate within the area of its housing region. If a portion of the area lies within the territorial boundary of a municipality or county that has established an authority or housing agency, the regional authority and the municipal or county authority or agency may each exercise its jurisdiction over the common area pursuant to a resolution enacted by a municipality or county."

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 637

Approved April 7, 2005

LAWS 2005, CHAPTER 344

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR SPECIAL REGISTRATION PLATES FOR EMERGENCY MEDICAL TECHNICIANS.

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

Chapter 344 Section 1 Laws 2005

Section 1. A new section of Chapter 66, Article 3 NMSA 1978 is enacted to read:

"SPECIAL REGISTRATION PLATES FOR EMERGENCY MEDICAL
TECHNICIANS.--

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is an emergency medical technician.

B. No person shall represent himself to be an emergency medical technician if he is, in fact, not an emergency medical technician licensed in New Mexico. The secretary shall determine what constitutes satisfactory proof.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for an emergency medical technician.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing a special registration plate for emergency medical technicians.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plate for emergency medical technicians.

H. When a person holding a special registration plate ceases to be an emergency medical technician, he shall immediately remove the plate from the vehicle and return it to the department, at which time it shall be exchanged for a regular registration plate."

SENATE BILL 820

Approved April 7, 2005

LAWS 2005, CHAPTER 345

AN ACT

RELATING TO LOCAL GOVERNMENT; DELINEATING THE POWERS AND DUTIES OF THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 345 Section 1 Laws 2005

Section 1. Section 72-1-10 NMSA 1978 (being Laws 2003, Chapter 437, Section 1) is amended to read:

"72-1-10. WATER UTILITY AUTHORITY--CREATED--MEMBERSHIP--ADMINISTRATION OF UTILITY.--

A. The "Albuquerque-Bernalillo county water utility authority" is created. The membership of the board of directors of the authority shall consist of seven members. The municipal members shall be the mayor and three city councilors appointed by the Albuquerque city council. The county members shall be three county commissioners appointed by the Bernalillo county board of county commissioners. A city councilor member shall designate another city councilor to serve in the member's absence. A county commissioner member shall designate another county commissioner to serve in the member's absence. The mayor shall designate the chief executive officer of the municipality, a city councilor or a county commissioner to serve in the mayor's absence. City councilors shall serve one-year terms at the city council president's discretion. County commissioners shall serve one-year terms at the county commission chairman's discretion. The authority is subject to the state Procurement Code and other applicable state laws. The authority is a public body politic and corporate, separate and apart from the city of Albuquerque and Bernalillo county. The authority is a political subdivision of the state.

B. The authority:

(1) shall set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo county, including the determination and imposition of rates for services;

(2) is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules; and

(3) is authorized to use city or county procurement processes or to contract with the city or county to further its public and corporate purposes.

C. The authority may acquire, maintain, contract for, condemn or protect water and wastewater facilities. The city of Albuquerque and Bernalillo county may delegate any additional power or duty conferred by Sections 3-27-2 and 3-27-3 NMSA 1978 to the authority to exercise and administer.

D. In exercising its power to acquire, maintain, contract for or condemn water and wastewater facilities, the authority shall not act so as to physically isolate and make nonviable any portion of the water or wastewater facilities, within or outside of Bernalillo county.

E. The authority may adopt resolutions and rules necessary to exert the power conferred by this section.

F. For the purposes of acquiring, maintaining, contracting for, condemning or protecting water and wastewater facilities, the jurisdiction of the authority extends within and outside of the boundaries of Bernalillo county to the territory physically occupied by the water and wastewater facilities and to privately owned water and wastewater facilities interconnected to the utility system. The authority may:

(1) acquire, maintain, contract for or condemn facilities for the collection, treatment and disposal of wastewater;

(2) condemn private property for the construction, maintenance and operation of wastewater facilities; and

(3) acquire, maintain, contract for or condemn for use as part of the utility system privately owned water and wastewater facilities used for the collection, treatment and disposal of wastewater of the authority or its customers.

G. The authority is subject to:

(1) the limitations imposed by Section 72-1-9 NMSA 1978 regarding water rights obtained or water rights condemned pursuant to a water development plan;

(2) the provisions of the Eminent Domain Code; and

(3) the provisions of Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make the water available to the authority.

H. The authority is liable to the condemnee pursuant to the provisions of the Eminent Domain Code for the value of a water right as well as the market value of real property to which the water right is appurtenant if:

(1) the authority condemns water rights, either within or outside of the boundaries of Bernalillo county that are appurtenant to real property that has been in active agricultural operation; and

(2) the condemnation of the water right by the authority requires the permanent retirement from agricultural operation of some or all of the real property to which the water rights are appurtenant.

I. The authority is not subject to the jurisdiction of or approval from the public regulation commission. The authority is not subject to the provisions of the Public Utility Act. The authority is granted a water use planning period not to exceed forty years as set forth in Section 72-1-9 NMSA 1978.

J. The city of Albuquerque or Bernalillo county may, by ordinance or resolution, grant the authority a franchise for the operation, construction and maintenance of the utility system and for the use and rental of rights of way in exchange for consideration.

K. The authority may issue utility system revenue bonds and obligations pursuant to the Public Securities Short-Term Interest Rate Act for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving water facilities and wastewater facilities or for any combination of these purposes. The authority may issue revenue anticipation notes with maturities not exceeding thirteen months upon terms approved by the board of directors. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the revenue bonds or other obligations. It is unlawful to divert, use or expend money received from the issuance of utility system revenue bonds for any purpose other than the purpose for which the utility system revenue bonds were issued. Obligations, including bond anticipation notes, issued pursuant to the Public Securities Short-Term Interest Rate Act shall be sold pursuant to the terms of that act. Utility system revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as the authority determines;

(2) may be subject to prior redemption at the authority's option at such time and upon such terms and conditions with or without the payment of a premium as determined by the authority;

(3) may mature at any time not exceeding fifty years after the date of issuance;

(4) may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in another form as determined by the authority;

(5) shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and

(6) may be sold at a public or negotiated sale.

L. The bonds authorized by the authority and their income shall be exempt from all taxation by the state or its political subdivisions.

M. The members of the board of directors of the authority may adopt a resolution declaring the necessity for the issuance of utility system revenue bonds or other obligations and may authorize the issuance of utility system revenue bonds or other obligations by an affirmative vote of a majority of all members of the board of directors of the authority. Utility revenue bonds and the resolution authorizing their issuance shall not be subject to the approval of the public regulation commission pursuant to Section 3-23-3 NMSA 1978 or subject to voter approval pursuant to Section 3-23-2 NMSA 1978.

N. Except for the purpose of refunding previous utility system revenue bond issues, the authority may not sell utility system revenue bonds payable from pledged revenues after the expiration of three years from the date of the resolution authorizing their issuance. Any period of time during which a utility system revenue bond is in litigation shall not count toward the determination of the expiration date of that issue."

Chapter 345 Section 2 Laws 2005

Section 2. TEMPORARY DIVISION.--All functions, appropriations, money, records, equipment and other real and personal property pertaining to the Albuquerque water and wastewater utility not transferred pursuant to Section 72-1-10 NMSA 1978 prior to the effective date of this act shall be transferred to the Albuquerque-Bernalillo county water utility authority.

SENATE BILL 879, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 346

AN ACT

RELATING TO PUBLIC FINANCES; REVISING AND RENAMING THE PRIVILEGE TAX ON ATHLETIC COMPETITION; PROVIDING FOR COOPERATIVE

AGREEMENTS WITH TRIBAL GOVERNMENTS; AMENDING THE PROFESSIONAL ATHLETIC COMPETITION ACT.

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

Chapter 346 Section 1 Laws 2005

Section 1. Section 60-2A-23 NMSA 1978 (being Laws 1980, Chapter 90, Section 23, as amended) is amended to read:

"60-2A-23. REGULATORY FEES ON PROMOTIONS.--

A. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting a professional contest a regulatory fee in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of regulating the contest; provided that the fee shall not exceed four percent of the total gross receipts of any professional contest conducted live in New Mexico.

B. The commission shall adopt rules for the administration, collection and enforcement of the fee imposed pursuant to this section.

C. As used in this section, "total gross receipts of any professional contest" includes:

(1) the gross price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

(2) the face value of all tickets sold and complimentary tickets issued; and

(3) any sums received as consideration for holding a professional contest at a particular location."

Chapter 346 Section 2 Laws 2005

Section 2. Section 60-2A-24 NMSA 1978 (being Laws 1980, Chapter 90, Section 24) is amended to read:

"60-2A-24. ATHLETIC COMMISSION FUND.--The proceeds of the regulatory fee on promotions and of the supervisory fee on closed-circuit television or motion pictures, together with any license fees or other fees authorized pursuant to the Professional Athletic Competition Act, shall be deposited with the state treasurer to the credit of the "athletic commission fund" which is hereby created. Money in the fund is subject to

appropriation by the legislature. Expenditures from the athletic commission fund shall only be made on vouchers issued and signed by the person designated by the commission upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration."

Chapter 346 Section 3 Laws 2005

Section 3. Section 60-2A-25 NMSA 1978 (being Laws 1980, Chapter 90, Section 25) is amended to read:

"60-2A-25. TIME OF PAYMENT OF REGULATORY FEE.--

A. Any person upon whom the regulatory fee is imposed pursuant to Section 60-2A-23 NMSA 1978 shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the commission a written report on forms prescribed by the commission showing:

(1) the number of tickets sold and issued or sold or issued for the professional contest;

(2) the amount of the gross receipts or value thereof;

(3) the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and

(4) such other matters as the commission may prescribe.

B. The commission or any of its authorized employees may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the regulatory fee and supervisory fee imposed pursuant to the Professional Athletic Competition Act."

Chapter 346 Section 4 Laws 2005

Section 4. Section 60-2A-26 NMSA 1978 (being Laws 1980, Chapter 90, Section 26, as amended) is amended to read:

"60-2A-26. SUPERVISORY FEE ON CLOSED-CIRCUIT TELECASTS OR MOTION PICTURES--REPORT TO COMMISSION.--

A. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two hours after the event, furnish to the commission a verified written report on

a form prescribed by the commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.

B. There is imposed a supervisory fee upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture. A supervisory fee is imposed in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of supervising the exhibition; provided that the fee shall not exceed five percent of the gross receipts derived from the exhibition.

C. The fee imposed pursuant to this section shall be administered, collected, enforced and the proceeds deposited as provided in Section 60-2A-24 NMSA 1978."

Chapter 346 Section 5 Laws 2005

Section 5. Section 60-2A-27 NMSA 1978 (being Laws 1980, Chapter 90, Section 27) is amended to read:

"60-2A-27. PENALTY--NONPAYMENT OF FEE.--Any person who willfully attempts to evade or defeat any regulatory fee or supervisory fee or the payment thereof imposed pursuant to the Professional Athletic Competition Act is guilty of a fourth degree felony."

Chapter 346 Section 6 Laws 2005

Section 6. Section 60-2A-28 NMSA 1978 (being Laws 1980, Chapter 90, Section 28) is amended to read:

"60-2A-28. CIVIL PENALTY.--In the case of failure due to negligence or disregard of rules and regulations of the commission, but without intent to defraud, to pay when due any amount of regulatory fee or supervisory fee required to be paid pursuant to the Professional Athletic Competition Act, there shall be added to the amount two percent per month or a fraction of a month from the date the fee was due or from the date the report was required to be filed, not to exceed ten percent of the fee due."

Chapter 346 Section 7 Laws 2005

Section 7. A new section of the Professional Athletic Competition Act is enacted to read:

"COOPERATIVE AGREEMENTS WITH TRIBAL GOVERNMENTS.--

A. The commission may enter into a cooperative agreement with an Indian nation, tribe or pueblo whose tribal lands lie wholly or partly in New Mexico for the

exchange of information and for the reciprocal, joint or common direction, management or control of professional contests conducted, held or given in New Mexico. To be effective, an agreement must be signed by the governor.

B. Money collected by the commission on behalf of an Indian nation, tribe or 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. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or by the Indian nation, tribe or pueblo that the fees of one have precedence over the fees of the other when the person, event or transaction is subject to the jurisdiction 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."

SENATE BILL 713, AS AMENDED

Approved April 7, 2005

LAWS 2005, CHAPTER 347

AN ACT

RELATING TO THE EXPENDITURE OF PUBLIC MONEY; PROVIDING FOR CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; AUTHORIZING EXPENDITURES FROM CERTAIN FUNDS AND BALANCES; REAUTHORIZING BALANCES; CHANGING THE PURPOSE OF SEVERANCE TAX BOND AND GENERAL FUND APPROPRIATIONS; CLARIFYING CONDITIONS FOR THE ISSUANCE OF BONDS; ESTABLISHING CONDITIONS FOR THE EXPENDITURE OF SEVERANCE TAX BOND PROCEEDS; ESTABLISHING CONDITIONS FOR THE REVERSION OF UNEXPENDED BALANCES; PROVIDING FOR OTHER EXPENDITURES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 347 Section 1 Laws 2005

Section 1. SEVERANCE TAX BONDS--AUTHORIZATIONS--APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for purposes specified in this act. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated for the purposes specified in this act.

B. The agencies named in this act shall certify to the state board of finance when the money from the proceeds of the severance tax bonds authorized in this section is needed for the purposes specified in the applicable section of this act. If an agency has not certified the need for the issuance of the bonds for a particular project, including projects that have been reauthorized, by the end of fiscal year 2007, the authorization for that project is void.

C. Before an agency may certify for the issuance of severance tax bonds, the project must be developed sufficiently so that the agency reasonably expects to:

(1) incur within six months after the applicable bonds have been issued a substantial binding obligation to a third party to expend at least five percent of the bond proceeds for the project; and

(2) spend at least eighty-five percent of the bond proceeds within three years after the applicable bonds have been issued.

D. Except as otherwise provided in this section or another section of this act, the unexpended balance from the proceeds of severance tax bonds issued for a project, including projects that have been reauthorized, shall revert to the severance tax bonding fund as follows:

(1) for projects for which severance tax bonds were issued to match federal grants, six months after completion of the project;

(2) for projects for which severance tax bonds were issued to purchase vehicles, heavy equipment, educational technology or other equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year following the fiscal year in which the severance tax bonds were issued for the purchase;

(3) for projects for which severance tax bonds were issued to purchase emergency vehicles or other vehicles that require special equipment, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(4) for all other projects for which severance tax bonds were issued, within six months of completion of the project, but no later than the end of fiscal year 2010.

E. Except for appropriations to the capital program fund, money from severance tax bond proceeds provided pursuant to this act shall not be used to pay indirect project costs.

F. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Chapter 347 Section 2 Laws 2005

Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--LIMITATIONS--REVERSIONS.--

A. Except as otherwise provided in this section or another section of this act, the unexpended balance of an appropriation made in this act from the general fund or other state fund, including changes to prior appropriations, shall revert to the originating fund as follows:

(1) for projects for which appropriations were made to match federal grants, six months after completion of the project;

(2) for projects for which appropriations were made to purchase vehicles, heavy equipment, educational technology or equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year following the fiscal year in which the appropriation was made for the purchase;

(3) for projects for which appropriations were made to purchase emergency vehicles or other vehicles that require special equipment, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(4) for all other projects for which appropriations were made, within six months of completion of the project, but no later than the end of fiscal year 2010.

B. Except for appropriations to the capital program fund, money from appropriations made in this act shall not be used to pay indirect project costs.

C. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Chapter 347 Section 3 Laws 2005

Section 3. AGING PROJECTS--AGING AND LONG-TERM SERVICES DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the aging and long-term services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the aging and long-term services department for the following purposes:

1. sixty-three thousand dollars (\$63,000) to purchase vehicles for the Pueblo of Isleta senior center in Bernalillo county;
2. one hundred sixty thousand dollars (\$160,000) to construct an addition, including restrooms, storage, offices and a library, for the adult daycare and respite facility at the Artesia senior center in Artesia in Eddy county;
3. four hundred thousand dollars (\$400,000) to plan, design, construct, equip and furnish the senior center in Artesia in Eddy county;
4. one hundred thousand dollars (\$100,000) to acquire property for, plan, design and construct an adult daycare and respite facility in Carlsbad in Eddy county;
5. one hundred fifty-four thousand three hundred dollars (\$154,300) to plan, design, construct and equip a senior center and meal site in Vaughn in Guadalupe county;
6. one hundred thousand dollars (\$100,000) to plan, design, construct and equip a senior center for the Church Rock chapter of the Navajo Nation in McKinley county;
7. one hundred six thousand dollars (\$106,000) to plan, design, construct, equip and furnish an adult daycare center at the Pueblo of Zuni in McKinley county;
8. two hundred thousand dollars (\$200,000) to plan, design and construct a senior center in the Crownpoint chapter of the Navajo Nation in McKinley county;
9. fifty thousand dollars (\$50,000) to renovate and equip the Wagon Mound senior center in Mora county;
10. five hundred fourteen thousand seven hundred sixty dollars (\$514,760) to plan, design, construct, equip and furnish a senior center for the Mescalero Apache Tribe in Otero county;
11. four hundred fifty thousand dollars (\$450,000) to construct, furnish and equip a regional adult daycare facility in the Pueblo of Santa Clara in Rio Arriba county;
12. fifty thousand dollars (\$50,000) to plan, design, construct and equip an expansion of the kitchen at the senior center in Espanola in Rio Arriba county;

13. five hundred ten thousand dollars (\$510,000) to plan, design, construct, equip and furnish the senior center in the Beclabito chapter of the Navajo Nation in San Juan county;
14. one hundred thousand dollars (\$100,000) to plan, design and make improvements to the Pueblo of Nambe senior center in Santa Fe county;
15. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish improvements to the senior center in Edgewood in Santa Fe county;
16. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish the Southside senior center in Santa Fe in Santa Fe county;
17. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the senior center in Mountainair in Torrance county;
18. one hundred thousand dollars (\$100,000) for improvements at the senior center kitchen in Valencia county;
19. four hundred fifty thousand dollars (\$450,000) to plan, design, construct, equip and furnish an exercise facility at Los Volcanes senior center in Albuquerque in Bernalillo county;
20. one hundred thousand dollars (\$100,000) to purchase fitness center equipment for the Palo Duro senior center in Albuquerque in Bernalillo county;
21. sixty-five thousand dollars (\$65,000) to plan, design and construct an addition to the county senior center in Springer in Colfax county;
22. fifty thousand dollars (\$50,000) to plan, design and construct additional activity rooms at the Artesia meal site in Artesia in Eddy county;
23. two hundred thousand dollars (\$200,000) to plan, design, construct and equip a senior center in Vaughn in Guadalupe county;
24. fifty thousand dollars (\$50,000) to plan, design and construct renovations to the senior center in the Bread Springs chapter of the Navajo Nation in McKinley county;
25. fifty thousand dollars (\$50,000) to plan, design and construct a senior center at the Chichiltah chapter of the Navajo Nation in McKinley county;
26. fifty thousand dollars (\$50,000) to plan, design and construct a senior center at the Red Rock chapter of the Navajo Nation in McKinley county;

27. fifty thousand dollars (\$50,000) to plan, design, purchase or construct a senior center at the White Horse Lake chapter of the Navajo Nation in McKinley county;

28. eighty thousand dollars (\$80,000) to plan, design and construct wheelchair and mobility-related accessibility modifications to the homes of elderly or disabled Native Americans in McKinley, Cibola and San Juan counties;

29. fifty thousand dollars (\$50,000) to construct an adult daycare center in Espanola in Rio Arriba county;

30. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including an addition, to the Amalia senior center in Taos county; and

31. thirty thousand dollars (\$30,000) to plan, design, equip and construct an expansion to the senior center in McIntosh in Torrance county.

Chapter 347 Section 4 Laws 2005

Section 4. ARMORIES--STATE ARMORY BOARD--SEVERANCE TAX BONDS.-
-Pursuant to the provisions of Section 1 of this act, upon certification by the state armory board that the need exists for the issuance of the bonds, the following amounts are appropriated to the state armory board for the following purposes:

1. fifty thousand dollars (\$50,000) to improve the national guard armory in Las Cruces in Dona Ana county; and

2. seventy-five thousand dollars (\$75,000) to improve the military staging area of the Taos national guard armory in Taos county.

Chapter 347 Section 5 Laws 2005

Section 5. COURT PROJECT--SECOND JUDICIAL DISTRICT COURT--
SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the second judicial district court that the need exists for the issuance of the bonds, seventy thousand nine hundred forty dollars (\$70,940) is appropriated to the second judicial district court to upgrade the security system at the judicial complex in the second judicial district in Bernalillo county.

Chapter 347 Section 6 Laws 2005

Section 6. COURT AND DISTRICT ATTORNEY PROJECTS--THIRTEENTH
JUDICIAL DISTRICT--SEVERANCE TAX BONDS.--

A. Pursuant to the provisions of Section 1 of this act, upon certification by the thirteenth judicial district court that the need exists for the issuance of the bonds,

fifty thousand dollars (\$50,000) is appropriated to the thirteenth judicial district court to purchase and install information technology for the thirteenth judicial district courthouse in Grants in Cibola county.

B. Pursuant to the provisions of Section 1 of this act, upon certification by the thirteenth judicial district attorney that the need exists for the issuance of the bonds, twenty thousand dollars (\$20,000) is appropriated to the thirteenth judicial district attorney to purchase vehicles for the thirteenth judicial district attorney in Cibola, Sandoval and Valencia counties.

Chapter 347 Section 7 Laws 2005

Section 7. CULTURAL AFFAIRS PROJECTS--CULTURAL AFFAIRS DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the cultural affairs department that the need exists for the issuance of the bonds, the following amounts are appropriated to the cultural affairs department for the following purposes:

1. one million dollars (\$1,000,000) to plan, design, construct, equip and furnish improvements to the national Hispanic cultural center in Albuquerque in Bernalillo county;

2. one hundred seventy-five thousand dollars (\$175,000) to purchase land and a building adjacent to the New Mexico museum of natural history and science in Albuquerque in Bernalillo county;

3. forty thousand dollars (\$40,000) to purchase a tractor, an adobe mixer and outdoor furniture for Fort Selden state monument in Radium Springs in Dona Ana county;

4. one hundred thousand dollars (\$100,000) to plan, design and construct a heating system for the historic courthouse museum in Lincoln in Lincoln county;

5. one hundred ten thousand dollars (\$110,000) to plan, design and construct renovations at Lincoln state monument in Lincoln county;

6. seventy-five thousand dollars (\$75,000) to plan, design and construct access upgrades and gates to pathways and entrances to museums on museum hill in Santa Fe in Santa Fe county;

7. fifty thousand dollars (\$50,000) to plan, design, construct and remodel a multipurpose greenhouse at the children's museum in Santa Fe in Santa Fe county;

8. three hundred thousand dollars (\$300,000) for planning, design and construction of an education building at the national Hispanic cultural center in Albuquerque in Bernalillo county; and

9. fifty thousand dollars (\$50,000) to construct landscape improvements, including pathways and visitor rest areas, at the Stewart L. Udall center for museum resources in Santa Fe in Santa Fe county.

Chapter 347 Section 8 Laws 2005

Section 8. ECONOMIC DEVELOPMENT PROJECTS--ECONOMIC DEVELOPMENT DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the economic development department that the need exists for the issuance of the bonds, the following amounts are appropriated to the economic development department for the following purposes:

1. one hundred thousand dollars (\$100,000) to plan, design and redevelop the Pittsburg and Midway mine in McKinley county; and

2. fifty thousand dollars (\$50,000) to plan and design the redevelopment of central business districts as part of the mainstreet program statewide.

Chapter 347 Section 9 Laws 2005

Section 9. STATE ENGINEER PROJECTS--OFFICE OF THE STATE ENGINEER--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of the state engineer that the need exists for the issuance of the bonds, the following amounts are appropriated to the office of the state engineer for the following purposes:

1. fifty thousand dollars (\$50,000) to purchase water rights for the Carnuel mutual domestic water and wastewater consumers association in Carnuel in Bernalillo county;

2. twenty-five thousand dollars (\$25,000) for the purchase of water rights for San Rafael in Cibola county;

3. sixty thousand dollars (\$60,000) to plan, design and construct improvements to the dams in Springer in Colfax county;

4. forty-five thousand dollars (\$45,000) for flood control and irrigation system improvements for the Bluewater dam in the Bluewater-Toltec irrigation district in Cibola and McKinley counties;

5. thirty thousand dollars (\$30,000) to assess methods and systems for water rights and water use transfer statewide in order to install necessary infrastructure and implement a pilot test market;

6. two million eight hundred thousand dollars (\$2,800,000) to acquire water rights, water and storage facilities to comply with the requirements of the Endangered Species Act of 1973 and compact obligations;

7. one hundred fifty thousand dollars (\$150,000) to purchase water rights for El Prado water and sanitation district in El Prado in Taos county;

8. sixty thousand dollars (\$60,000) for improvements to the canal infrastructure in the Fort Sumner irrigation district in De Baca county;

9. fifty thousand dollars (\$50,000) to purchase fifty acre-feet of water rights that have a priority date of 1950 or earlier not to exceed two thousand seven hundred dollars (\$2,700) per acre-foot, for Chamberino in Dona Ana county;

10. fifty thousand dollars (\$50,000) to plan, design and construct flood control improvements to the Avalon-Alacran watershed in the Carlsbad soil and water conservation district in Eddy county; and

11. fifty thousand dollars (\$50,000) to develop and implement a model water rights protection project for the acequia de Alcalde in Rio Arriba county.

Chapter 347 Section 10 Laws 2005

Section 10. INTERSTATE STREAM PROJECTS--INTERSTATE STREAM COMMISSION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the interstate stream commission that the need exists for the issuance of the bonds, the following amounts are appropriated to the interstate stream commission for the following purposes:

1. ten million dollars (\$10,000,000) for purchasing water rights and land and making related infrastructure improvements to implement the long-term strategy for the state's permanent compliance with the Pecos River Compact and the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original;

2. fifty thousand dollars (\$50,000) for equipment and to plan, design and construct repairs to the acequia de la Placita in San Miguel county; and

3. fifty thousand dollars (\$50,000) to purchase and install acequia improvements, including pipelines, valves and head gates, for the acequia de La Cienega in La Cienega in Santa Fe county.

Chapter 347 Section 11 Laws 2005

Section 11. STATE PARK PROJECT--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the energy, minerals and natural resources

department that the need exists for the issuance of the bonds, one hundred thousand dollars (\$100,000) is appropriated to the energy, minerals and natural resources department for expansion, preservation, restoration and visitors' facility improvements at Shakespeare Ghost Town state park in Lordsburg in Hidalgo county.

Chapter 347 Section 12 Laws 2005

Section 12. ENVIRONMENT PROJECTS--DEPARTMENT OF ENVIRONMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of environment for the following purposes:

1. two hundred thousand dollars (\$200,000) to purchase a sewer vector truck for Dexter in Chaves county;
2. one hundred fifty thousand dollars (\$150,000) to plan, design and construct water system improvements for the Cumberland cooperative water users association in Chaves county;
3. forty-five thousand dollars (\$45,000) to plan, design and construct well and water system improvements for the Bluewater water and sanitation district in Cibola county;
4. one hundred thousand dollars (\$100,000) to plan, design and construct water system improvements, including replacing the water tank, in Melrose in Curry county;
5. seventy thousand dollars (\$70,000) to plan, design and construct collection lines and a wastewater treatment facility in Chaparral in Dona Ana county;
6. one hundred thirty thousand dollars (\$130,000) to plan, design, construct and equip water system and building and grounds improvements, including water meters, water lines, hydrants and an office building, for the Mesquite mutual domestic water consumers and mutual sewage works association serving the communities of Mesquite, Vado and Del Cerro in Dona Ana county;
7. one million dollars (\$1,000,000) to plan, develop and implement a water and wastewater system in Chaparral in Dona Ana county;
8. one hundred fifty thousand dollars (\$150,000) for construction of the effluent reuse project at the Carlsbad municipal golf course in Carlsbad in Eddy county;
9. two hundred twenty-five thousand dollars (\$225,000) to plan, design and construct improvements for the Otis water users cooperative in Eddy county;

10. one hundred thousand dollars (\$100,000) to plan, design and construct the regional wastewater treatment facility in Bayard in Grant county;

11. fifty thousand dollars (\$50,000) to plan, design and construct wells and well improvements in Bayard in Grant county;

12. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to the water system in Hanover in Grant county;

13. four hundred thousand dollars (\$400,000) for planning, design and construction of a regional wastewater facility with the city of Bayard for the village of Santa Clara in Grant county;

14. two hundred thousand dollars (\$200,000) to plan, design and construct a water system, including storage and distribution, in Roy in Harding county;

15. one hundred fifty thousand dollars (\$150,000) to plan, design and construct water system improvements in Lordsburg in Hidalgo county;

16. one hundred thousand dollars (\$100,000) to plan, design and construct water system fluoride improvements in Lordsburg in Hidalgo county;

17. one million fifty thousand dollars (\$1,050,000) to plan, design, construct and equip a wastewater treatment plant in Hobbs in Lea county;

18. thirty-nine thousand three hundred dollars (\$39,300) to plan, design and construct sewer lines for an affordable housing project in Eunice in Lea county;

19. twenty-four thousand five hundred sixty dollars (\$24,560) to plan, design and construct water system improvements for an affordable housing project in Eunice in Lea county;

20. one million dollars (\$1,000,000) to plan, design, construct and upgrade a wastewater treatment plant in Eunice in Lea county;

21. two hundred thousand dollars (\$200,000) to plan, design and construct water system improvements in Carrizozo in Lincoln county;

22. three hundred fifty thousand dollars (\$350,000) to plan, design, construct and equip the expansion of the treatment plant jointly owned by Ruidoso and Ruidoso Downs in Lincoln county;

23. five hundred thousand dollars (\$500,000) to plan, design and construct, including drilling, a water well and chlorination facility in Ruidoso Downs in Lincoln county;

24. one hundred thousand dollars (\$100,000) to restore the site for, demolish the old building and plan, design and construct the Bayo wastewater treatment plant in Los Alamos county;

25. two hundred fifty thousand dollars (\$250,000) to close the existing landfill and to construct and purchase equipment for a new landfill and transfer station on property owned by Deming in Luna county;

26. two hundred thousand dollars (\$200,000) to plan and improve the water and wastewater system in Columbus in Luna county;

27. one hundred thousand dollars (\$100,000) to plan, design and construct the Williams Acres water and sanitation district wastewater treatment system project in McKinley county;

28. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the wastewater system in White Cliff in McKinley county;

29. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to the water system in Wagon Mound in Mora county;

30. fifty thousand dollars (\$50,000) to plan, design, engineer and construct improvements to the drinking water system, including the storage tank, well and distribution lines, for the Mora mutual domestic water and sewer association in Mora county;

31. four hundred thirty thousand dollars (\$430,000) to purchase land for, plan, design, construct and equip a solid waste transfer station to serve the unincorporated community of Chaparral in Otero county;

32. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and improve the water and wastewater system in Chama in Rio Arriba county;

33. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Chamita mutual domestic water consumers association water system in Rio Arriba county;

34. eighty thousand dollars (\$80,000) to plan, design and construct a new water storage tank in Dora in Roosevelt county;

35. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct improvements to the water system for the upper La Plata water users association in San Juan county;

36. eight hundred thousand dollars (\$800,000) to plan, design and construct a wastewater collection system in Kirtland in San Juan county;

37. one hundred fifteen thousand dollars (\$115,000) to design and construct a radio read metering network for the West Hammond mutual domestic water consumers association in Bloomfield in San Juan county;

38. three hundred forty thousand dollars (\$340,000) to expand and relocate the water main, including new water lines, a water tank and repairs, for the Ponderosa mutual domestic water consumers association in Sandoval county;

39. sixty-five thousand dollars (\$65,000) to plan, design and construct a water storage tank for the Ponderosa mutual domestic water consumers association in Sandoval county;

40. five hundred thousand dollars (\$500,000) to plan, design, construct and equip improvements to the Bernalillo wastewater treatment plant in Sandoval county;

41. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct wastewater system improvements in Cuba in Sandoval county;

42. two hundred thousand dollars (\$200,000) to provide infrastructure upgrade and development, including water system pipe replacement, for the Pueblo of Jemez in Sandoval county;

43. three hundred seventy-five thousand dollars (\$375,000) to plan, design and construct the Buckman direct water diversion project in Santa Fe county;

44. four hundred thousand dollars (\$400,000) to purchase a water utility system and plan, design and construct improvements to the water system, including wells, water rights acquisition and pipelines, for the Eldorado area water and sanitation district in Santa Fe county;

45. seven hundred thousand dollars (\$700,000) to plan, design and construct a wastewater treatment system in Edgewood in Santa Fe county;

46. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including a water well, storage tank, fire hydrants, water treatment and a distribution system, for the Chupadero water and sewage corporation in Santa Fe county;

47. seven hundred seventy-five thousand dollars (\$775,000) to plan, design, construct and equip improvements to the Canyon road water treatment plant in Santa Fe in Santa Fe county;

48. two hundred fifty thousand dollars (\$250,000) to plan, design and construct water system improvements and fire suppression, including a water tank, for

La Cienega mutual domestic water consumers and mutual sewage works in La Cienega in Santa Fe county;

49. four hundred thousand dollars (\$400,000) to plan, design and construct, including the acquisition of rights of way, an effluent water recycling project in Truth or Consequences in Sierra county;

50. five hundred thousand dollars (\$500,000) to plan, design and improve the water and wastewater system in Truth or Consequences in Sierra county;

51. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including a pump house, meters, a tank and water lines, to the Vadito mutual domestic water consumers association water system in Taos county;

52. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the drinking water system in the Trampas mutual domestic water consumers association in Taos county;

53. one hundred thousand dollars (\$100,000) to plan, design and construct a water and wastewater system, including acquisition of easements, for El Valle de los Ranchos water and sanitation district in Taos county;

54. one hundred thousand dollars (\$100,000) to plan, design and construct a transfer station for solid waste in Red River in Taos county;

55. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct water system improvements, including water transmission lines, in Estancia in Torrance county;

56. two hundred thirty-five thousand dollars (\$235,000) to plan, design, construct and equip a landfill, including land acquisition and improvements, in Clayton in Union county;

57. two hundred thousand dollars (\$200,000) to improve and replace pump station equipment, including electrical controls, a switch gear, piping and a backup generator, at the west side booster pump station in Belen in Valencia county;

58. five hundred fifty-five thousand dollars (\$555,000) to implement remediation of asbestos and other hazardous materials in the water and sewer lines on Mesa road in Belen in Valencia county;

59. seventy-five thousand dollars (\$75,000) for design, drainage, erosion control, grading and slope stabilization, including a solar photovoltaic system on the erosion control slope, as part of a landfill reuse and renewable energy project on land owned by the state land office and the Albuquerque public school district in Albuquerque in Bernalillo county;

60. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the water reclamation system in Raton in Colfax county;
61. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the water and wastewater system and water meter system in Cimarron in Colfax county;
62. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including sewer line replacements, to the wastewater treatment plant in Loving in Eddy county;
63. fifty thousand dollars (\$50,000) to plan, design and construct water system improvements for the Dilia mutual domestic water consumers association in Dilia in Guadalupe county;
64. one hundred thousand dollars (\$100,000) to plan, design and construct upgrades at the wastewater treatment plant in Jal in Lea county;
65. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and equip wastewater system improvements in Columbus in Luna county;
66. fifty thousand dollars (\$50,000) to plan, design and construct the Williams Acres water and sanitation district treatment system project in McKinley county;
67. sixty thousand dollars (\$60,000) to plan, design and construct water system improvements in Watrous in Mora county;
68. fifty thousand dollars (\$50,000) to plan, design and construct a water treatment system, including a supply well and touch read water meters, for the Agua Pura mutual domestic water consumers association in Chacon in Mora county;
69. one hundred thousand dollars (\$100,000) to plan, design and construct water storage facilities and a wastewater reclamation system, including drilling water wells, in Cloudcroft in Otero county;
70. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the water and wastewater system in Cloudcroft in Otero county;
71. one hundred thousand dollars (\$100,000) to plan, design and construct water and wastewater system improvements in Tucumcari in Quay county;
72. fifty thousand dollars (\$50,000) to plan, design and construct water and wastewater system improvements and expansion in San Jon in Quay county;

73. two hundred fifty thousand dollars (\$250,000) to plan, design and construct the expansion of the wastewater treatment plant in Espanola in Rio Arriba county;

74. one hundred thousand dollars (\$100,000) to plan, design and construct water line infrastructure for the water distribution system for the North Star domestic water consumers and mutual sewage works cooperative in San Juan county;

75. fifty thousand dollars (\$50,000) to plan, design and construct water system improvements in Rowe in San Miguel county;

76. fifty thousand dollars (\$50,000) to plan, design, construct and improve a water supply well, including related technology, for the north San Isidro mutual domestic water consumers association in San Miguel county;

77. fifty thousand dollars (\$50,000) to plan, design and construct water system improvements in Tecolote in San Miguel county;

78. fifty thousand dollars (\$50,000) for a sewer line extension in the vicinity of paseo de Tercero and via Don Toribio in Agua Fria in Santa Fe county;

79. one hundred fifty thousand dollars (\$150,000) to acquire water rights and land, including needed applications and transfers, and to plan, design and construct a domestic water system, including a well, water tank and delivery system, in Agua Fria in Santa Fe county;

80. fifty thousand dollars (\$50,000) to plan, design and construct a supplemental well for La Bajada community ditch, incorporated, in Santa Fe county;

81. five hundred fifty thousand dollars (\$550,000) to plan, design and construct phases 1 and 2 of a regional wastewater system in Elephant Butte in Sierra county;

82. one hundred thousand dollars (\$100,000) to plan, design and construct well and water system improvements for the Polvadera mutual domestic water consumers association in Socorro county;

83. one hundred thousand dollars (\$100,000) to plan, design and construct a water system for the San Acacia mutual domestic water consumers association in San Acacia in Socorro county; and

84. fifty thousand dollars (\$50,000) to plan a pilot project and implementation system for a regional water and sewer master plan in Valencia county.

Chapter 347 Section 13 Laws 2005

Section 13. HEALTH PROJECTS--DEPARTMENT OF HEALTH--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of health that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of health for the following purposes:

1. one hundred thousand dollars (\$100,000) to purchase and install information technology and equipment for the hepatitis C and project echo at the university of New Mexico in Albuquerque in Bernalillo county;

2. one million dollars (\$1,000,000) to make improvements to school-based clinics and department of health facilities to meet the requirements of the school-based health initiative statewide; and

3. fifty thousand dollars (\$50,000) to purchase a bus for the New Mexico rehabilitation center in Roswell in Chaves county.

Chapter 347 Section 14 Laws 2005

Section 14. STATE FAIR PROJECTS--STATE FAIR COMMISSION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state fair commission that the need exists for the issuance of the bonds, the following amounts are appropriated to the state fair commission for the following purposes:

1. one million three hundred five thousand dollars (\$1,305,000) to plan, design and construct a statewide African-American performing arts and exhibit hall at the state fairgrounds in Albuquerque in Bernalillo county; and

2. forty thousand dollars (\$40,000) to construct lighting improvements at the livestock, dairy and swine arenas at the state fairgrounds in Albuquerque in Bernalillo county.

Chapter 347 Section 15 Laws 2005

Section 15. INDIAN AFFAIRS PROJECTS--INDIAN AFFAIRS DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the Indian affairs department that the need exists for the issuance of the bonds, the following amounts are appropriated to the Indian affairs department for the following purposes:

1. three hundred twenty-five thousand dollars (\$325,000) to plan, design and construct a native business leadership center and business education facility at the southwest Indian polytechnic institute in Albuquerque in Bernalillo county;

2. two hundred sixty thousand dollars (\$260,000) to plan and design a judicial complex, to include tribal courts and police and fire departments, at the Pueblo of Isleta in Bernalillo county;

3. one hundred thousand dollars (\$100,000) to extend powerlines in the Ramah chapter of the Navajo Nation in Cibola county;

4. one hundred forty thousand dollars (\$140,000) to plan, design and construct vendor spaces at the Sky City center and Ha'ak'u museum tribal outdoor marketplace in the Pueblo of Acoma in Cibola county;

5. one hundred thousand dollars (\$100,000) to plan, design and construct a storage tank and related infrastructure in the Pueblo of Acoma in Cibola county;

6. one hundred thousand dollars (\$100,000) to purchase and install equipment for the fire and rescue department at the Pueblo of Laguna in Cibola county;

7. one hundred thousand dollars (\$100,000) to improve and renovate the Kwaike community center in the Pueblo of Laguna in Cibola county;

8. one hundred eighty thousand dollars (\$180,000) for water line extensions and bathroom additions to houses in the Manuelito chapter of the Navajo Nation in McKinley county;

9. one hundred thousand dollars (\$100,000) to renovate the chapter house in the Standing Rock chapter of the Navajo Nation in McKinley county;

10. seventy-five thousand dollars (\$75,000) to construct bathroom additions at the Pueblo Pintado chapter of the Navajo Nation in McKinley county;

11. fifty thousand dollars (\$50,000) to plan, design and construct a water and wastewater system in the Littlewater chapter of the Navajo Nation in McKinley county;

12. fifty thousand dollars (\$50,000) to plan, design and construct bathrooms and plumbing facilities improvements in the Casamero Lake chapter of the Navajo Nation in McKinley county;

13. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and equip a manufacturing facility at the industrial park in the Church Rock chapter of the Navajo Nation in McKinley county;

14. one hundred thousand dollars (\$100,000) to plan, design and construct bathroom additions in the Crownpoint chapter of the Navajo Nation in McKinley county;

15. one hundred sixty thousand dollars (\$160,000) to plan, design and construct a two-cell sewer lagoon at the Pinedale chapter of the Navajo Nation in McKinley county;

16. one hundred fifteen thousand two hundred thirty-six dollars (\$115,236) to prepare the site for and make infrastructure improvements at the Mexican Springs chapter of the Navajo Nation in McKinley county;

17. fifty thousand dollars (\$50,000) to plan and design a heritage center for the Jicarilla Apache Nation in Dulce in Rio Arriba county;

18. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the community library in the Pueblo of San Juan in Rio Arriba county;

19. two million dollars (\$2,000,000) to plan, design, construct and improve infrastructure for the Pueblo of San Juan airport in Rio Arriba county;

20. two hundred thousand dollars (\$200,000) to plan, design and complete infrastructure projects in the Pueblo of Santa Clara in Rio Arriba county;

21. fifty thousand dollars (\$50,000) to purchase and equip a tractor with a mower attachment for San Juan river Dineh water users, incorporated, in San Juan county;

22. two hundred seventy-four thousand dollars (\$274,000) to plan, design and construct improvements to the Navajo preparatory school in the Navajo Nation in San Juan county;

23. seventy-five thousand dollars (\$75,000) to plan, design and construct an addition to the Shiprock chapter house in the Navajo Nation in San Juan county;

24. seventy-five thousand dollars (\$75,000) to construct bathroom additions and plumbing at the Huerfano chapter of the Navajo Nation in San Juan county;

25. seven hundred fifty thousand dollars (\$750,000) to plan, design, construct, equip and furnish an adult residential behavioral health treatment center in the Shiprock chapter of the Navajo Nation in San Juan county;

26. one hundred forty thousand dollars (\$140,000) to plan, design and construct powerline extensions in the Newcomb chapter of the Navajo Nation in San Juan county;

27. one hundred forty-two thousand fifty dollars (\$142,050) to plan, renovate and make additions to the Gadii'ahi chapter of the Navajo Nation in San Juan county;

28. five hundred thousand dollars (\$500,000) to plan, design and construct a food distribution center and administration office for the five Sandoval Indian pueblos in Sandoval county;

29. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct regional infrastructure development in the Pueblo of Santo Domingo in Sandoval county;

30. fifty thousand dollars (\$50,000) to plan, design and construct a multipurpose education and wellness center at the Pueblo of Santa Ana in Sandoval county;

31. sixty thousand dollars (\$60,000) to plan, design, construct and equip an ambulatory health center at the Pueblo of Zia in Sandoval county;

32. fifty thousand dollars (\$50,000) to plan, design and construct a water and wastewater system for the Pueblo of San Felipe in Sandoval county;

33. two hundred thousand dollars (\$200,000) to plan, design and construct the replacement of the water main utility system, including components for pumping, supply, storage, distribution and metering, at the Pueblo of Cochiti in Sandoval county;

34. two hundred thousand dollars (\$200,000) to plan, design, construct, equip and furnish a multipurpose facility at the Pueblo of Cochiti in Sandoval county;

35. eighty-eight thousand dollars (\$88,000) to purchase and equip patrol units at the Pueblo of Jemez in Sandoval county;

36. two hundred thousand dollars (\$200,000) to plan, design and construct a water tank in the Pueblo of Santa Ana in Sandoval county;

37. two hundred seventy-five thousand dollars (\$275,000) to plan, design and construct the center for lifelong learning at the institute of American Indian arts in Santa Fe county;

38. four hundred fifty thousand dollars (\$450,000) for master planning of trust lands at Santa Fe Indian school in Santa Fe in Santa Fe county;

39. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a wellness and health center, including a field house and an exercise facility, at Santa Fe Indian school in Santa Fe in Santa Fe county;

40. two hundred seventy-five thousand dollars (\$275,000) to plan, design, construct, equip and furnish a pool and clinical offices at the intergenerational center at the Pueblo of Tesuque in Santa Fe county;

41. one hundred sixty thousand dollars (\$160,000) to plan, design, construct, equip and furnish a library and museum archive center at the Pueblo of San Ildefonso in Santa Fe county;

42. two hundred fifty thousand dollars (\$250,000) to renovate and improve, including replacing the roof and related repairs, the administrative buildings at the Pueblo of Picuris in Taos county;

43. one hundred thousand dollars (\$100,000) to renovate the pueblo house at the Indian pueblo cultural center in Albuquerque in Bernalillo county;

44. forty thousand dollars (\$40,000) to purchase buses for the boys' and girls' club in the Pueblo of Acoma in Cibola county;

45. fifty thousand dollars (\$50,000) to plan, design and construct a water and wastewater treatment facility, including a transmission line and storage tank, at the Pueblo of Zuni in McKinley county;

46. one hundred thousand dollars (\$100,000) to purchase and equip a computer tomography scanner and scanner housing for the Crownpoint Indian health service hospital in Crownpoint in McKinley county;

47. fifty thousand dollars (\$50,000) to construct bathroom additions at the Red Rock chapter of the Navajo Nation in McKinley county;

48. fifty thousand dollars (\$50,000) to purchase a road grader for the Coyote Canyon chapter of the Navajo Nation in McKinley county;

49. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including an addition, to the Coyote Canyon chapter house in the Navajo Nation in McKinley county;

50. fifty thousand dollars (\$50,000) to pave the parking lot adjacent to the chapter house at the Chichiltah chapter of the Navajo Nation in McKinley county;

51. fifty thousand dollars (\$50,000) to plan, design and construct an extension to the powerline at the Chichiltah chapter of the Navajo Nation in McKinley county;

52. one hundred thousand dollars (\$100,000) to plan, design and construct a water line for the White Horse Lake chapter of the Navajo Nation in McKinley county;

53. sixty thousand dollars (\$60,000) for landscaping and improvements to the perimeter of the baseball field at the recreation center at the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties;

54. seventy-five thousand dollars (\$75,000) to purchase and equip an ambulance for the emergency medical services program at the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties;

55. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the judicial complex in the Pueblo of Santa Clara in Rio Arriba county;

56. four hundred twelve thousand dollars (\$412,000) to plan, design and construct a rural electrification extension in Bluerock in the Naschitti chapter of the Navajo Nation in San Juan county;

57. one hundred thousand dollars (\$100,000) to plan, design and construct water system improvements, including a water storage tank, plumbing and connection to an existing system, at the Pueblo of Santa Ana in Sandoval county;

58. fifty thousand dollars (\$50,000) to plan, design and improve the water and wastewater system at the Pueblo of Sandia in Sandoval county;

~~59. fifty thousand dollars (\$50,000) to plan, design and construct the renovation of a traditional administrative building, including an addition, at the Pueblo of Pojoaque in Santa Fe county;~~

~~60. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a field and running track at the Pueblo of Pojoaque wellness center in Santa Fe county;~~

~~61. fifty thousand dollars (\$50,000) to equip a field and running track at the Pueblo of Pojoaque wellness center in Santa Fe county;~~

~~62. one hundred thousand dollars (\$100,000) to plan, design, construct and improve the Poch cultural center at the Pueblo of Pojoaque in Santa Fe county;]~~
and [*LINE-ITEM VETO*]

63. one hundred twenty thousand dollars (\$120,000) to plan, design, construct, equip and furnish a multipurpose law enforcement training facility in the Pueblo of Tesuque in Santa Fe county.

Chapter 347 Section 16 Laws 2005

Section 16. LOCAL GOVERNMENT PROJECTS--LOCAL GOVERNMENT DIVISION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the local government division of the department of finance and administration that the need exists for the issuance of the bonds, the following amounts are appropriated to the local government division for the following purposes:

1. two hundred eighty thousand dollars (\$280,000) to plan, design and construct a transitional housing facility for the metropolitan assessment and treatment services program in Bernalillo county;
2. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including landscaping, drainage and interior finishes, to the Lomas-Tramway library building in Albuquerque in Bernalillo county;
3. one hundred fifty thousand dollars (\$150,000) to design and construct an expansion to the Carnue land grant community building in Bernalillo county;
4. four hundred twenty-five thousand dollars (\$425,000) to plan, design, construct, equip and furnish a veterinary clinic at the Albuquerque zoological park in Bernalillo county;
5. fifty thousand dollars (\$50,000) to purchase and install protective storage lockers for the county fire and rescue department in Bernalillo county;
6. one hundred thousand dollars (\$100,000) to repair and construct improvements, including drainage, stucco and landscaping, to Los Vecinos community center in Tijeras in Bernalillo county;
7. one million one hundred thousand dollars (\$1,100,000) to plan, design, construct and equip a multipurpose center in the south valley in Bernalillo county;
8. seventy thousand dollars (\$70,000) for equipment and improvements to the site, facility and field, including improvements to comply with the Americans with Disabilities Act of 1990, for the Atrisco little league in Bernalillo county;
9. two hundred twelve thousand dollars (\$212,000) to renovate a performing arts theater for persons with disabilities in the north valley of Albuquerque in Bernalillo county;
10. one hundred eighty-five thousand dollars (\$185,000) to plan, design and construct improvements to the Martineztown park and walkway in Albuquerque in Bernalillo county;
11. fifty thousand dollars (\$50,000) to construct a basketball court, construct a bocce court and purchase and install furnishings at W.L. Jackson park in Bernalillo county;
12. seven hundred twenty thousand dollars (\$720,000) to plan, design, construct and equip a building for the New Mexico holocaust and intolerance museum and study center, which will also house the African-American museum and cultural center and offices of the New Mexico human rights coalition education foundation, in Albuquerque in Bernalillo county;

13. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the city-owned Roadrunner little league fields and facilities in Albuquerque in Bernalillo county;

14. three hundred forty-five thousand dollars (\$345,000) to design, construct and purchase equipment and furnishings for the Anderson-Abruzzo Albuquerque international balloon museum in Bernalillo county;

15. one hundred thirty-five thousand dollars (\$135,000) for improvements to Graves park in Albuquerque in Bernalillo county;

16. seventy-five thousand dollars (\$75,000) to plan, design, construct and equip a play area at Matthew Meadows park in Albuquerque in Bernalillo county;

17. one hundred twenty-five thousand dollars (\$125,000) to design, construct, renovate and equip Valley neighborhood park in Albuquerque in Bernalillo county;

18. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Altamont little league facility in Albuquerque in Bernalillo county;

19. five hundred fifty thousand dollars (\$550,000) to plan, design, construct and equip a multigenerational center at north Domingo Baca park in Albuquerque in Bernalillo county;

20. one hundred twenty-five thousand dollars (\$125,000) to plan, design, construct, equip and furnish improvements to the Mesa Verde community center in Albuquerque in Bernalillo county;

21. three hundred twenty thousand dollars (\$320,000) to design, develop, construct, purchase and install exhibits, furniture, fixtures, equipment, facilities and portable buildings for the Explora science center and children's museum in Albuquerque in Bernalillo county;

22. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish improvements, including a concession stand and equipment, for the Alameda little league complex in Albuquerque in Bernalillo county;

23. two hundred thousand dollars (\$200,000) to design, construct, purchase and install pedestrian lighting in the central highland upper Nob Hill metropolitan redevelopment area in Albuquerque in Bernalillo county;

24. fifty thousand dollars (\$50,000) to plan for public improvements, including improvements to streets, sidewalks and transit stops, in the central highland upper Nob Hill metropolitan redevelopment area in Albuquerque in Bernalillo county;

25. fifty thousand dollars (\$50,000) to plan, design and construct improvements and renovations to the tennis courts at Los Altos park in Albuquerque in Bernalillo county;

26. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Sierra Vista tennis complex in Albuquerque in Bernalillo county;

27. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct renovations and improvements to the Wyoming library in Albuquerque in Bernalillo county;

28. two hundred thousand dollars (\$200,000) to develop the site for, plan, design, renovate and improve existing facilities, including equipment for the game and meeting rooms, and construct an addition at the Westside community center in the south valley of Albuquerque in Bernalillo county;

29. one hundred thousand dollars (\$100,000) to design, construct, equip and furnish La Familia park in the south valley of Albuquerque in Bernalillo county;

30. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including resurfacing Main street and purchasing and installing bollards, at Balloon Fiesta park in Albuquerque in Bernalillo county;

31. seventy-five thousand dollars (\$75,000) for the metropolitan redevelopment area project for public improvements, including improvements to streets, sidewalks and transit stops, in the Nob Hill area of Albuquerque in Bernalillo county;

32. one hundred twenty-five thousand dollars (\$125,000) to purchase and install a firearms training simulator system for the sheriff's department in Bernalillo county;

33. one million two hundred thousand dollars (\$1,200,000) to plan, design and construct a gymnasium to be jointly used by East Mountain high school and Vista Grande community center in Bernalillo county;

34. four hundred thousand dollars (\$400,000) to plan, design and construct the Tower community park and Westgate little league field improvements, including ball fields, irrigation, turf, lighting, a concession building and landscaping, in house district 13 in Albuquerque in Bernalillo county;

35. two hundred thousand dollars (\$200,000) to design and construct a multipurpose playing field, including related landscaping, fencing, a playground, courts and site amenities, at Los Padillas community center in Bernalillo county;

36. one hundred thousand dollars (\$100,000) for improvements to the Mile High little league fields in Albuquerque in Bernalillo county;

37. four hundred fifty thousand dollars (\$450,000) to construct a multipurpose field using vacant land at Taft middle school, including building a drainage pond and a track, for use by the public and the Albuquerque public school district in Los Ranchos de Albuquerque in Bernalillo county;

38. one hundred thousand dollars (\$100,000) to plan, design and construct Vista del Norte park in Albuquerque in Bernalillo county;

39. two hundred seventy-five thousand dollars (\$275,000) to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Los Ranchos de Albuquerque in Bernalillo county;

40. one hundred thousand dollars (\$100,000) to plan, design, construct and equip the south valley economic incubator in Bernalillo county;

41. fifty thousand dollars (\$50,000) to design and construct improvements, including a dog park and modular skate park, at Coronado park in Albuquerque in Bernalillo county;

42. eighty thousand dollars (\$80,000) to equip and improve Duranes park in Albuquerque in Bernalillo county;

43. one hundred eighty thousand dollars (\$180,000) to plan, design, construct and equip improvements at the Wells Park community center in Albuquerque in Bernalillo county;

44. six hundred thousand dollars (\$600,000) to plan, design and construct a fire station in Los Ranchos de Albuquerque in Bernalillo county;

45. forty-one thousand five hundred dollars (\$41,500) to plan, design and construct improvements at the Thunderbird little league facilities in Albuquerque in Bernalillo county;

46. fifty thousand dollars (\$50,000) to purchase and install a heating, ventilation and air conditioning system for the R.G. Sanchez community center in Albuquerque in Bernalillo county;

47. sixty thousand dollars (\$60,000) for reforestation, landscaping and irrigation in the Silver Hill neighborhood in Albuquerque in Bernalillo county;

48. one hundred fifty thousand dollars (\$150,000) for a metropolitan redevelopment plan for the Clayton Heights and Lomas del Cielo neighborhoods in Albuquerque in Bernalillo county;

49. sixty thousand dollars (\$60,000) to plan, design, construct and equip the park and playground and landscape the park and multipurpose building in Chilili in Bernalillo county;

50. fifty thousand dollars (\$50,000) to plan, design, construct and equip a multipurpose facility in Reserve in Catron county;

51. one hundred thousand dollars (\$100,000) to plan, design, construct and equip an emergency response building in Catron county;

52. seventy-five thousand dollars (\$75,000) to plan, design, construct and purchase portable classrooms, prepare fields and make road improvements, including chip seal and gravel, at the fire training academy in Chaves county;

53. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish renovations and additions to the animal control facility in Roswell in Chaves county;

54. one hundred forty thousand dollars (\$140,000) to plan, design and construct improvements to the Cielo Grande sports complex in Roswell in Chaves county;

55. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to the police station in Roswell in Chaves county;

56. two hundred twenty-five thousand dollars (\$225,000) to plan, design and construct improvements to the Wool Bowl track and field, including a sprinkler system installation, in Roswell in Chaves county;

57. one hundred ten thousand dollars (\$110,000) to plan, design and construct a building for the fire and police departments in Lake Arthur in Chaves county;

~~58. fifty thousand dollars (\$50,000) to plan, design and construct renovations to the baseball field at the Noon Optimist baseball complex in Roswell in Chaves county;~~ [LINE-ITEM VETO]

59. fifty thousand dollars (\$50,000) to plan, design and construct a softball complex at the Wool Bowl in Roswell in Chaves county;

60. one hundred thousand dollars (\$100,000) to plan, design, construct and remodel the energy library in Roswell in Chaves county;

61. seventy-five thousand dollars (\$75,000) to purchase, install and furnish a portable building for the working mothers' day nursery in Roswell in Chaves county;

62. seventy-five thousand dollars (\$75,000) for planning, design, construction, equipping and furnishing of the historical society for southeast New Mexico's museum archive building in Roswell in Chaves county;

63. one hundred forty thousand dollars (\$140,000) to purchase a building for and to plan, design and construct improvements to the youth center in Dexter in Chaves county;

~~64. fifty thousand dollars (\$50,000) to plan, design and construct the Noon Optimist baseball field in Roswell in Chaves county;~~ [*LINE-ITEM VETO*]

65. one hundred fifty thousand dollars (\$150,000) to plan and improve the Roswell Spring river facility in Chaves county;

66. one hundred thousand dollars (\$100,000) to plan, design, construct and equip an animal shelter for Grants and Cibola county;

67. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including equipment purchase, to the parks in Milan in Cibola county;

68. two hundred thousand dollars (\$200,000) to plan, design, construct and equip an animal shelter in Grants in Cibola county;

69. one hundred thousand dollars (\$100,000) to plan, design and construct a swimming pool in Grants in Cibola county;

70. thirty-eight thousand dollars (\$38,000) to plan, design and construct a building for the region 1 housing authority in Grants in Cibola county;

71. fifty thousand dollars (\$50,000) to plan, design and construct the recreation center in Raton in Colfax county;

72. two hundred thousand dollars (\$200,000) to plan, design, construct and improve the learning center in Raton in Colfax county;

73. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and equip a primary care clinic in the Moreno valley in Colfax county;

74. one hundred thirty thousand dollars (\$130,000) to purchase land adjacent to the village offices in Eagle Nest in Colfax county;

75. seven hundred fifty thousand dollars (\$750,000) to plan, design and construct an industrial training park in Raton in Colfax county;

76. one hundred thousand dollars (\$100,000) to plan, design, acquire, construct, equip and furnish roads, buildings and infrastructure at the Clovis industrial park in Curry county;

77. three hundred thousand dollars (\$300,000) to plan, design, construct, equip and furnish or renovate a facility for the adult detention center in Curry county;

78. one million ninety thousand dollars (\$1,090,000) to purchase land for and plan, design and construct improvements, including furnishings, or to purchase, renovate and furnish a building for the county business enterprise center in Clovis in Curry county;

79. one hundred thousand dollars (\$100,000) to plan, design, construct and equip the Urioste wellness center in house district 63 in Clovis in Curry county;

80. one hundred thousand dollars (\$100,000) to purchase and install information technology in county offices in De Baca county;

81. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the youth center in Fort Sumner in De Baca county;

82. twenty-five thousand dollars (\$25,000) to plan, design, construct and landscape the veterans' memorial wall in Dona Ana county;

83. fifty thousand dollars (\$50,000) to plan, design, construct and equip the development of north Las Cruces park in Dona Ana county;

84. six hundred twenty-five thousand dollars (\$625,000) to plan, design and construct development and streetscape improvements in conjunction with the downtown revitalization project in Las Cruces in Dona Ana county;

85. fifty-five thousand dollars (\$55,000) to plan, design and construct improvements to Burn lake and Esslinger park in Las Cruces in Dona Ana county;

86. fifty-five thousand dollars (\$55,000) to plan, design and construct the High Noon soccer complex in Las Cruces in Dona Ana county;

87. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct the veterans' memorial wall in Las Cruces in Dona Ana county;

88. two hundred thousand dollars (\$200,000) to plan, design and construct sidewalk improvements in Sunland Park in Dona Ana county;

89. two hundred sixty-five thousand dollars (\$265,000) to plan, design, construct and equip a swimming pool in Sunland Park in Dona Ana county;

90. two hundred twenty thousand dollars (\$220,000) for site development and construction of the visitors' center and an addition to house the marshal and fire department in Mesilla in Dona Ana county;

91. seven hundred thousand dollars (\$700,000) to construct, equip and furnish, including site development for, a public safety building in Hatch in Dona Ana county;

92. fifty-five thousand dollars (\$55,000) to acquire land for, design and construct a pedestrian walkway and bike trail in Vado in Dona Ana county;

93. four hundred twenty-five thousand dollars (\$425,000) to plan, design and construct infrastructure improvements, including lighting, in the historic Mesquite district of Las Cruces in Dona Ana county;

94. five hundred thousand dollars (\$500,000) to plan, design, construct and equip a records center in Carlsbad in Eddy county;

95. one hundred seventy-five thousand dollars (\$175,000) to plan, design, construct and equip a little league complex in Loving in Eddy county;

96. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Carlsbad riverwalk recreation center in Carlsbad in Eddy county;

97. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Carlsbad adult softball complex in Carlsbad in Eddy county;

98. one hundred fifty thousand dollars (\$150,000) to furnish and equip the cave and karst research institute in Carlsbad in Eddy county;

99. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a youth sports complex in Carlsbad in Eddy county;

100. sixty thousand dollars (\$60,000) to plan, design and construct improvements to the Walter Gerrells performing arts and exhibition center in Carlsbad in Eddy county;

101. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the St. Francis hospital building in Carlsbad in Eddy county;

102. three hundred twenty-five thousand dollars (\$325,000) to plan, design and construct a domestic violence shelter in Carlsbad in Eddy county;

103. twenty-five thousand dollars (\$25,000) to plan, design, construct and equip classrooms and a laboratory for the city-owned New Mexico state university center in Artesia in Eddy county;

104. one hundred twenty-five thousand dollars (\$125,000) for improvements, including renovations to comply with the Americans with Disabilities Act of 1990, at the horse council arena in Eddy county;

105. thirty-five thousand dollars (\$35,000) to construct a canopy at the San Jose plaza in Carlsbad in Eddy county;

106. one hundred fifty-five thousand dollars (\$155,000) to equip and furnish the obstetrics and gynecology department at the Artesia general hospital in Artesia in Eddy county;

107. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including an addition, to the municipal buildings, including the police station, municipal court and city hall, in Hurley in Grant county;

108. twelve thousand dollars (\$12,000) to plan, design and construct improvements and a parking lot at La Capilla heritage park in Silver City in Grant county;

109. one hundred thousand dollars (\$100,000) to plan, design and construct an emergency medical services center at Gila regional medical center in Silver City in Grant county;

110. one hundred thousand dollars (\$100,000) for demolition and site remediation of the county-owned Hillcrest hospital facility in Silver City in Grant county;

111. four hundred thousand dollars (\$400,000) to revitalize, make improvements and overlay downtown streets for the Silver City downtown economic development and mainstreet project in Grant county;

112. fifty thousand dollars (\$50,000) to plan, design and construct a library in Anton Chico in Guadalupe county;

113. fifty thousand dollars (\$50,000) to purchase an ambulance for Anton Chico fire and rescue in Guadalupe county;

114. sixty thousand dollars (\$60,000) to plan, design and construct a parking lot for the downtown area in Eunice in Lea county;

115. four hundred thousand dollars (\$400,000) to plan, design and construct an outdoor swimming pool at Chaparral park in Lovington in Lea county;

116. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a domestic violence shelter in Lincoln county;

117. fifty thousand dollars (\$50,000) to plan, design, construct and upgrade a multipurpose facility at the county fairgrounds in Capitan in Lincoln county;

118. fifty thousand dollars (\$50,000) to plan, design and construct a baseball field and recreational facilities in Capitan in Lincoln county;

119. one hundred thousand dollars (\$100,000) to plan, design, construct and equip a civic center in Los Alamos in Los Alamos county;

120. six hundred sixty thousand dollars (\$660,000) to renovate and make improvements, including improvements to comply with the Americans with Disabilities Act of 1990, to the Deming-Luna museum in Luna county;

121. one hundred thousand dollars (\$100,000) to plan, design and construct improvements and an expansion to the metro dispatch E911 facility in McKinley county;

122. ninety thousand dollars (\$90,000) to plan, design and construct or renovate a national Codetalkers museum in Gallup in McKinley county;

123. one hundred fifty thousand dollars (\$150,000) to acquire land for an economic development facility in Gallup in McKinley county;

124. four hundred thousand dollars (\$400,000) to plan, design, construct, equip and furnish a cancer treatment center in Gallup in McKinley county;

125. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a park in Mora county;

126. fifty thousand dollars (\$50,000) to purchase and install a public safety communications system in Mora county;

127. fifty thousand dollars (\$50,000) to purchase an ambulance for the Mora clinic in Mora county;

128. five hundred thousand dollars (\$500,000) to plan, design, construct, equip and furnish a library and health center in Mora in Mora county;

129. seventy-five thousand dollars (\$75,000) to plan, design and construct a fire station in La Luz in Otero county;

130. two hundred sixty thousand dollars (\$260,000) to plan, design and construct the renovation, including needed roof, electrical and heating and cooling improvements, of the Otero county fair facilities in Alamogordo in Otero county;

131. fifty-eight thousand dollars (\$58,000) to plan, design and renovate the Otero county jail in Otero county;

132. one hundred eighty-two thousand dollars (\$182,000) to plan, design, construct and renovate a county road shop in Otero county;

133. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Alamo West volunteer fire department building in Otero county;

134. five hundred five thousand dollars (\$505,000) to plan, design and construct a medical clinic in Chaparral in Otero county;

135. two hundred thousand dollars (\$200,000) to plan, design, construct, equip, furnish and renovate the Flickinger performing arts center in Otero county;

136. forty thousand dollars (\$40,000) to purchase and equip a four-wheel-drive ambulance for the High Rolls volunteer fire department and emergency services department in Otero county;

137. one hundred fifty thousand dollars (\$150,000) to plan, design and construct capital improvements to facilities owned by Quay county;

138. one hundred thousand dollars (\$100,000) to plan, design and construct offices at the Quay agriculture educational center building in Quay county;

139. one hundred thousand dollars (\$100,000) to plan, design and construct a livestock canopy for the rural events center in Rio Arriba county;

140. two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish the Agua Sana fire station in Hernandez in Rio Arriba county;

141. one hundred thousand dollars (\$100,000) to design and construct a community center in Chimayo in Rio Arriba county;

142. fifty thousand dollars (\$50,000) to design, construct and install an electronic sign on the plaza de Espanola in Rio Arriba county;

143. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and improve the Pinon Hills residential treatment facility in Rio Arriba county;

144. seventy-five thousand dollars (\$75,000) for purchasing street equipment for infrastructure improvements in Portales in Roosevelt county;

145. seventy-five thousand dollars (\$75,000) to purchase equipment for the highway department in Roosevelt county;

146. one hundred thousand dollars (\$100,000) to purchase and equip vehicles for the county sheriff's department in Roosevelt county;

147. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to the county fairgrounds facilities in Roosevelt county;

148. one hundred fifty thousand dollars (\$150,000) for improvements, equipment and additions to facilities in the Roosevelt special hospital district in Portales in Roosevelt county;

149. one hundred twenty thousand dollars (\$120,000) to plan, design and construct or acquire a building for the Farmington public health department in Farmington in San Juan county;

150. one hundred seventy-five thousand dollars (\$175,000) to purchase and install radio console equipment at the 911 communications center for the San Juan county communications authority in Aztec;

151. one million one hundred thousand dollars (\$1,100,000) to plan, design, construct, equip and furnish the east tower project at San Juan regional medical center in San Juan county;

152. one hundred thousand dollars (\$100,000) to purchase equipment for the Riverview education and recreation center in Kirtland in San Juan county;

153. sixty thousand dollars (\$60,000) to replace the roof and make interior improvements to the youth center in Aztec in San Juan county;

154. four hundred thousand dollars (\$400,000) to plan, design and construct the expansion of the police and fire departments and improvements to the park facilities at the administrative complex in Bloomfield in San Juan county;

155. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and equip the San Juan detoxification center in San Juan county;

156. one hundred thousand dollars (\$100,000) to plan, design and construct a parking lot at the municipal building and park in Pecos in San Miguel county;

157. ninety-five thousand dollars (\$95,000) to plan, design and construct improvements to the municipal courthouse in Las Vegas in San Miguel county;

158. three hundred seventy-five thousand dollars (\$375,000) to plan, design and construct the county health commons building in Sandoval county;

159. ninety thousand dollars (\$90,000) to design and construct lighting, bleachers, landscaping and infrastructure improvements at the New Mexico soccer tournament complex in Sandoval county;

160. seventy thousand dollars (\$70,000) to purchase and equip police units in Corrales in Sandoval county;

161. eight hundred twenty thousand dollars (\$820,000) to purchase up to two hundred acres of state trust land in Sandoval county from the commissioner of public lands or any other appropriate lands from Sandoval county for the Rio Rancho public school district;

162. nine hundred twenty-five thousand dollars (\$925,000) to plan, design, renovate and expand, including the emergency department, facilities at St. Vincent hospital in Santa Fe in Santa Fe county;

163. four hundred thousand dollars (\$400,000) to plan, design, construct, equip, furnish and acquire land for the first judicial district courthouse in Santa Fe county;

164. seven hundred thousand dollars (\$700,000) to acquire land for, plan, design, construct, equip and furnish the Esperanza shelter administrative complex in Santa Fe county;

165. one hundred thousand dollars (\$100,000) to acquire land for, plan, design, construct, equip and furnish a senior housing project in Santa Fe county;

166. one hundred fifty thousand dollars (\$150,000) to acquire land for, plan, design, construct, equip and furnish the Pojoaque Valley community center in Santa Fe county;

167. three hundred fifty thousand dollars (\$350,000) to plan, design, construct, equip and furnish an expansion to La Familia medical center on Alto street in Santa Fe in Santa Fe county;

168. sixty-five thousand dollars (\$65,000) to plan, design and construct the Zona del Sol complex in Santa Fe in Santa Fe county;

169. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a joint training facility for the police and fire departments in Santa Fe in Santa Fe county;

170. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a museum and visitors' center in Truth or Consequences in Sierra county;

171. two hundred thousand dollars (\$200,000) to construct renovations, including site work, landscaping, fire hydrants and water system, for the revitalization of Monticello plaza in Sierra county;

172. one hundred thousand dollars (\$100,000) to plan, design and construct the municipal complex in Magdalena in Socorro county;

173. two hundred fifty thousand dollars (\$250,000) to purchase the current boys' and girls' club building and plan, design and construct renovations and additions to that building in Socorro county;

174. five hundred thousand dollars (\$500,000) to plan, design, construct, renovate, furnish and equip the Taos center for the arts in Taos county;

175. one hundred thousand dollars (\$100,000) to purchase road equipment for Taos county;

176. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a community center in Amalia in Taos county;

177. eighty thousand dollars (\$80,000) to plan, design and construct a little league field in Questa in Taos county;

178. four hundred thousand dollars (\$400,000) to plan, design and construct infrastructure improvements in Questa in Taos county;

179. one hundred thirty-five thousand dollars (\$135,000) to plan, design and construct the DWI memorial of perpetual tears park in Moriarty in Torrance county;

180. one hundred ten thousand dollars (\$110,000) to purchase and equip vehicles for the sheriff's department in Torrance county;

181. fifty thousand dollars (\$50,000) to plan and construct a fence around the village park and a playground area and purchase and install equipment in Willard in Torrance county;

182. seventy-five thousand dollars (\$75,000) to plan, design, construct and equip a park in Torreon in Torrance county;

183. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish a park in the Manzano land grant in Torrance county;

184. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish an emergency medical services building in Des Moines in Union county;

185. one million dollars (\$1,000,000) to plan, design, construct, equip and furnish the county hospital in Clayton in Union county;

186. seventy-five thousand dollars (\$75,000) to construct improvements, including a gymnasium, at the multipurpose community center in Belen in Valencia county;

187. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to the Tome Dominguez community center in Tome in Valencia county;

188. one hundred fifty thousand dollars (\$150,000) to plan, design and construct El Cerro fire station in Valencia county;

189. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, renovate and purchase furnishings for the Rio Grande Estates fire station in Valencia county;

190. four hundred thousand dollars (\$400,000) to plan, design, construct, equip and furnish the fire and police station in Bosque Farms in Valencia county;

191. one hundred fifty thousand dollars (\$150,000) to plan, design and construct renovations to casa Colorada for a community center in Valencia county;

192. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including an activity room and restrooms, at the West Mesa community center in Albuquerque in Bernalillo county;

193. one hundred twenty-five thousand dollars (\$125,000) for streetscape and roadway improvements to Fourth street northwest in Albuquerque in Bernalillo county;

194. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a women's softball field, including batting cages, at the city-owned Roadrunner little league site in Albuquerque in Bernalillo county;

195. fifty thousand dollars (\$50,000) to renovate, construct and equip the southwest velodrome park in Albuquerque in Bernalillo county;

196. twenty-five thousand dollars (\$25,000) to purchase athletic equipment, exercise equipment and furnishings at Cesar Chavez community center in Albuquerque in Bernalillo county;

197. twenty-five thousand dollars (\$25,000) for purchasing and renovating a building and purchasing and installing equipment for channel 27 and Quote Unquote in Albuquerque in Bernalillo county;

198. two hundred thirty thousand dollars (\$230,000) to purchase non-invasive alcohol screening and testing equipment for the sheriff's department in Bernalillo county;

199. fifty thousand dollars (\$50,000) to expand the Lomas-Tramway linear park in Albuquerque in Bernalillo county;

200. one hundred twenty-five thousand dollars (\$125,000) to plan, design, construct, improve and equip renovations and purchase equipment for the Albuquerque museum in Albuquerque in Bernalillo county;

201. one hundred thousand dollars (\$100,000) to design, construct and equip Balloon Fiesta park, including concessions, signage and access control, in Albuquerque in Bernalillo county;

202. seventy-five thousand dollars (\$75,000) to design and construct a storage shed at the Rio Grande community farm in Albuquerque in Bernalillo county;

203. four hundred thousand dollars (\$400,000) to renovate the Hiland theater in Albuquerque in Bernalillo county;

204. fifty thousand dollars (\$50,000) for site preparation and to plan, design and construct the Amistad crisis shelter in Bernalillo county;

205. forty thousand dollars (\$40,000) to plan, design, construct and equip the Albuquerque Indian center in Bernalillo county;

206. fifty thousand dollars (\$50,000) to plan, design and construct or purchase and renovate a facility for use as a rape crisis center in Bernalillo county;

207. fifty-five thousand dollars (\$55,000) to equip and improve Los Padillas community center in Bernalillo county;

208. one hundred thirty-five thousand dollars (\$135,000) to purchase a four-wheel-drive emergency vehicle for the east mountain area along interstate 40 in Tijeras in Bernalillo county;

209. two hundred seventy-five thousand dollars (\$275,000) to furnish and equip the South Valley health center in Albuquerque in Bernalillo county;

210. seventy-five thousand dollars (\$75,000) for the Bernalillo county commission to acquire and rehabilitate a property in La Mesa neighborhood for micro enterprises and a dental clinic in Albuquerque in Bernalillo county;

211. eighty thousand dollars (\$80,000) to plan, design and renovate a health care center in southeast Albuquerque in Bernalillo county;

212. seventy thousand dollars (\$70,000) to purchase an aerial ladder truck for the east Grand Plains volunteer fire department in Chaves county;

213. fifty-eight thousand dollars (\$58,000) to plan, design and construct a plaza across from the Chaves county courthouse, including a statue, demolition of property and construction of a parking lot, in Chaves county;

214. fifty thousand dollars (\$50,000) for construction and lighting at the softball field at Angell sports complex in Hagerman in Chaves county;

215. twenty-five thousand dollars (\$25,000) to purchase and install electronic signage in Hagerman in Chaves county;

216. twenty-five thousand dollars (\$25,000) to plan, design and construct the Blackdom memorial in Chaves county;

217. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a museum archives building for the historical society for southeast New Mexico in Roswell in Chaves county;

218. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to and purchase equipment for the daycare center in Roswell in Chaves county;

219. fifty thousand dollars (\$50,000) for purchasing and installing equipment for the Valley boys' and girls' club in Hagerman in Chaves county;

220. twenty-five thousand dollars (\$25,000) to construct improvements, including the replacement of the radio antenna, at the Penasco fire department in Chaves county;

221. fifty thousand dollars (\$50,000) to purchase and install handicapped-accessible playground equipment at Sertoma park in Roswell in Chaves county;

222. fifty thousand dollars (\$50,000) to plan, design and construct an expansion to the Candy Kitchen fire department in Cibola county;

223. forty thousand dollars (\$40,000) to design and construct improvements to the parking lot at the Seboyeta fire department in Cibola county;

224. forty thousand dollars (\$40,000) to purchase equipment for the street department in Grants in Cibola county;

225. thirty thousand dollars (\$30,000) to purchase and equip vehicles for the police department in Grants in Cibola county;

226. five thousand dollars (\$5,000) to purchase and install information technology for the police department in Grants in Cibola county;

227. ninety thousand dollars (\$90,000) for moving and reinstallation of sensitive equipment from the current central 911 dispatch facility to a new building in Grants in Cibola county;

228. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a primary care medical clinic in Angel Fire in Colfax county;

229. eighty-five thousand dollars (\$85,000) to renovate and expand the county courthouse and off-site office space for the district attorney's office in Clovis in Curry county;

230. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a wellness and youth development center in Clovis in Curry county;

231. one hundred thousand dollars (\$100,000) for planning, design and construction of a community center, including site infrastructure, in Butterfield park in Dona Ana county;

232. eighty thousand dollars (\$80,000) to purchase equipment for the district one fire department in Dona Ana county;

233. fifty thousand dollars (\$50,000) to purchase, remodel and equip a county-owned building for La Pinon sexual assault recovery service in Las Cruces in Dona Ana county;

234. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to the city-owned La Casa domestic violence center in Las Cruces in Dona Ana county;

235. fifty thousand dollars (\$50,000) to plan, design and construct shelters for the city transit system in Las Cruces in Dona Ana county;

236. fifty thousand dollars (\$50,000) to plan, design and construct an indoor swimming pool and recreation center in Las Cruces in Dona Ana county;

237. ten thousand dollars (\$10,000) to plan, design, purchase and install information technology for the property tax collection and distribution system at the Dona Ana county treasurer's office;

238. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a community center in Rodey in Dona Ana county;

239. fifty thousand dollars (\$50,000) to equip and furnish the Valley community library in Anthony in Dona Ana county;

240. fifty thousand dollars (\$50,000) to acquire land for, develop the site for and plan, design and construct an industrial park to house a manufacturing and business incubator in Dona Ana county;

241. fifty thousand dollars (\$50,000) for improvements to Berino park in Dona Ana county;

242. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Colquitt park in Chaparral in Dona Ana county;

243. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the community of hope center in Las Cruces in Dona Ana county;

244. fifty thousand dollars (\$50,000) for building improvements and equipment at La Pinon center for sexual assault in Las Cruces in Dona Ana county;

245. two hundred thousand dollars (\$200,000) to acquire land for and make improvements to the Dona Ana plaza in Dona Ana county;

246. two hundred fifty thousand dollars (\$250,000) to renovate the county fairgrounds in Silver City in Grant county;

247. two hundred fifty thousand dollars (\$250,000) for preliminary building preparations for construction of an oncology center at the Gila regional medical center in Silver City in Grant county;

248. ninety thousand dollars (\$90,000) to purchase and install information technology and office equipment at the county clerk's, treasurer's and assessor's offices in Guadalupe county, to be divided equally;

249. fifty thousand dollars (\$50,000) to plan, design and construct a fire training tower in McKinley county;

250. one hundred thousand dollars (\$100,000) to plan, design and construct turf replacement for the soccer and football fields in Gallup in McKinley county;

251. fifty thousand dollars (\$50,000) to plan, design and construct parking lot improvements at the northside community and senior center in Gallup in McKinley county;

252. fifty thousand dollars (\$50,000) to plan, design and construct improvements to comply with the Americans with Disabilities Act of 1990 at the Rainsville community center in Mora county;

253. fifty thousand dollars (\$50,000) to purchase office and computer equipment for the county assessor's office in Mora county;

254. fifty thousand dollars (\$50,000) to plan, design and construct a community center in Guadalupita in Mora county;

255. one hundred thousand dollars (\$100,000) to renovate the volunteer fire department building in Tularosa in Otero county;

256. sixty-five thousand dollars (\$65,000) to plan, design and construct improvements to the fairgrounds in Quay county;

257. fifty thousand dollars (\$50,000) to purchase land for, plan, design, construct and equip a county health facility in Espanola in Rio Arriba county;

258. fifty thousand dollars (\$50,000) to plan, design and construct a court facility for the first judicial district in Rio Arriba county;

259. fifty thousand dollars (\$50,000) to plan and construct improvements and repairs to the enterprise center in Portales in Roosevelt county;

260. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the memorial park in Causey in Roosevelt county;

261. fifty thousand dollars (\$50,000) to purchase and equip a vehicle for the sheriff's department in Portales in Roosevelt county;

262. twenty-five thousand dollars (\$25,000) to acquire land for and plan, design and construct a domestic violence shelter and center in Farmington in San Juan county;

263. three hundred thousand dollars (\$300,000) to plan, design and construct shower and restroom facilities at the McGee park fairgrounds in San Juan county;

264. ninety thousand dollars (\$90,000) to purchase and install information technology and office equipment at the county clerk's, treasurer's and assessor's offices in San Miguel county, to be divided equally;

265. fifty thousand dollars (\$50,000) to construct, equip and furnish improvements to the Tecolote fire station in Tecolote in San Miguel county;

266. fifty thousand dollars (\$50,000) to plan, design and construct a community library in Placitas in Sandoval county;

267. fifty thousand dollars (\$50,000) to plan, design and construct an expansion to the boys' and girls' club in Rio Rancho in Sandoval county;

268. seventy-five thousand dollars (\$75,000) for infrastructure improvements and equipment at the New Mexico soccer complex in Bernalillo in Sandoval county;

269. fifty thousand dollars (\$50,000) to plan, design, construct and renovate studio and office space at the museo cultural, including upgrading the performance space for use by the Maria Benitez institute for Spanish arts, in Santa Fe in Santa Fe county;

270. one hundred thousand dollars (\$100,000) to acquire land and a building for and to plan, design, construct, renovate, equip and furnish the women's health services complex in Santa Fe county;

271. one hundred thousand dollars (\$100,000) to plan, design and construct the Santa Fe railyard plaza in Santa Fe in Santa Fe county;

272. fifty thousand dollars (\$50,000) to purchase and install olympic power-lifting equipment at High Desert athletic club in Santa Fe county;

273. fifty thousand dollars (\$50,000) to plan, design, construct and acquire land for a multipurpose park on paseo de la Conquistadora in Santa Fe in Santa Fe county;

274. one hundred thousand dollars (\$100,000) to design and construct a teen arts center at the railyard property in Santa Fe in Santa Fe county;

275. fifty thousand dollars (\$50,000) to design and construct a soccer field in Eldorado, contingent upon Santa Fe county and the Santa Fe public school district executing an agreement for a joint-use county-school soccer field in Santa Fe county;

276. fifty thousand dollars (\$50,000) to purchase the Parker property east of Santa Fe in Santa Fe county;

277. seventy-five thousand dollars (\$75,000) to plan, design and construct a concession building at the municipal outdoor recreation complex at the rugby fields on Caja del Rio road in Santa Fe in Santa Fe county;

278. fifty thousand dollars (\$50,000) to purchase and install information technology and equipment for the juvenile detention center in Santa Fe county;

279. one hundred thousand dollars (\$100,000) to acquire land for, plan, design, construct, equip and furnish the Pojoaque Valley community center in Santa Fe county;

280. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a building, sidewalks, bathrooms, electrical wiring and improvements to comply with the Americans with Disabilities Act of 1990 at the fairgrounds in Sierra county;

281. two hundred thousand dollars (\$200,000) to purchase and install information technology at the county offices in Socorro county;

282. fifty thousand dollars (\$50,000) to improve, upgrade, equip and furnish the Talpa community center in Taos county;

283. fifty thousand dollars (\$50,000) to renovate and expand the community center, including fencing improvements, in Penasco in Taos county;

284. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a building for the spire solar project in Questa in Taos county;

285. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements and an expansion to the community against violence facility in Taos in Taos county;

286. seventy thousand dollars (\$70,000) to plan, design, construct, equip and furnish improvements to the library in Questa in Taos county;

287. one hundred thirty thousand dollars (\$130,000) to plan, design, construct, equip and furnish improvements, including a statue, for the museum in Questa in Taos county;

288. thirty thousand dollars (\$30,000) to purchase land for, plan, design and construct a veterans' memorial in Questa in Taos county;

289. one hundred thousand dollars (\$100,000) to plan, design and construct relining and installation of fencing at the Talpa reservoir ditch diversion structure in Taos county;

290. one hundred forty thousand dollars (\$140,000) to plan, design, construct and landscape a parking lot for the swimming pool and library in Estancia in Torrance county;

291. twenty-five thousand dollars (\$25,000) for improvements to the seventh judicial district court complex in Estancia in Torrance county;

292. two hundred fifty thousand dollars (\$250,000) for improvements to the multipurpose recreation park, including lighting, roads, parking lots, landscaping and furnishings, in Belen in Valencia county;

293. fifty thousand dollars (\$50,000) to plan, design and construct a community center in the Tome-Adelino area of Valencia county;

294. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish Los Chavez fire department in Valencia county;

295. fifty thousand dollars (\$50,000) to plan, design, construct and equip a community center in Jarales in Valencia county;

296. fifty thousand dollars (\$50,000) for construction of the fire station and community center for the Highland Meadows community in Valencia county;

297. fifty thousand dollars (\$50,000) to acquire land for, improve and equip the Yucca little league complex in Bosque Farms in Valencia county; and

298. four hundred thousand dollars (\$400,000) to plan, design, construct and equip local fair and arena facilities for the rodeo initiative, contingent on local matches of equal funding.

Chapter 347 Section 17 Laws 2005

~~[Section 17. STATE CAPITOL PROJECT--LEGISLATIVE COUNCIL SERVICE--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the legislative council service that the need exists for the issuance of the bonds, fifty thousand dollars (\$50,000) is appropriated to the legislative council service to purchase and install exercise equipment at the state capitol in Santa Fe in Santa Fe county.] [LINE-ITEM VETO]~~

Chapter 347 Section 18 Laws 2005

Section 18. MILITARY AFFAIRS PROJECT--DEPARTMENT OF MILITARY AFFAIRS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of military affairs that the need exists for the issuance of the bonds, forty-five thousand dollars (\$45,000) is appropriated to the department of military affairs to purchase vehicles for the New Mexico youth challenge program in Roswell in Chaves county.

Chapter 347 Section 19 Laws 2005

Section 19. PUBLIC EDUCATION PROJECTS--PUBLIC EDUCATION DEPARTMENT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the public education department that the need exists for

the issuance of the bonds, the following amounts are appropriated to the public education department for the following purposes:

1. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a high school in the Albuquerque public school district in Bernalillo county;
2. fifty thousand dollars (\$50,000) to plan, design, construct, purchase and install improvements to the baseball and softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;
3. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;
4. fifty thousand dollars (\$50,000) to purchase and install educational technology at Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;
5. one hundred thousand dollars (\$100,000) to purchase and install educational technology at James Monroe middle school in the Albuquerque public school district in Bernalillo county;
6. fifty thousand dollars (\$50,000) to purchase and install educational technology at Manzano Mesa elementary school in the Albuquerque public school district in Bernalillo county;
7. two hundred fifty thousand dollars (\$250,000) to purchase and install educational technology for the Manzano high school cluster in the Albuquerque public school district in Bernalillo county;
8. fifty thousand dollars (\$50,000) to purchase and install educational technology in La Cueva high school cluster in the Albuquerque public school district in Bernalillo county;
9. fifty thousand dollars (\$50,000) to purchase and install educational technology at Seven Bar elementary school in the Albuquerque public school district in Bernalillo county;
10. seventy-five thousand dollars (\$75,000) to purchase and install educational technology at Desert Ridge middle school in the Albuquerque public school district in Bernalillo county;
11. fifty thousand dollars (\$50,000) to furnish and equip East Mountain high school, a charter school in the Albuquerque public school district in Bernalillo county;

12. five hundred fifteen thousand dollars (\$515,000) to plan, design and construct and to purchase and remodel modular buildings for La Promesa early childhood learning center charter school in the Albuquerque public school district in Bernalillo county;

13. two hundred twelve thousand dollars (\$212,000) to plan, design, construct, equip and furnish a smart lab for southwest secondary charter school in the Albuquerque public school district in Bernalillo county;

14. fifty thousand dollars (\$50,000) to purchase and install educational technology at Reginald Chavez elementary school in the Albuquerque public school district in Bernalillo county;

15. ninety-seven thousand dollars (\$97,000) to purchase and install educational technology at Jackson middle school in the Albuquerque public school district in Bernalillo county;

16. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to the cafeteria at Inez elementary school in the Albuquerque public school district in Bernalillo county;

17. forty-five thousand dollars (\$45,000) to plan, design and construct improvements, including locker rooms, fencing and shelving, at Highland high school in the Albuquerque public school district in Bernalillo county;

18. seventy-five thousand dollars (\$75,000) to purchase and install educational technology at Osuna elementary school in the Albuquerque public school district in Bernalillo county;

19. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including dugouts, bleachers, restrooms and batting cages, for the baseball field at La Cueva high school in the Albuquerque public school district in Bernalillo county;

20. two hundred seventy-four thousand dollars (\$274,000) for purchase and installation of equipment for a smart lab at Creative Education preparatory institute number 1, a charter high school in the Albuquerque public school district in Bernalillo county;

21. seven hundred sixty-five thousand dollars (\$765,000) to remodel, equip and furnish the former federal post office building in downtown Albuquerque for use as Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

22. one hundred thousand dollars (\$100,000) to purchase and install educational technology at Double Eagle elementary school in the Albuquerque public school district in Bernalillo county;

23. seventy-six thousand dollars (\$76,000) to purchase and install educational technology at Kennedy middle school in the Albuquerque public school district in Bernalillo county;

24. fifty thousand dollars (\$50,000) to upgrade the gymnasium at Kennedy middle school in the Albuquerque public school district in Bernalillo county;

25. fifty thousand dollars (\$50,000) to purchase and install educational technology at Tomasita elementary school in the Albuquerque public school district in Bernalillo county;

26. ninety thousand dollars (\$90,000) to make student safety improvements to the parking lot and pickup and drop-off areas at Tomasita elementary school in the Albuquerque public school district in Bernalillo county;

27. fifty-five thousand dollars (\$55,000) to purchase and install educational technology at McCollum elementary school in the Albuquerque public school district in Bernalillo county;

28. seventy thousand dollars (\$70,000) to upgrade the telephone and security systems at McCollum elementary school in the Albuquerque public school district in Bernalillo county;

29. ninety-five thousand five hundred dollars (\$95,500) to purchase and install educational technology at Hawthorne elementary school in the Albuquerque public school district in Bernalillo county;

30. fifty-four thousand five hundred dollars (\$54,500) for playground improvements at Lavaland elementary school in the Albuquerque public school district in Bernalillo county;

31. one hundred fifty thousand dollars (\$150,000) to purchase and install educational technology at John Adams middle school in the Albuquerque public school district in Bernalillo county;

32. one hundred eighty thousand dollars (\$180,000) to purchase and install educational technology at Chaparral elementary school in the Albuquerque public school district in Bernalillo county;

33. one hundred fifty thousand dollars (\$150,000) to purchase and install equipment for Susie R. Marmon elementary school in the Albuquerque public school district in Bernalillo county;

34. one hundred sixty thousand dollars (\$160,000) to purchase and install educational technology at West Mesa high school in the Albuquerque public school district in Bernalillo county;

35. one hundred thousand dollars (\$100,000) to purchase and install educational technology at Bellehaven elementary school in the Albuquerque public school district in Bernalillo county;

36. fifty thousand dollars (\$50,000) to purchase and install library books and a portable stage at Sombra del Monte elementary school in the Albuquerque public school district in Bernalillo county;

37. sixty-two thousand nine hundred dollars (\$62,900) for asbestos abatement and replacement of tile and carpet at Zuni elementary school in the Albuquerque public school district in Bernalillo county;

38. sixty thousand dollars (\$60,000) to purchase and construct a multipurpose building for the Family school in the Albuquerque public school district in Bernalillo county;

39. sixty-six thousand dollars (\$66,000) to purchase and install educational technology at Chelwood elementary school in the Albuquerque public school district in Bernalillo county;

40. fifty-five thousand dollars (\$55,000) to purchase and install educational technology at Collet Park elementary school in the Albuquerque public school district in Bernalillo county;

41. seventy-five thousand dollars (\$75,000) to purchase and install weight training equipment at Del Norte high school in the Albuquerque public school district in Bernalillo county;

42. fifty thousand dollars (\$50,000) to purchase and install health technology for the Cibola school cluster in the Albuquerque public school district in Bernalillo county;

43. eighty-five thousand dollars (\$85,000) to construct bathroom improvements to comply with the Americans with Disabilities Act of 1990 at Albuquerque high school in the Albuquerque public school district in Bernalillo county;

44. one hundred fifty thousand dollars (\$150,000) to construct improvements to the fields and grounds at Hayes middle school in the Albuquerque public school district in Bernalillo county;

45. sixty-three thousand dollars (\$63,000) to purchase and install video editing equipment at Van Buren middle school in the Albuquerque public school district in Bernalillo county;

46. fifty thousand dollars (\$50,000) for construction of the playground at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

47. one hundred thousand dollars (\$100,000) to purchase and install educational technology at Ventana Ranch elementary school in the Albuquerque public school district in Bernalillo county;

48. one hundred thousand dollars (\$100,000) to purchase and install educational technology for Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

49. fifty-four thousand five hundred dollars (\$54,500) to purchase and install educational technology for Lavaland elementary school in the Albuquerque public school district in Bernalillo county;

50. one hundred thousand dollars (\$100,000) to plan, design and construct, including purchasing classrooms for, the Math, Science, Technology high school, a new charter school in the Albuquerque public school district in Bernalillo county;

51. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the baseball field at Goddard high school in the Roswell independent school district in Chaves county;

52. fifty thousand dollars (\$50,000) to plan and construct a sprinkler system for the football field at Berrendo middle school in the Roswell independent school district in Chaves county;

53. thirty thousand dollars (\$30,000) to plan, design and construct reroofing at the gymnasium in the Hagerman public school district in Chaves county;

54. one hundred thousand dollars (\$100,000) to plan, design and construct a middle and high school playfield, including lighting, bleachers and a track, and the conversion of an existing playfield for elementary use in the Lake Arthur municipal school district in Chaves county;

55. fifty thousand dollars (\$50,000) to purchase and install educational technology and other equipment for the library at Sunrise elementary school in Las Cruces public school district in Dona Ana county;

56. fifty thousand dollars (\$50,000) to plan, design and construct a new roof for Loving high school in the Loving municipal school district in Eddy county;

57. sixty-five thousand dollars (\$65,000) to purchase and install educational technology in the Tatum municipal school district in Lea county;

58. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish ball fields and recreation facilities in the Capitan municipal school district in Lincoln county;

59. fifty thousand dollars (\$50,000) to construct improvements to the septic and water drainage systems in the Mora independent school district in Mora county;

60. four hundred twenty-five thousand dollars (\$425,000) to purchase and install playground equipment and sun shades that comply with the Americans with Disabilities Act of 1990 in the Alamogordo public school district in Otero county;

61. one hundred thousand dollars (\$100,000) to plan, design and construct a multipurpose athletic field in the Jemez mountain public school district in Rio Arriba county;

62. fifty thousand dollars (\$50,000) to purchase and install educational technology for Espanola military academy, a charter school in the Espanola public school district in Rio Arriba county;

63. sixty-five thousand dollars (\$65,000) for upgrading the electrical service, including installing transformers, at Aztec high school in the Aztec municipal school district in San Juan county;

64. one hundred thousand dollars (\$100,000) to improve and equip the Donaldo Martinez administration building in the West Las Vegas public school district in San Miguel county;

65. one hundred thousand dollars (\$100,000) to purchase a bus and a vehicle for the Las Vegas city public school district in San Miguel county;

66. one hundred ten thousand dollars (\$110,000) to purchase vehicles for the West Las Vegas public school district in San Miguel county;

67. four hundred seventy-five thousand dollars (\$475,000) to acquire land for an education park and the new high school in the Rio Rancho public school district in Sandoval county;

68. seventy-eight thousand dollars (\$78,000) to purchase and install computers and educational technology at Corrales elementary school in the Albuquerque public school district in Sandoval county;

69. one hundred thousand dollars (\$100,000) to plan, design and construct a water and wastewater system for the Pojoaque Valley public school district in Santa Fe county;

70. one hundred five thousand dollars (\$105,000) to purchase school bus inspection equipment statewide;

71. one hundred thousand dollars (\$100,000) to plan, design and construct a walking field and track in the Penasco independent school district in Taos county;

72. one hundred thousand dollars (\$100,000) to construct improvements to the drainage system at the West Mesa high school track in the Albuquerque public school district in Bernalillo county;

73. fifty thousand dollars (\$50,000) to plan, design and construct a girls' softball field at West Mesa high school in the Albuquerque public school district in Bernalillo county;

74. fifty thousand dollars (\$50,000) to plan, design, construct and equip bleachers, an awning and a press box for the baseball and softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;

75. one hundred thousand dollars (\$100,000) to purchase and install a modular science laboratory at Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

76. fifty thousand dollars (\$50,000) for improvements to the library at Eldorado high school in the Albuquerque public school district in Bernalillo county;

77. one hundred twenty-five thousand dollars (\$125,000) to purchase and install educational technology in the Eldorado high school cluster in the Albuquerque public school district in Bernalillo county;

78. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Eldorado high school cluster libraries in the Albuquerque public school district in Bernalillo county;

79. fifty thousand dollars (\$50,000) to plan, design and construct playground facilities improvements for the Manzano high school cluster in the Albuquerque public school district in Bernalillo county;

80. fifty thousand dollars (\$50,000) to purchase and install educational technology at Cibola high school in the Albuquerque public school district in Bernalillo county;

81. one hundred forty-five thousand dollars (\$145,000) to plan, design, construct and equip a science facility at South Valley Academy charter school in the Albuquerque public school district in Bernalillo county;

82. twenty-five thousand dollars (\$25,000) for improvements and equipment at the Highland high school weight room in the Albuquerque public school district in Bernalillo county;

83. twenty-five thousand dollars (\$25,000) for improvements and equipment at the Manzano high school weight room in the Albuquerque public school district in Bernalillo county;

84. one hundred thousand dollars (\$100,000) for television and film production and broadcast equipment for schools in the Highland cluster in the Albuquerque public school district in Bernalillo county;

85. one hundred thousand dollars (\$100,000) for television and film production and broadcast equipment for schools in the Manzano cluster in the Albuquerque public school district in Bernalillo county;

86. seventy-five thousand dollars (\$75,000) for a portable science laboratory for Garfield middle school in the Albuquerque public school district in Bernalillo county;

87. one hundred thousand dollars (\$100,000) to make improvements to the grass play field at Duranes elementary school in the Albuquerque public school district in Bernalillo county;

88. seventy-five thousand dollars (\$75,000) for reroofing the Douglas MacArthur elementary school in the Albuquerque public school district in Bernalillo county;

89. one hundred thousand dollars (\$100,000) to plan, design and construct a multipurpose field at Taft middle school in the Albuquerque public school district in Bernalillo county;

90. fifty thousand dollars (\$50,000) to purchase and install educational technology at the Twenty-First Century public academy in the Albuquerque public school district in Bernalillo county;

91. three hundred thirty-five thousand dollars (\$335,000) to plan, design and construct improvements, including artificial turf, scoreboard and overall field

improvements, to the baseball field at Sandia high school in the Albuquerque public school district in Bernalillo county;

92. fifty thousand dollars (\$50,000) to expand and renovate Inez elementary school in the Albuquerque public school district in Bernalillo county;

93. sixty thousand dollars (\$60,000) to plan, design and construct improvements, including bleachers and the parking lot, at Del Norte high school in the Albuquerque public school district in Bernalillo county;

94. fifty thousand dollars (\$50,000) to purchase and install educational technology at Bel Air elementary school in the Albuquerque public school district in Bernalillo county;

95. fifty thousand dollars (\$50,000) to plan, design, construct and purchase improvements for the library at Cleveland middle school in the Albuquerque public school district in Bernalillo county;

96. fifty thousand dollars (\$50,000) to purchase and install modular classroom buildings at Robert F. Kennedy charter high school in the Albuquerque public school district in Bernalillo county;

97. fifty thousand dollars (\$50,000) for books and equipment for the Albuquerque reads program in the Albuquerque public school district in Bernalillo county;

98. seventy-five thousand dollars (\$75,000) to purchase and install physical education and classroom safety dividers at Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

99. fifty thousand dollars (\$50,000) to purchase and install educational technology and related infrastructure and furnishings at Sombra del Monte elementary school in the Albuquerque public school district in Bernalillo county;

100. fifty thousand dollars (\$50,000) to purchase library books for Eisenhower middle school in the Albuquerque public school district in Bernalillo county;

101. fifty thousand dollars (\$50,000) to purchase and install educational technology, including dedicated electrical outlets and related technology, at Madison middle school in the Albuquerque public school district in Bernalillo county;

102. fifty thousand dollars (\$50,000) to purchase and install educational technology at Eubank elementary school in the Albuquerque public school district in Bernalillo county;

103. fifty thousand dollars (\$50,000) to purchase and install educational technology at Sierra Vista elementary school in the Albuquerque public school district in Bernalillo county;

104. fifty thousand dollars (\$50,000) to purchase and install educational technology at Chamisa elementary school in the Albuquerque public school district in Bernalillo county;

105. fifty thousand dollars (\$50,000) to purchase and install educational technology at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

106. fifty thousand dollars (\$50,000) to purchase and install educational technology at Lyndon B. Johnson middle school in the Albuquerque public school district in Bernalillo county;

107. fifty thousand dollars (\$50,000) to purchase and install educational technology at Marie Hughes elementary school in the Albuquerque public school district in Bernalillo county;

108. fifty thousand dollars (\$50,000) to purchase and install educational technology at Mary Ann Binford elementary school in the Albuquerque public school district in Bernalillo county;

109. fifty thousand dollars (\$50,000) for a pole vault pit, cover and standards at Manzano high school in the Albuquerque public school district in Bernalillo county;

110. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

111. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Berrendo elementary school in the Roswell independent school district in Chaves county;

112. twenty-five thousand dollars (\$25,000) to plan, construct and remodel the home economics facility at Goddard high school in the Roswell independent school district in Chaves county;

113. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Del Norte elementary school in the Roswell independent school district in Chaves county;

114. twenty-five thousand dollars (\$25,000) to purchase vehicles for the future farmers of America program at Goddard high school in the Roswell independent school district in Chaves county;

115. fifty thousand dollars (\$50,000) to purchase and install educational technology at Berrendo middle school in the Roswell independent school district in Chaves county;

116. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including asbestos abatement, at Sidney Gutierrez middle school in the Roswell independent school district in Chaves county;

117. eighty-five thousand dollars (\$85,000) to plan, design and purchase football equipment, including technology equipment, and to plan, design and construct football-related storage equipment and facilities at Goddard high school in the Roswell independent school district in Chaves county;

118. fifty thousand dollars (\$50,000) to plan, design and construct a baseball field in the Texico municipal school district in Curry county;

119. three hundred seventy-five thousand dollars (\$375,000) to purchase, install and equip weight room facilities at high schools in the Gadsden independent school district in Dona Ana county;

120. fifty thousand dollars (\$50,000) to plan, design, construct and purchase equipment for an exercise track and basic walking track at Anthony elementary school in the Gadsden independent school district in Dona Ana county;

~~[121. fifty thousand dollars (\$50,000) to plan, design and construct improvements to bring the stadium into compliance with the Americans with Disabilities Act of 1990 in the Carlsbad municipal school district in Eddy county;] [LINE-ITEM VETO]~~

122. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to playgrounds and to bring the playgrounds into compliance with the Americans with Disabilities Act of 1990 in the Carlsbad municipal school district in Eddy county;

123. fifty thousand dollars (\$50,000) to purchase and install a new heating, ventilation and air conditioning system in the Loving high school in Loving municipal school district in Eddy county;

124. fifty thousand dollars (\$50,000) to purchase an activity bus for the Hondo Valley public school district in Lincoln county;

125. ninety thousand dollars (\$90,000) to purchase an activity bus for the Wagon Mound public school district in Mora county;

126. one hundred thousand dollars (\$100,000) to plan, design and construct the athletic facilities project in the Cloudcroft municipal school district in Otero county;

127. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including asbestos abatement, demolition, site work, utilities and infrastructure, and to construct new facilities at Escalante high school in the Chama Valley independent school district in Rio Arriba county;

128. one hundred twenty-five thousand dollars (\$125,000) to construct, equip and furnish Sombrillo elementary school in the Espanola public school district in Rio Arriba county;

129. one hundred thousand dollars (\$100,000) to construct improvements at Portales high school in the Portales municipal school district in Roosevelt county;

130. fifty thousand dollars (\$50,000) to plan and design a Rio Rancho high school, in the Rio Rancho public school district in Sandoval county, in the education park for use by New Mexico institutions of higher education;

131. fifty thousand dollars (\$50,000) to purchase and install educational technology at Puesta del Sol elementary school in the Rio Rancho public school district in Sandoval county;

132. fifty thousand dollars (\$50,000) to purchase and install educational technology at Martin Luther King, Jr. elementary school in the Rio Rancho public school district in Sandoval county;

133. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the bleachers and press box at the Belen high school football field in the Belen consolidated school district in Valencia county;

134. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including plumbing, heating and cooling, electrical, fire alarm system, stucco and roof replacement at the Adelino head start center in the Belen consolidated school district in Valencia county; and

135. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the weight and training room at Los Lunas high school in the Los Lunas public school district in Valencia county.

Chapter 347 Section 20 Laws 2005

Section 20. TRANSPORTATION PROJECTS--DEPARTMENT OF TRANSPORTATION--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of transportation that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of transportation for the following purposes:

1. one hundred fifty thousand dollars (\$150,000) to plan, design and construct landscaping improvements on Paradise boulevard in Albuquerque in Bernalillo county;

2. fifty thousand dollars (\$50,000) to purchase and install a traffic signal on Paradise boulevard at La Paz in Bernalillo county;

3. one hundred seventy thousand dollars (\$170,000) to plan, design and construct improvements, including paving, to La Madera road in Bernalillo county;

4. thirty thousand dollars (\$30,000) to design, construct and renovate landscaping for interstates 25 and 40 in Albuquerque in Bernalillo county;

5. one hundred fifty thousand dollars (\$150,000) to plan, design, construct and acquire rights of way for a continuous-flow intersection at Fourth street and Montano road in the north valley of Albuquerque in Bernalillo county;

~~6. seventy-five thousand dollars (\$75,000) to design and construct median landscaping on Candelaria road from Morris road to San Mateo boulevard in Albuquerque in Bernalillo county;~~ [LINE-ITEM VETO]

7. one hundred fifty thousand dollars (\$150,000) to design and construct a storm drain along Paradise boulevard between Lyons boulevard and La Paz road northwest in Albuquerque in Bernalillo county;

8. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to Valdora avenue, Citation street, Padilla road and Lanega road in house district 12 in Bernalillo county;

9. one hundred thousand dollars (\$100,000) to plan, design and construct the metropolitan redevelopment area plan road improvements in Albuquerque in Bernalillo county;

10. two hundred thousand dollars (\$200,000) to design, construct and pave San Antonio boulevard northeast between Eubank boulevard and Browning street, including constructing traffic barricades at Browning street and San Antonio drive northeast, in Albuquerque in Bernalillo county;

11. one hundred twenty-five thousand dollars (\$125,000) to acquire rights of way for the widening of Elks drive in Las Cruces in Dona Ana county;

12. two hundred thousand dollars (\$200,000) to plan, design and construct the realignment of Del Rey boulevard, including acquisition of rights of way, in Las Cruces in Dona Ana county;

~~[13. one hundred thousand dollars (\$100,000) to plan, design and construct an arroyo crossing at the extension of Leasburg Dam road in Dona Ana county;] [LINE-ITEM VETO]~~

14. one hundred thousand dollars (\$100,000) to plan, design and construct landscaping improvements to the median on Lohman avenue between Telshor and Roadrunner drives in Las Cruces in Dona Ana county;

15. seventy thousand dollars (\$70,000) to plan, design and construct improvements to the storm water drainage and pumping system in Mesilla in Dona Ana county;

16. sixty thousand dollars (\$60,000) to plan, design and construct Joy drive, beginning at New Mexico highway 460 and bearing west to Montana Azul, in Anthony in Dona Ana county;

17. one hundred fifteen thousand dollars (\$115,000) to plan, design and construct improvements to Montes road in Dona Ana county;

18. one hundred ninety thousand dollars (\$190,000) to plan, design and construct improvements to New Mexico highway 292 in Dona Ana county;

19. sixty thousand dollars (\$60,000) to plan, design and construct improvements to Montana Azul road in Dona Ana county;

20. sixty thousand dollars (\$60,000) to plan, design and construct improvements to Montana Vista road in Dona Ana county;

21. seventy thousand dollars (\$70,000) to construct improvements to Acosta road in Anthony in Dona Ana county;

22. one hundred thousand dollars (\$100,000) to plan, design, construct, improve and upgrade roads in Harding county;

23. three hundred thousand dollars (\$300,000) to plan, design and construct road improvements, including paving, curbs, gutters and sidewalks, for an affordable housing project in Eunice in Lea county;

24. three hundred thousand dollars (\$300,000) to plan, design and construct improvements to paved and unpaved streets in Tatum in Lea county;

25. three hundred twenty thousand dollars (\$320,000) to plan, design and construct improvements, including landscaping and lighting, to Main street in Eunice in Lea county;

26. fifty thousand dollars (\$50,000) to plan and design improvements to roads in Corona in Lincoln county;

27. two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to China Springs Loop road, county road 57, in McKinley county;

28. one hundred thousand dollars (\$100,000) to plan, design and construct road improvements, including surfacing and drainage, to Smooth Mountain road, a county road in the Chichiltah chapter of the Navajo Nation in McKinley county;

29. fifty thousand dollars (\$50,000) for improvements, including surfacing, to Twin Buttes-Crestview road in McKinley county;

30. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct road improvements to Nizhoni-Mendoza road, including construction of a roadway, bicycle lanes, a pedestrian walkway, an intersection and a bridge, in McKinley county;

31. eighty thousand dollars (\$80,000) to purchase and install a traffic light at the intersection of Toltec avenue and United States highway 66 in Gallup in McKinley county;

32. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to county road 19 in McKinley county;

33. one million three hundred thousand dollars (\$1,300,000) to plan, design and construct improvements to the rail spur, including rail sighting and industrial areas, in Tucumcari in Quay county;

34. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Rio Arriba county roads 69 and 73 in Rio Arriba county;

35. one hundred thousand dollars (\$100,000) to plan, design and purchase material for improvements on county roads 144, 107, 108, 44 and 41, including widening and paving, in county commission district 2 in Rio Arriba county;

36. two hundred twenty-five thousand dollars (\$225,000) to plan, design and construct improvements, including the purchase of materials, for county roads in Roosevelt county;

37. three hundred thousand dollars (\$300,000) for design, engineering, archaeological clearances, environmental assessments and construction related to extending Main avenue and improving the intersection of United States highway 550 and New Mexico highway 516 in Aztec in San Juan county;

38. one hundred fifty thousand dollars (\$150,000) for the planning, design and construction, including archaeological clearances, environmental assessment, property and right-of-way acquisition, sidewalks, curbs and gutters of Ford, Zia and Pollard roads in Aztec in San Juan county;

39. fifty thousand dollars (\$50,000) to plan, design and construct improvements to county road 7900 in San Juan county;

40. one hundred forty-seven thousand dollars (\$147,000) to construct improvements, including chip seal, for county road 5500 in San Juan county;

41. seventy thousand dollars (\$70,000) to plan, design and construct road improvements to Camp Luna Vista de Vegas road in San Miguel county;

42. fifty thousand dollars (\$50,000) to plan, design and construct La Joya del Padre road in Pecos in San Miguel county;

43. two million three hundred fifty thousand dollars (\$2,350,000) to plan, design and construct paseo del Volcan in Rio Rancho in Sandoval county;

44. one hundred fifty thousand dollars (\$150,000) to plan, design and construct drainage and paving improvements in the Rio Vista area of Rio Rancho in Sandoval county;

45. fifty-five thousand dollars (\$55,000) to plan, design and construct improvements to Nancy's trail in La Cienega in Santa Fe county;

46. seventy-five thousand dollars (\$75,000) to plan, design and construct roadway and bridge improvements to camino Alire between west Alameda street and Alto street in Santa Fe in Santa Fe county;

47. fifty thousand dollars (\$50,000) to plan, design and construct improvements to camino de los Montoyas from New Mexico highway 599 south to Buckman road in Santa Fe in Santa Fe county;

48. fifty thousand dollars (\$50,000) to pave Tano road north in Santa Fe in Santa Fe county;

49. one hundred forty thousand dollars (\$140,000) to design, purchase materials for and pave a section of county road 55 in Santa Fe county;

50. one hundred thousand dollars (\$100,000) to construct improvements to Flor del Valle and Melody roads in Socorro in Socorro county;

51. two hundred thousand dollars (\$200,000) to plan, design and construct improvements, including draining and surfacing, to streets in Red River in Taos county;

52. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct improvements to the Don Carlos and Sandoval area roads, including drainage, sidewalks, striping and signage, in Los Lunas in Valencia county;

53. eighty thousand dollars (\$80,000) to purchase and install streetlights on Golf Course road in Valencia county;

54. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a pedestrian walkway on Golf Course road in Valencia county;

55. two hundred fifty thousand dollars (\$250,000) to plan, design and improve Airport road in Belen in Valencia county;

56. two hundred fifty thousand dollars (\$250,000) to plan, design and improve the Belen interchange at interstate 25 and exit 195 in Valencia county;

57. fifty thousand dollars (\$50,000) to plan, design and construct improvements to roads in Valley Gardens and West Gate heights in Albuquerque in Bernalillo county;

~~58. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the road to the shooting range park in Albuquerque in Bernalillo county;~~ [LINE-ITEM VETO]

59. fifty thousand dollars (\$50,000) to plan, design and construct paving of Anthony lane in Bernalillo county;

60. two hundred thousand dollars (\$200,000) for a storm drainage system, overlay and upgrades, including curbs and sidewalks, on Atrisco drive SW from Five Points road to Bridge boulevard SW in the south valley of Bernalillo county;

61. fifty thousand dollars (\$50,000) for streetlights on Zuni road between San Pedro and Wyoming boulevards in Albuquerque in Bernalillo county;

62. fifty thousand dollars (\$50,000) to design and construct median landscaping on Candelaria road from Chelwood street to Juan Tabo boulevard in Albuquerque in Bernalillo county;

63. fifty thousand dollars (\$50,000) for streetscape improvements to Menaul boulevard and Twelfth street in Albuquerque in Bernalillo county;

64. one hundred thousand dollars (\$100,000) to plan, design and construct road improvements, including paving, to Oakland avenue from Ventura street to Holbrook street and from Holbrook street to Eubank boulevard and to Glendale road from Holbrook street to Eubank boulevard in Albuquerque in Bernalillo county;

65. one hundred thousand dollars (\$100,000) to plan, design and construct road improvements, including paving, to Oakland avenue from Browning street to Eubank boulevard and for speed humps from Browning street to Lowell street in Albuquerque in Bernalillo county;

66. one hundred thousand dollars (\$100,000) to plan, design and construct road improvements, including paving, to Glendale road from Eubank boulevard to Browning street, to Holly avenue from Eubank boulevard to Browning street and to Palomas avenue from Tennyson street to Lowell street, and to construct a temporary light at Eubank and San Francisco road in Albuquerque in Bernalillo county;

67. one hundred thousand dollars (\$100,000) to plan, design and construct landscaping improvements to Irving boulevard between Unser avenue and Golf Course road in Albuquerque in Bernalillo county;

68. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Mountaineer road in Reserve in Catron county;

69. forty thousand dollars (\$40,000) to repair the road in Bibo canyon in the Seboyeta land grant in Cibola county;

70. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including resurfacing, to roads in Curry county;

71. one hundred thousand dollars (\$100,000) to purchase and install a living snow fence on state road 241 in Clovis in Curry county;

72. one hundred thousand dollars (\$100,000) to repair streets in Melrose in Curry county;

73. one hundred thousand dollars (\$100,000) to repair streets in Fort Sumner in De Baca county;

74. two hundred thousand dollars (\$200,000) to plan, design and construct improvements, including paving, flood drainage and emergency access improvements and acquisition of rights of way, to Baylor Canyon road in the east mesa area of Las Cruces in Dona Ana county;

75. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to an extension of Shrode road, including paving, acquisition of rights of way and utilities relocation, in Berino in Dona Ana county;

76. fifty thousand dollars (\$50,000) to plan, design and construct improvements to El Molino boulevard in Las Cruces in Dona Ana county;
77. two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to Elks drive in Las Cruces in Dona Ana county;
78. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Oak, Manso and Bell streets in Las Cruces in Dona Ana county;
79. thirty-five thousand dollars (\$35,000) to plan, design and construct a bituminous overlay on north Valley drive on the northerly edge of the Las Cruces city limits in Dona Ana county;
80. one hundred forty-five thousand dollars (\$145,000) for phases 1 and 2 planning, design and construction of flood control drainage and emergency access improvements to roads in Dona Ana county;
81. one hundred eighty thousand dollars (\$180,000) to plan, design and construct improvements to Prescott Anthony drive in Chaparral in Dona Ana county;
82. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Meador drive in Dona Ana county;
83. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including streets, drainage and sidewalks, at the Morningside area housing projects in Eddy county;
84. two hundred thousand dollars (\$200,000) to plan, design and construct improvements, including chip seal, to roads in Lea county;
85. one hundred thousand dollars (\$100,000) to plan, design and construct the Mendoza boulevard extension project, including construction of a roadway, bicycle lanes, a pedestrian walkway, an intersection and a bridge, in McKinley county;
86. fifty thousand dollars (\$50,000) for improvements to Whispering Cedars subdivision road in McKinley county;
87. fifty thousand dollars (\$50,000) to plan, design, survey and construct road improvements in Iyanbito in McKinley county;
88. thirty thousand dollars (\$30,000) to plan, design and construct various roads and make road improvements, including drainage, surfacing and a maintenance yard, in the Bread Springs chapter of the Navajo Nation in McKinley county;

89. fifty thousand dollars (\$50,000) to plan, design and construct road improvements in the Tsa-Ya-Toh chapter of the Navajo Nation in McKinley county;

90. fifty thousand dollars (\$50,000) for a feasibility study for the construction of Tse Bonito bridge in the Tsa-Ya-Toh chapter of the Navajo Nation in McKinley county;

91. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including material purchase, for El Carmen road in Mora county;

92. three hundred thousand dollars (\$300,000) to plan, design and construct improvements, including widening and an extension, to south Florida avenue in Alamogordo in Otero county;

93. fifty thousand dollars (\$50,000) to plan, design and construct road improvements, including resurfacing, to Coronado road, west Hill road, north Railroad avenue, Rio Vista road, camino Arboleda and McCurdy lane in Espanola in Rio Arriba county;

94. one hundred thousand dollars (\$100,000) to construct improvements, including the purchase of materials, for various streets in Portales in Roosevelt county;

95. one hundred thousand dollars (\$100,000) to resurface railroad crossing approaches in Portales in Roosevelt county;

96. one hundred sixty thousand dollars (\$160,000) to plan, design and construct improvements, including chip seal and overlay, to county road 6100 in San Juan county;

97. seventy-eight thousand dollars (\$78,000) to plan, design and construct road improvements, including paving, to county road 7800 in San Juan county;

98. one hundred fifty thousand dollars (\$150,000) to plan, design and construct road improvements, including archaeological and environmental surveys, property acquisition, rights of way, sidewalks, curbs and gutters, in Aztec in San Juan county;

99. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including subsurface, property acquisition, archaeological and environmental clearance, engineering and reconstruction to sewer lines and waterlines at Airport road in Aztec in San Juan county;

100. one hundred thousand dollars (\$100,000) for a feasibility study to assess the need and cost of widening N-36 in San Juan county;

~~[101. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Rocky road, including paving, in Pecos in San Miguel county;] [LINE-ITEM VETO]~~

102. fifty thousand dollars (\$50,000) to plan, design and construct improvements to county road B-31-A in San Miguel county;

103. fifty thousand dollars (\$50,000) to plan, design and construct improvements to county road B-28-B in San Miguel county;

104. fifty thousand dollars (\$50,000) to plan, design and construct drainage and road improvements to Tyson road in Rowe in San Miguel county;

105. fifty thousand dollars (\$50,000) to plan, design and construct drainage and improvements to roads in Conchas in San Miguel county;

106. fifty thousand dollars (\$50,000) to plan, design and construct a bridge in Ribera in San Miguel county;

107. fifty thousand dollars (\$50,000) to plan, design and construct drainage and road improvements to county road B-28-A in San Miguel county;

108. fifty thousand dollars (\$50,000) to plan, design and construct road improvements to Luna drive at Luna vocational-technical institute in San Miguel county;

109. fifty thousand dollars (\$50,000) to construct road improvements, including paving, blading, shaping and drainage, to county road B-29 in Villanueva in San Miguel county;

110. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, to camino de San Francisco in Sandoval county;

111. two hundred thousand dollars (\$200,000) to acquire land for and plan, design and construct a pedestrian walkway in Jemez Springs in Sandoval county;

112. one hundred thousand dollars (\$100,000) to plan, design and construct a lighted intersection with a traffic signal at New Mexico highway 528 and Northern boulevard in Corrales and Rio Rancho in Sandoval county;

113. fifty thousand dollars (\$50,000) for paving and drainage improvements on Agua Fria road from San Isidro crossing to the city limits in Santa Fe county;

114. fifty thousand dollars (\$50,000) to plan, design and construct improvements and paving to north Estrella road in La Cienega in Santa Fe county;

115. one hundred thousand dollars (\$100,000) to plan, design and construct repaving to Bullock and College streets in Socorro in Socorro county;

116. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, to Jaramillo road in Valencia county;

117. fifty thousand dollars (\$50,000) for improvements to Don Andres road and Los Chavez loop in Valencia county; and

118. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, to roads in Highland Meadows in Valencia county.

Chapter 347 Section 21 Laws 2005

Section 21. UNIVERSITIES AND COLLEGES--SEVERANCE TAX BONDS.-- Pursuant to the provisions of Section 1 of this act, upon certification by the following institutions of higher learning that the need exists for the issuance of the bonds, the following amounts are appropriated to the following institutions of higher learning for the following purposes:

A. to the governing board of Albuquerque technical-vocational institute, one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a new wing at Albuquerque technical-vocational institute in Albuquerque in Bernalillo county;

B. to the board of regents of eastern New Mexico university:

(1) twenty-five thousand dollars (\$25,000) to purchase and install a security and telephone system at eastern New Mexico university in Roswell in Chaves county;

(2) ninety thousand dollars (\$90,000) to equip the studio at the communications center at eastern New Mexico university in Portales in Roosevelt county;

(3) two hundred fifty thousand dollars (\$250,000) for equipment for a distance learning program for the underserved native population in McKinley and San Juan counties;

(4) one hundred thousand dollars (\$100,000) to plan, design and construct athletic facilities at eastern New Mexico university in Portales in Roosevelt county; and

(5) eighty-two thousand dollars (\$82,000) to purchase and equip a remote television van for eastern New Mexico university in Portales in Roosevelt county;

C. to the governing board of Luna vocational-technical institute:

(1) two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to the building trades facility at Luna vocational-technical institute in Las Vegas in San Miguel county; and

(2) seventy thousand dollars (\$70,000) to plan, design and construct improvements to the administration building at Luna vocational-technical institute in Las Vegas in San Miguel county;

D. to the board of regents of New Mexico state university:

(1) fifty thousand dollars (\$50,000) to plan, design and construct improvements to facilities and to equip the Clovis livestock center of New Mexico state university in Curry county;

(2) one hundred thousand dollars (\$100,000) to equip and upgrade the dental clinic and related facilities at New Mexico state university Dona Ana branch community college in Las Cruces in Dona Ana county;

(3) fifty thousand dollars (\$50,000) to purchase equipment for the football program at New Mexico state university in Las Cruces in Dona Ana county;

(4) fifty thousand dollars (\$50,000) to plan, design and construct improvements to the baseball field dugouts and locker room at New Mexico state university in Las Cruces in Dona Ana county;

(5) two hundred fifty thousand dollars (\$250,000) to construct improvements to and equip the baseball and softball complexes at New Mexico state university in Las Cruces in Dona Ana county;

(6) one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Aggie memorial stadium at New Mexico state university in Las Cruces in Dona Ana county;

(7) one hundred thousand dollars (\$100,000) to plan, design and construct the renovation of housing units for the children's village at New Mexico state university in Las Cruces in Dona Ana county;

(8) one hundred twenty-five thousand dollars (\$125,000) to purchase musical instruments for New Mexico state university in Las Cruces in Dona Ana county;

(9) three hundred thousand dollars (\$300,000) to plan, design and improve the athletic fields, including installing astro turf, at New Mexico state university in Las Cruces in Dona Ana county;

(10) five hundred thousand dollars (\$500,000) to prepare the site for and plan, design, construct, equip and furnish a health sciences building at the Alamogordo branch campus of New Mexico state university in Otero county;

(11) one hundred thousand dollars (\$100,000) to acquire land for, plan, design and construct an urban farming and science education center for underserved and at-risk kindergarten through college students in the south valley of Bernalillo county;

(12) twenty-five thousand dollars (\$25,000) to plan, design, construct and equip a skills lab for the nursing science program at the Grants branch campus of New Mexico state university in Cibola county;

(13) fifty thousand dollars (\$50,000) to purchase and install health equipment and an elevator at the Fidel activities center at the Grants branch campus of New Mexico state university in Cibola county;

(14) two hundred fifty thousand dollars (\$250,000) to plan and design the Native American cultural center at New Mexico state university in Las Cruces in Dona Ana county;

(15) one hundred thousand dollars (\$100,000) to plan, design, construct, furnish and equip renovations and the expansion of Gardiner hall at New Mexico state university in Las Cruces in Dona Ana county;

(16) two hundred thousand dollars (\$200,000) to plan, design and construct improvements to the football complex at New Mexico state university in Las Cruces in Dona Ana county;

(17) one hundred thousand dollars (\$100,000) to purchase and install information technology for the hotel, restaurant and tourism management department at New Mexico state university in Las Cruces in Dona Ana county;

(18) ten thousand dollars (\$10,000) to purchase and install information technology and equipment at the state agriculture and future farmers of America offices for use statewide; and

(19) one hundred thousand dollars (\$100,000) to purchase, install and construct improvements to the railroad crossing at the racehorse training facility for the Valencia soil and water conservation district in Valencia county, contingent upon the legal transfer of the railroad crossing property to Valencia county;

E. to the governing board of San Juan college, six hundred three thousand dollars (\$603,000) to plan, design, construct, equip and furnish the outdoor learning center demonstration gardens at San Juan college in Farmington in San Juan county;

F. to the board of regents of the university of New Mexico:

(1) one million five hundred thousand dollars (\$1,500,000) to complete work in progress at the men's and women's athletic facilities at the university of New Mexico in Albuquerque in Bernalillo county;

(2) one hundred thousand dollars (\$100,000) to plan, design and construct renovations to the Alfonso Ortiz center at the university of New Mexico in Albuquerque in Bernalillo county;

(3) one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and prepare the site for an addition to the championship golf course at the university of New Mexico in Albuquerque in Bernalillo county;

(4) four hundred ninety-five thousand dollars (\$495,000) to plan, design and construct heating, air conditioning and ventilation improvements at the Tow Diehm building at the university of New Mexico in Albuquerque in Bernalillo county;

(5) one million two hundred fifty thousand dollars (\$1,250,000) to plan, design and construct the Centennial engineering center at the school of engineering at the university of New Mexico in Albuquerque in Bernalillo county;

(6) one hundred thousand dollars (\$100,000) to purchase a double-wide trailer for use as a teen health center by the university of New Mexico in the To'hajiilee chapter of the Navajo Nation in Bernalillo county;

(7) one hundred thousand dollars (\$100,000) to purchase and install diagnostic equipment for the cancer research and treatment center at the university of New Mexico in Albuquerque in Bernalillo county;

(8) fifty thousand dollars (\$50,000) for an aquatic therapy and conditioning pool at the Tow Diehm trainers' room at the university of New Mexico in Albuquerque in Bernalillo county;

(9) seventy-five thousand dollars (\$75,000) for equipping the Tow Diehm athletic facility at the university of New Mexico in Albuquerque in Bernalillo county;

(10) fifty thousand dollars (\$50,000) to equip the women's basketball program at the university of New Mexico in Albuquerque in Bernalillo county;

(11) one hundred thousand dollars (\$100,000) for constructing, purchasing and installing equipment for the manufacturing training and technology center clean room at the university of New Mexico in Albuquerque in Bernalillo county;

(12) fifty thousand dollars (\$50,000) to plan, design, construct and equip improvements to the KUNM facilities at the university of New Mexico in Albuquerque in Bernalillo county;

(13) seventy-five thousand dollars (\$75,000) to purchase and install physical therapy equipment in the training room at the Tow Diehm athletic facility at the university of New Mexico in Albuquerque in Bernalillo county;

(14) seventy-five thousand dollars (\$75,000) to purchase and install video and television equipment in the Tow Diehm athletic facility at the university of New Mexico in Albuquerque in Bernalillo county; and

(15) fifty thousand dollars (\$50,000) to purchase digital photography and editing equipment for the graduate studies building at the university of New Mexico school of photography in Albuquerque in Bernalillo county;

G. to the board of regents of New Mexico highlands university, one million dollars (\$1,000,000) to plan, design, construct and equip a student services center at New Mexico highlands university in Las Vegas in San Miguel county;

H. to the board of regents of western New Mexico university:

(1) one million dollars (\$1,000,000) to plan, design, construct, furnish and improve the student dorms at western New Mexico university in Silver City in Grant county; and

(2) one hundred thousand dollars (\$100,000) to plan, design, renovate and equip the MECHA Native American student building at western New Mexico university in Silver City in Grant county;

I. to the board of regents of New Mexico institute of mining and technology, five hundred thousand dollars (\$500,000) to construct, equip and furnish the Joseph A. Fidel student services center at New Mexico institute of mining and technology in Socorro in Socorro county; and

J. to the board of regents of New Mexico military institute, seventy-five thousand dollars (\$75,000) for infrastructure renovation, expansion and deferred maintenance at New Mexico military institute in Roswell in Chaves county.

Chapter 347 Section 22 Laws 2005

Section 22. STATE BUILDINGS PROJECTS--CAPITAL PROGRAM FUND--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the property control division of the general services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the capital program fund for the following purposes:

1. four hundred thousand dollars (\$400,000) to plan, design and renovate the restoration of four historic buildings on the quadrangle at Fort Stanton in Lincoln county;

2. four hundred thousand dollars (\$400,000) to demolish two existing twenty-five-bed living units and a hazardous kitchen and to purchase or construct a new dorm living unit and kitchen at Camp Sierra Blanca in Fort Stanton in Lincoln county;

3. one hundred fifty thousand dollars (\$150,000) to purchase Los Amigos nursing home for a state building in Santa Rosa in Guadalupe county; and

4. forty thousand dollars (\$40,000) to plan, design and construct improvements to the mining museum in Grants in Cibola county.

Chapter 347 Section 23 Laws 2005

Section 23. AGING PROJECTS--AGING AND LONG-TERM SERVICES DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the aging and long-term services department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. seven thousand dollars (\$7,000) to purchase equipment for Los Volcanes, R. Sanchez and Paradise senior centers in Bernalillo county;

2. four thousand dollars (\$4,000) to purchase meals equipment for the Pueblo of Isleta senior center in Bernalillo county;

3. ten thousand dollars (\$10,000) to make improvements to the north Albuquerque meal site in Bernalillo county;

4. sixty-three thousand dollars (\$63,000) to purchase vehicles for the Pueblo of Isleta senior center in Bernalillo county;

5. one hundred thousand dollars (\$100,000) to make improvements to the North Valley senior center in Bernalillo county;

6. thirty thousand dollars (\$30,000) to make improvements to the John Marshall meal site in Bernalillo county;

7. seventy-five thousand dollars (\$75,000) to purchase equipment for senior centers citywide in Albuquerque in Bernalillo county;

8. thirty thousand dollars (\$30,000) to make improvements to the Barelaz senior center in Bernalillo county;

9. three hundred sixty-six thousand dollars (\$366,000) to plan, design, construct, equip and furnish an exercise facility at Los Volcanes senior center in Albuquerque in Bernalillo county;
10. seventy thousand dollars (\$70,000) to plan, design, construct, equip and furnish an exercise facility at Los Volcanes senior center in Albuquerque in Bernalillo county;
11. forty-three thousand dollars (\$43,000) to make improvements to the Roswell Joy center in Chaves county;
12. two hundred eight thousand dollars (\$208,000) to purchase vehicles for senior centers countywide in Chaves county;
13. thirty thousand dollars (\$30,000) to construct improvements to the parking lot, including paving, to comply with the Americans with Disabilities Act of 1990 at the Joy center in Lake Arthur in Chaves county;
14. twenty thousand dollars (\$20,000) to purchase equipment for the Grants senior center in Cibola county;
15. eighty thousand dollars (\$80,000) to make improvements to the Grants senior center in Cibola county;
16. forty-five thousand dollars (\$45,000) to purchase vehicles for the Pueblo of Acoma senior center in Cibola county;
17. two thousand dollars (\$2,000) to make improvements to the Pueblo of Acoma senior center in Cibola county;
18. ten thousand dollars (\$10,000) to purchase equipment for the Pueblo of Acoma senior center in Cibola county;
19. seventeen thousand dollars (\$17,000) to purchase meals equipment for the Grants senior center in Cibola county;
20. twenty thousand dollars (\$20,000) to make improvements to the Eagle Nest, Raton and Maxwell senior centers in Colfax county;
21. fourteen thousand dollars (\$14,000) to purchase meals equipment for countywide senior centers in Colfax county;
22. four thousand dollars (\$4,000) to purchase equipment for countywide senior centers in Colfax county;

23. eighty thousand dollars (\$80,000) to purchase vehicles for senior centers countywide in Colfax county;
24. twenty thousand dollars (\$20,000) to make improvements to the Grady senior center in Curry county;
25. seven thousand dollars (\$7,000) to make improvements to senior centers in Curry county;
26. twenty thousand dollars (\$20,000) to make improvements to the Baxter-Curren senior center in Curry county;
27. five thousand dollars (\$5,000) to purchase meals equipment for the Grady senior center in Curry county;
28. one hundred thousand dollars (\$100,000) for the multigenerational center, including planning, design and site selection, in the east mesa area of Las Cruces in Dona Ana county;
29. ninety thousand dollars (\$90,000) to purchase vehicles for citywide senior centers in Las Cruces in Dona Ana county;
30. forty-five thousand dollars (\$45,000) to purchase meals equipment for citywide senior centers in Las Cruces in Dona Ana county;
31. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish renovations and additions to the Munson senior center in Las Cruces in Dona Ana county;
32. thirty thousand dollars (\$30,000) to construct an addition, including restrooms, storage, offices and a library, for the adult daycare and respite facility at the Artesia senior center in Artesia in Eddy county;
33. eighty thousand dollars (\$80,000) to acquire property for, plan, design and construct an adult daycare and respite facility in Carlsbad in Eddy county;
34. ninety-four thousand six hundred dollars (\$94,600) to purchase vehicles for senior programs in Eddy county;
35. forty-eight thousand dollars (\$48,000) to purchase vehicles for the Artesia senior center in Eddy county;
36. one thousand four hundred dollars (\$1,400) to purchase meals equipment for the Artesia senior center in Eddy county;

37. one thousand five hundred dollars (\$1,500) to make improvements to the Silver City senior center in Grant county;

38. one thousand one hundred dollars (\$1,100) to make improvements to the Gila Valley senior center in Grant county;

39. five hundred dollars (\$500) to make improvements to the Santa Clara senior center in Grant county;

40. five thousand dollars (\$5,000) to make improvements to the Mimbres Valley senior center in Grant county;

41. five thousand dollars (\$5,000) to purchase meals equipment for La Loma senior center in Guadalupe county;

42. ten thousand dollars (\$10,000) to purchase meals equipment for the Puerta de Luna senior center in Guadalupe county;

43. forty-five thousand seven hundred dollars (\$45,700) to plan, design, construct and equip a senior center and meal site in Vaughn in Guadalupe county;

44. five thousand dollars (\$5,000) to make improvements to the Mosquero senior center in Harding county;

45. twenty-four thousand five hundred dollars (\$24,500) to purchase vehicles for the Mosquero/Roy senior centers in Harding county;

46. twelve thousand dollars (\$12,000) to purchase meals equipment for the Ena-Mitchell senior center in Hidalgo county;

47. four thousand dollars (\$4,000) to purchase equipment for the Ena-Mitchell senior center in Hidalgo county;

48. sixteen thousand dollars (\$16,000) to purchase vehicles for the Ena-Mitchell senior center in Hidalgo county;

49. twenty-five thousand dollars (\$25,000) to purchase vehicles for the Hobbs senior center in Lea county;

50. fifty-five thousand dollars (\$55,000) to purchase vehicles for the Lovington senior center in Lea county;

51. two thousand five hundred dollars (\$2,500) to purchase meals equipment for the Lovington senior center in Lea county;

52. one hundred thirty thousand dollars (\$130,000) to make improvements to the Bill McKibben senior center in Lea county;

53. three thousand dollars (\$3,000) to purchase equipment for the Jal senior center in Lea county;

54. fifty thousand dollars (\$50,000) to purchase vehicles for the Ruidoso senior center in Lincoln county;

55. five thousand dollars (\$5,000) to purchase equipment for the Lincoln/Zia senior centers in Lincoln county;

56. eight thousand dollars (\$8,000) to purchase meals equipment for the Lincoln/Zia senior centers in Lincoln county;

57. ten thousand dollars (\$10,000) to make improvements to the Lincoln/Zia senior centers in Lincoln county;

58. eighty thousand dollars (\$80,000) to purchase vehicles for the Lincoln/Zia senior centers in Lincoln county;

59. four thousand dollars (\$4,000) to purchase equipment for the Los Alamos senior center in Los Alamos county;

60. twenty-two thousand dollars (\$22,000) to purchase vehicles for the Los Alamos senior center in Los Alamos county;

61. thirty thousand dollars (\$30,000) to purchase vehicles for the Deming/Luna senior program in Luna county;

62. forty-four thousand one hundred fifty-five dollars (\$44,155) to purchase vehicles for the Deming/Luna senior center in Luna county;

63. six thousand eight hundred forty-five dollars (\$6,845) to purchase meals equipment for the Deming/Luna senior center in Luna county;

64. six thousand dollars (\$6,000) to make improvements to the Ramah and Thoreau senior centers in McKinley county;

65. seven thousand dollars (\$7,000) to purchase equipment for the Ramah and Thoreau senior centers in McKinley county;

66. eight thousand dollars (\$8,000) to make improvements to the Thoreau senior center in McKinley county;

67. eighty thousand dollars (\$80,000) to make improvements to the Ramah senior center in McKinley county;

68. three thousand dollars (\$3,000) to purchase meals equipment for the Ramah and Thoreau senior centers in McKinley county;

69. three thousand dollars (\$3,000) to make improvements to the Baca senior center on the Navajo Nation in McKinley county;

70. thirty-three thousand dollars (\$33,000) to make improvements to the Becenti senior center on the Navajo Nation in McKinley county;

71. seventy thousand dollars (\$70,000) to make improvements to the Bread Springs senior center on the Navajo Nation in McKinley county;

72. twenty-eight thousand seven hundred dollars (\$28,700) to purchase meals equipment for the Baca, Bread Springs, Red Rock and Torreon senior centers on the Navajo Nation in McKinley county;

73. thirteen thousand two hundred dollars (\$13,200) to purchase equipment for the Bread Springs and Chichiltah senior centers on the Navajo Nation in McKinley county;

74. twenty-three thousand dollars (\$23,000) to purchase equipment for the Church Rock, Red Rock and Torreon senior centers on the Navajo Nation in McKinley county;

75. one hundred thirty-five thousand dollars (\$135,000) to purchase vehicles for the Canoncito, Chichiltah and Red Rock senior centers on the Navajo Nation in McKinley county;

76. forty-five thousand dollars (\$45,000) to plan, design and construct a senior center at the Chichiltah chapter of the Navajo Nation in McKinley county;

77. seventy-four thousand two hundred ninety-four dollars (\$74,294) to plan, design, construct, equip and furnish an adult daycare center at the Pueblo of Zuni in McKinley county;

78. fifty thousand dollars (\$50,000) to make improvements to the Mora senior center in Mora county;

79. two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish a senior center for the Mescalero Apache Tribe in Otero county;

80. twenty-two thousand dollars (\$22,000) to make improvements to the Alamo senior center in Otero county;

81. twelve thousand dollars (\$12,000) to purchase meals equipment for the Alamo senior center in Otero county;

82. twenty-five thousand dollars (\$25,000) to purchase vehicles for the Tularosa senior center in Otero county;

83. seventy-three thousand dollars (\$73,000) to purchase vehicles for the Pioneer senior program in Quay county;

84. three thousand dollars (\$3,000) to purchase equipment for senior sites in Quay county;

85. fifteen thousand dollars (\$15,000) to purchase meals equipment for senior sites in Quay county;

86. twelve thousand dollars (\$12,000) to purchase meals equipment for the Logan senior center in Quay county;

87. four thousand dollars (\$4,000) to make improvements to the Logan senior center in Quay county;

88. twenty thousand dollars (\$20,000) to make improvements to the Pueblo of Santa Clara senior center in Rio Arriba county;

89. eleven thousand dollars (\$11,000) to purchase meals equipment for countywide senior centers in Rio Arriba county;

90. fourteen thousand dollars (\$14,000) to purchase equipment for countywide senior centers in Rio Arriba county;

91. fifteen thousand dollars (\$15,000) to purchase vehicles for countywide senior centers in Rio Arriba county;

92. forty-five thousand dollars (\$45,000) to purchase vehicles for senior citizens programs at the eight northern Indian pueblos council in Rio Arriba county;

93. ninety thousand dollars (\$90,000) to purchase meals equipment for senior centers at the pueblos of Nambe, Picuris, Pojoaque and San Ildefonso in multiple counties;

94. five thousand dollars (\$5,000) to purchase equipment for senior centers at the pueblos of Nambe, Picuris, Pojoaque and San Ildefonso in multiple counties;

95. sixteen thousand dollars (\$16,000) to purchase meals equipment for the senior meal site in Roosevelt county;

96. eight thousand dollars (\$8,000) to make improvements to the community services senior center in Roosevelt county;

97. two thousand dollars (\$2,000) to make improvements to the Elida senior center in Roosevelt county;

98. twenty-five thousand dollars (\$25,000) to purchase vehicles for the Blanco senior center in San Juan county;

99. thirty thousand dollars (\$30,000) to purchase meals equipment for the Bloomfield and Bonnie Dallas senior centers in San Juan county;

100. fifty-five thousand dollars (\$55,000) to purchase vehicles for the Bloomfield and Blanco senior centers in San Juan county;

101. four thousand dollars (\$4,000) to make improvements to the San Juan senior center in San Juan county;

102. eleven thousand dollars (\$11,000) to make improvements to the Lower Valley/Fruitland senior centers in San Juan county;

103. eight hundred dollars (\$800) to purchase equipment for the Lower Valley/Fruitland senior centers in San Juan county;

104. twenty-five thousand dollars (\$25,000) to make improvements to the Two Grey Hills senior center on the Navajo Nation in San Juan county;

105. fifty thousand dollars (\$50,000) to make improvements to the Sanostee senior center on the Navajo Nation in San Juan county;

106. two thousand dollars (\$2,000) to make improvements to the Fort Defiance senior center on the Navajo Nation in San Juan county;

107. sixteen thousand dollars (\$16,000) to purchase meals equipment for the Fort Defiance senior center on the Navajo Nation in San Juan county;

108. fifty thousand dollars (\$50,000) to purchase equipment for the Fort Defiance senior center on the Navajo Nation in San Juan county;

109. forty-nine thousand dollars (\$49,000) to purchase vehicles for the Hogback senior center on the Navajo Nation in San Juan county;

110. thirty-five thousand dollars (\$35,000) to purchase vehicles for the Nageezi senior center on the Navajo Nation in San Juan county;
111. nine thousand dollars (\$9,000) to purchase meals equipment for the Nageezi senior center on the Navajo Nation in San Juan county;
112. forty thousand dollars (\$40,000) to make improvements to the Nageezi senior center on the Navajo Nation in San Juan county;
113. thirty-five thousand dollars (\$35,000) to purchase vehicles for the Lake Valley senior center on the Navajo Nation in San Juan county;
114. four thousand dollars (\$4,000) to purchase equipment for the Lake Valley senior center on the Navajo Nation in San Juan county;
115. twenty-five thousand dollars (\$25,000) to purchase vehicles for the Two Grey Hills senior center on the Navajo Nation in San Juan county;
116. one thousand dollars (\$1,000) to purchase meals equipment for the Lake Valley senior center on the Navajo Nation in San Juan county;
117. nine thousand dollars (\$9,000) to purchase equipment for the Nageezi senior center on the Navajo Nation in San Juan county;
118. one hundred thirty thousand dollars (\$130,000) to purchase vehicles for the Fort Defiance senior center on the Navajo Nation in San Juan county;
119. eight thousand dollars (\$8,000) to purchase equipment for the Two Grey Hills senior center on the Navajo Nation in San Juan county;
120. twenty thousand dollars (\$20,000) to purchase meals equipment for the Shiprock senior center on the Navajo Nation in San Juan county;
121. two hundred sixty-five thousand dollars (\$265,000) to plan, design, construct, equip and furnish a senior center in the Burnham chapter of the Navajo Nation in San Juan county;
122. twenty thousand dollars (\$20,000) to make improvements to senior centers in Las Vegas and other locations in San Miguel county;
123. sixty thousand dollars (\$60,000) to make improvements to the Las Vegas senior center in San Miguel county;
124. fifteen thousand dollars (\$15,000) to purchase equipment for the San Miguel senior center in Ribera in San Miguel county;

125. one hundred sixty-five thousand dollars (\$165,000) to plan, design and construct improvements, including an expansion, to the Placitas senior and community center in Sandoval county;

126. fifty-four thousand dollars (\$54,000) to purchase meals equipment for the Rio Rancho senior center in Sandoval county;

127. thirty-six thousand dollars (\$36,000) to make improvements to the Pueblo of San Felipe senior center in Sandoval county;

128. twenty-four thousand seven hundred dollars (\$24,700) to make improvements to the Pena Blanca senior center in Sandoval county;

129. thirty-one thousand five hundred dollars (\$31,500) to make improvements to the Cuba and Pena Blanca senior centers in Sandoval county;

130. thirteen thousand dollars (\$13,000) to purchase meals equipment for countywide senior centers in Sandoval county;

131. one hundred seventy thousand dollars (\$170,000) to purchase vehicles for countywide senior centers in Sandoval county;

132. fifteen thousand dollars (\$15,000) to purchase vehicles for the Meadowlark senior center in Sandoval county;

133. one hundred forty thousand dollars (\$140,000) to purchase vehicles for the Pueblo of San Felipe senior center in Sandoval county;

134. thirteen thousand dollars (\$13,000) to make improvements to the Pueblo of Santo Domingo senior center in Sandoval county;

135. eighteen thousand dollars (\$18,000) to purchase meals equipment for the Pueblo of Santo Domingo senior center in Sandoval county;

136. five thousand dollars (\$5,000) to purchase equipment for countywide senior centers in Sandoval county;

137. twenty thousand dollars (\$20,000) to purchase equipment for the Pueblo of Jemez senior center in Sandoval county;

138. five thousand dollars (\$5,000) to purchase equipment for the Pueblo of San Felipe senior center in Sandoval county;

139. three hundred thousand dollars (\$300,000) to make improvements to the Pueblo of Santa Ana senior center in Sandoval county;

140. one hundred thousand dollars (\$100,000) to make improvements to the Pueblo of Jemez senior center in Sandoval county;

141. twenty-five thousand dollars (\$25,000) to purchase vehicles for the senior companion program in Sandoval county;

~~142. fifty thousand dollars (\$50,000) to purchase meals equipment for the Pueblo of Pojeaque senior center in Santa Fe county;~~ [*LINE-ITEM VETO*]

143. one hundred thousand dollars (\$100,000) to plan, design and make improvements to the Pueblo of Nambe senior center in Santa Fe county;

144. eight thousand dollars (\$8,000) to make improvements to the senior centers in Santa Fe in Santa Fe county;

145. forty-eight thousand dollars (\$48,000) to purchase vehicles for the Pueblo of San Ildefonso senior center in Santa Fe county;

146. eighty thousand dollars (\$80,000) to purchase meals equipment for senior centers in Santa Fe in Santa Fe county;

147. forty-nine thousand dollars (\$49,000) to make improvements to the Chimayo senior center in Santa Fe county;

148. fifty thousand dollars (\$50,000) to make improvements to the north central New Mexico area agency on aging building in Santa Fe county;

149. ninety-five thousand dollars (\$95,000) to plan, design, construct, furnish and equip a senior center in Eldorado in Santa Fe county;

150. seventy thousand dollars (\$70,000) to purchase a vehicle for the division of senior services in Santa Fe in Santa Fe county;

151. sixty-five thousand dollars (\$65,000) to purchase vehicles for senior centers in Sierra county;

152. forty-one thousand dollars (\$41,000) to purchase meals equipment for senior centers in Sierra county;

153. nine thousand dollars (\$9,000) to purchase equipment for senior centers in Sierra county;

154. one thousand dollars (\$1,000) to purchase meals equipment for the Socorro senior center in Socorro county;

155. twenty thousand dollars (\$20,000) to make improvements to the Socorro senior center in Socorro county;

156. sixteen thousand dollars (\$16,000) to purchase meals equipment for countywide senior centers in Socorro county;

157. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a senior and multipurpose center in the Alamo chapter of the Navajo Nation in Socorro county;

158. one hundred thousand dollars (\$100,000) to purchase video and audio surveillance cameras for use statewide;

159. forty-eight thousand dollars (\$48,000) to purchase vehicles for senior centers in Taos county;

160. three thousand dollars (\$3,000) to make improvements to senior centers in Taos county;

161. fifty thousand dollars (\$50,000) to purchase vehicles for the Pueblo of Taos senior center in Taos county;

162. ninety thousand dollars (\$90,000) to make improvements to the Pueblo of Picuris senior center in Taos county;

163. eight thousand dollars (\$8,000) to purchase meals equipment for senior centers in Taos county;

164. eight thousand dollars (\$8,000) to purchase meals equipment for the Pueblo of Taos senior center in Taos county;

165. seven thousand dollars (\$7,000) to purchase equipment for the Pueblo of Taos senior center in Taos county;

166. thirty thousand dollars (\$30,000) to plan, design and construct improvements, including an addition, to the Amalia senior center in Taos county;

167. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish the senior center in the Pueblo of Taos in Taos county;

168. one hundred seventy thousand dollars (\$170,000) to plan, design and construct improvements to the senior center in Mountainair in Torrance county;

169. one hundred sixty thousand dollars (\$160,000) to make improvements to senior centers in Torrance county;

170. fifty thousand dollars (\$50,000) to make improvements to the Moriarty senior center in Torrance county;

171. seventy-seven thousand dollars (\$77,000) to purchase vehicles for the senior centers in Torrance county;

172. ten thousand dollars (\$10,000) to make improvements to the roof at the senior center in Encino in Torrance county;

173. three thousand dollars (\$3,000) to purchase equipment for the senior center in Clayton in Union county;

174. two hundred thousand dollars (\$200,000) to purchase vehicles for transportation of seniors in Valencia county;

175. fifty thousand dollars (\$50,000) to renovate a building in Los Lunas for use as a kitchen for senior programs in Valencia county;

176. one hundred thousand dollars (\$100,000) to plan, design, construct and equip a centralized kitchen for seniors in Albuquerque in Bernalillo county;

177. twenty-five thousand dollars (\$25,000) to plan, design and construct a Joy center in Hagerman in Chaves county;

178. forty-five thousand dollars (\$45,000) to purchase a vehicle for the Fort Sumner senior program in De Baca county;

179. thirty-seven thousand dollars (\$37,000) to purchase a four-wheel-drive vehicle for the senior center in the Bread Springs chapter of the Navajo Nation in McKinley county;

180. seventeen thousand one hundred dollars (\$17,100) to plan, design and construct an addition to the senior center in the Bread Springs chapter of the Navajo Nation in McKinley county;

181. seven thousand dollars (\$7,000) to purchase kitchen equipment for the senior center in the Bread Springs chapter of the Navajo Nation in McKinley county;

182. eleven thousand four hundred dollars (\$11,400) to purchase equipment for the senior center in the Bread Springs chapter of the Navajo Nation in McKinley county;

183. ten thousand dollars (\$10,000) to pave and improve the parking lot at the Mora senior center in Mora county;

184. six thousand dollars (\$6,000) to equip and furnish the senior center in Mora county;

185. fifteen thousand dollars (\$15,000) to plan, design and construct a garage at the Mora senior center in Mora county;

186. twenty thousand dollars (\$20,000) to plan, design and construct wheelchair and mobility-related accessibility modifications to the homes of elderly or disabled Native Americans in McKinley, Cibola and San Juan counties;

187. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a senior center in the Pueblo of San Juan in Rio Arriba county;

188. fifty thousand dollars (\$50,000) to purchase land for, plan, design and construct a senior center in Dixon in Rio Arriba county;

189. five thousand dollars (\$5,000) to purchase equipment for a senior center in Truchas in Rio Arriba county;

190. fifty thousand dollars (\$50,000) to purchase a van for senior citizens at the San Juan chapter of the Navajo Nation in San Juan county;

191. one hundred fifty thousand dollars (\$150,000) to plan, design, construct or purchase a senior center for the Torreon-Star Lake chapter of the Navajo Nation in Sandoval county;

192. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish a senior center in the Counselor chapter of the Navajo Nation in Sandoval county; and

193. twenty thousand dollars (\$20,000) to purchase a vehicle for senior citizens in Santa Fe in Santa Fe county.

Chapter 347 Section 24 Laws 2005

Section 24. ARMORY PROJECTS--STATE ARMORY BOARD--GENERAL FUND.--The following amounts are appropriated from the general fund to the state armory board for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. ten thousand dollars (\$10,000) to renovate the Bataan memorial museum in Santa Fe in Santa Fe county;

2. five hundred thousand dollars (\$500,000) to plan, design and construct improvements to armories statewide; and

3. ten thousand dollars (\$10,000) to improve the national guard armory in Las Cruces in Dona Ana county.

Chapter 347 Section 25 Laws 2005

Section 25. J.P. TAYLOR JUVENILE JUSTICE CENTER PROJECT--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the children, youth and families department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act for the following purposes:

1. thirty-five thousand dollars (\$35,000) for plumbing and electrical infrastructure improvements to the greenhouse at the J.P. Taylor juvenile justice center in Dona Ana county; and

2. two thousand dollars (\$2,000) to purchase digital photography equipment for the J.P. Taylor juvenile justice center in Dona Ana county.

Chapter 347 Section 26 Laws 2005

Section 26. CORRECTIONS PROJECTS--CORRECTIONS DEPARTMENT--GENERAL FUND.--The following amounts are appropriated to the corrections department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. five hundred thousand dollars (\$500,000) to purchase radios and vests for correctional officers statewide;

2. two million dollars (\$2,000,000) for security upgrades at correctional facilities statewide; and

3. one hundred thousand dollars (\$100,000) for a six- to nine-month long term substance abuse and alcohol treatment rehabilitation program at the westside facility in Albuquerque in Bernalillo county.

Chapter 347 Section 27 Laws 2005

Section 27. COURT PROJECTS--FIRST, FIFTH AND THIRTEENTH JUDICIAL DISTRICT COURTS--GENERAL FUND.--

A. Twenty-five thousand dollars (\$25,000) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to plan, design, construct and purchase an automated database system to track water rights adjudication for the administrative office of the courts in Santa Fe in Santa Fe county.

B. The following amounts are appropriated to the following district courts for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. to the first judicial district court:

~~[(a) six thousand dollars (\$6,000) to purchase furniture for the first judicial district court in Los Alamos in Los Alamos county;]~~ [*LINE-ITEM VETO*]

(b) sixty thousand dollars (\$60,000) to purchase furniture for the first judicial district courthouse in Tierra Amarilla in Rio Arriba county;

(c) twenty thousand dollars (\$20,000) to purchase and install recording equipment for the first judicial district court in Santa Fe in Santa Fe county;

(d) twenty-five thousand dollars (\$25,000) to equip the first judicial district courthouse in Santa Fe county; and

(e) twenty-five thousand dollars (\$25,000) to purchase and install information technology, related infrastructure and digital recording equipment for the first judicial district court in Santa Fe in Santa Fe county;

(2) to the second judicial district court:

(a) fifty thousand dollars (\$50,000) to upgrade the security system at the judicial complex in Bernalillo county; and

(b) thirty thousand dollars (\$30,000) to hire pro tempore judges to hear cases of alleged probation violation in Bernalillo county;

(3) to the fifth judicial district court, twenty-five thousand dollars (\$25,000) to plan, design, purchase and install video arraignment equipment for the fifth judicial district court in Chaves county; and

(4) to the thirteenth judicial district court, three hundred thousand dollars (\$300,000) to furnish and equip the courthouse in Sandoval county.

Chapter 347 Section 29 Laws 2005

Section 28. DISTRICT ATTORNEY VEHICLES--ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS--GENERAL FUND.--Fifty-seven thousand dollars (\$57,000) is appropriated from the general fund to the administrative office of the district attorneys for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to purchase vehicles for the administrative office of the district attorneys in Santa Fe in Santa Fe county.

Chapter 347 Section 29 Laws 2005

Section 29. DISTRICT ATTORNEY PROJECT--FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE--GENERAL FUND.--The following amounts are appropriated from the general fund to the following agencies for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

A. twenty-five thousand dollars (\$25,000) to the first judicial district attorney's office to purchase a vehicle for the first judicial district attorney's office in Santa Fe in Santa Fe county; and

B. fifty thousand dollars (\$50,000) to the thirteenth judicial district attorney to purchase vehicles in Cibola, Sandoval and Valencia counties.

Chapter 347 Section 30 Laws 2005

Section 30. CULTURAL AFFAIRS PROJECTS--CULTURAL AFFAIRS DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the cultural affairs department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. ten thousand dollars (\$10,000) to plan, design and construct an educational complex for the New Mexico museum of natural history and science in Albuquerque in Bernalillo county;

2. nine hundred four thousand two hundred forty-three dollars (\$904,243) to purchase land and a building adjacent to the New Mexico museum of natural history and science in Albuquerque in Bernalillo county;

3. one million five thousand dollars (\$1,005,000) for planning, design and construction of an education building at the national Hispanic cultural center in Albuquerque in Bernalillo county;

4. sixty-five thousand dollars (\$65,000) to purchase and install radio station equipment, including an antenna and a tower, at the national Hispanic cultural center in Albuquerque in Bernalillo county;

5. seventy thousand dollars (\$70,000) to plan, design and construct improvements to buildings, structures and exhibits at the farm and ranch heritage museum in Las Cruces in Dona Ana county;

6. ten thousand dollars (\$10,000) to purchase a tractor, an adobe mixer and outdoor furniture for Fort Selden state monument in Radium Springs in Dona Ana county;

7. twelve thousand dollars (\$12,000) to upgrade the exhibit printer at the farm and ranch heritage museum in Las Cruces in Dona Ana county;

8. eighty thousand dollars (\$80,000) to plan, design and construct renovations at Lincoln state monument in Lincoln county;

9. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to works progress administration public art pieces in public buildings in Santa Fe in Santa Fe county;

10. seventy-five thousand dollars (\$75,000) to plan, design, construct, purchase and install exhibits for the museum of Spanish colonial art in Santa Fe in Santa Fe county;

11. forty-five thousand dollars (\$45,000) to renovate and upgrade the infrastructure at the center for contemporary arts in Santa Fe in Santa Fe county;

12. three million dollars (\$3,000,000) to plan, design and construct a New Mexico archaeology center in Santa Fe county to serve as a research and collections repository for the state's archaeological collection;

13. thirty-five thousand dollars (\$35,000) to plan and design improvements to works progress administration art projects statewide;

14. one million dollars (\$1,000,000) for renovations and repairs, including upgrades to comply with the Americans with Disabilities Act of 1990, at cultural affairs department facilities statewide;

15. one hundred thousand dollars (\$100,000) to renovate the New Mexico museum of space history, including elevator, generator, security, handicap lifts and heating, ventilation and air conditioning upgrades, in Alamogordo in Otero county;

16. one hundred thousand dollars (\$100,000) to plan, design and construct an archaeological storage and research center for the office of archaeological studies in the museum of New Mexico in Santa Fe in Santa Fe county;

17. fifty thousand dollars (\$50,000) to plan, design, construct and remodel a multipurpose greenhouse at the children's museum in Santa Fe in Santa Fe county;

18. twenty thousand dollars (\$20,000) to construct improvements, including purchasing equipment, materials and supplies, for the Santa Fe performing arts center in Santa Fe county;

19. twenty-five thousand dollars (\$25,000) to landscape and purchase and install outdoor furniture to comply with the Americans with Disabilities Act of 1990 at El Camino Real international heritage center in Socorro in Socorro county; and

20. seventy-five thousand dollars (\$75,000) to purchase and equip a bookmobile for the rural bookmobile west office in Los Lunas in Valencia county.

Chapter 347 Section 31 Laws 2005

Section 31. CUMBRES AND TOLTEC RAILROAD PROJECT--CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION--GENERAL FUND.--One million dollars (\$1,000,000) is appropriated from the general fund to the Cumbres and Toltec scenic railroad commission for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for track rehabilitation and locomotive upgrades for the Cumbres and Toltec scenic railroad.

Chapter 347 Section 32 Laws 2005

Section 32. ECONOMIC DEVELOPMENT PROJECTS--ECONOMIC DEVELOPMENT DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the economic development department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. two million dollars (\$2,000,000) to plan, design, construct and improve economic development manufacturing infrastructure in Albuquerque in Bernalillo county;
2. thirty-five thousand dollars (\$35,000) to plan, design and redevelop the Pittsburg and Midway mine in McKinley county;
3. one million dollars (\$1,000,000) to plan, design, construct, equip and furnish the southwest regional spaceport in Sierra county;
4. one million dollars (\$1,000,000) to plan and design the redevelopment of central business districts as part of the mainstreet program statewide;
5. ten million dollars (\$10,000,000) to make needed investments to stimulate economic development statewide; and
6. one hundred thousand dollars (\$100,000) to contract for manufacturing extension services, contingent on the receipt of money from the national institute of standards and technology to operate a manufacturing center in the state that is approved by that institute.

Chapter 347 Section 33 Laws 2005

Section 33. ENERGY, MINERALS AND NATURAL RESOURCES PROJECTS--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the energy,

minerals and natural resources department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one million dollars (\$1,000,000) for statewide park improvements;
2. three million dollars (\$3,000,000) for bosque revitalization and to plan and develop trails in the north bosque area along the Rio Grande;
3. one hundred fifty thousand dollars (\$150,000) to purchase the development rights on agricultural properties in the middle Rio Grande valley;
4. two hundred thousand dollars (\$200,000) to plan, design and construct a multipurpose center in Cerrillos in Santa Fe county;
5. two hundred fifty thousand dollars (\$250,000) for land grant planning on the development of housing, land use and infrastructure statewide; and
6. one hundred fifty thousand dollars (\$150,000) for expansion, preservation, restoration and visitors' facility improvements at Shakespeare Ghost Town state park in Lordsburg in Hidalgo county.

Chapter 347 Section 34 Laws 2005

Section 34. STATE ENGINEER PROJECTS--OFFICE OF THE STATE ENGINEER--GENERAL FUND.--The following amounts are appropriated from the general fund to the office of the state engineer for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. three hundred fifty thousand dollars (\$350,000) to plan, design and construct improvements to the dams in Springer in Colfax county;
2. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the Las Cruces flood control dam in Dona Ana county;
3. sixty thousand dollars (\$60,000) to plan, design and construct flood control improvements to the Avalon-Alacran watershed in the Carlsbad soil and water conservation district in Eddy county;
4. ninety thousand dollars (\$90,000) for drilling of irrigation wells and purchase and installation of pipelines for the Hope community ditch association in Eddy county;
5. ten thousand dollars (\$10,000) to plan and design a dam and acequia water storage facility in Anton Chico in Guadalupe county;

6. one million dollars (\$1,000,000) to purchase, install and improve real-time data collection water measurement stations and diversion works required to properly administer water rights in the Nambe-Pojoaque-Tesuque stream system in multiple counties;

7. seventeen thousand dollars (\$17,000) to develop and implement a model water rights protection project for the acequia de Alcalde in Rio Arriba county;

8. ten thousand dollars (\$10,000) to plan, design and construct stabilization improvements to the dam northside in Villanueva in San Miguel county;

9. one hundred thousand dollars (\$100,000) to plan, design and construct improvements and repairs to the Barranca drainage channel in Rio Rancho in Sandoval county;

10. two hundred fifty thousand dollars (\$250,000) to continue to excavate and improve the temporary channel through the Elephant Butte reservoir in Sierra county;

11. two million dollars (\$2,000,000) for dam renovations and repairs statewide;

12. two hundred thousand dollars (\$200,000) to purchase water rights for El Prado water and sanitation district in El Prado in Taos county;

13. fifty thousand dollars (\$50,000) to purchase water rights for Hagerman in Chaves county;

14. twenty-five thousand dollars (\$25,000) to purchase water rights in Cibola county;

15. twenty-five thousand dollars (\$25,000) for the purchase of water rights for San Rafael in Cibola county;

16. fifty thousand dollars (\$50,000) to plan, design and construct the rehabilitation of the dam at the San Mateo reservoir for the San Mateo community ditch association in Cibola county;

17. twenty thousand dollars (\$20,000) to plan, design and construct a diversion dam for the acequia de la Sierra in Mora county; and

18. forty-five thousand dollars (\$45,000) for flood control and irrigation system improvements for the Bluewater dam in the Bluewater-Toltec irrigation district in Cibola and McKinley counties.

Chapter 347 Section 35 Laws 2005

Section 35. INTERSTATE STREAM PROJECTS--INTERSTATE STREAM COMMISSION--GENERAL FUND.--The following amounts are appropriated from the general fund to the interstate stream commission for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. seventy thousand dollars (\$70,000) to plan, design and construct improvements to the west Puerto de Luna community ditch in Guadalupe county;
2. fifteen thousand dollars (\$15,000) to plan, design and construct improvements to the acequia de los Ancones in Rio Arriba county;
3. fifteen thousand dollars (\$15,000) to make improvements to the Chamita community ditch in Rio Arriba county;
4. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the acequia de la Canova in Velarde in Rio Arriba county;
5. five thousand dollars (\$5,000) to construct a pipeline siphon for the acequia Gonzales-Gurule in Rio Arriba county;
6. fifteen thousand dollars (\$15,000) to plan, design and construct improvements to the acequia de la Posecion in Rio Arriba county;
7. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the acequia del Llano in Dixon in Rio Arriba county;
8. fifteen thousand dollars (\$15,000) for repairs and improvements to the acequia de la Jarita in Petaca in Rio Arriba county;
9. forty thousand dollars (\$40,000) for reconstruction and rehabilitation of the acequia diversion dam on the acequia del Llano in San Miguel county;
10. twenty-five thousand dollars (\$25,000) to repair and reconstruct the ditch system for the west Pecos acequia association in San Miguel county;
11. five thousand dollars (\$5,000) to construct improvements to the acequia de la Agua Caliente in San Jose in San Miguel county;
12. five thousand dollars (\$5,000) for improvements to the acequia de Potrero in Chimayo in Santa Fe county;
13. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the acequia de Llano in Santa Fe in Santa Fe county;

14. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the acequia in La Cienega in Santa Fe county;

15. two million dollars (\$2,000,000) for purchasing water rights and land and making related infrastructure improvements to implement the long-term strategy for the state's permanent compliance with the Pecos River Compact and the United States supreme court amended decree in *Texas v. New Mexico*, No. 65 original;

16. forty-five thousand dollars (\$45,000) for improvements and repairs to the acequia de Santa Cruz in Santa Fe and Rio Arriba counties;

17. forty-five thousand dollars (\$45,000) to make improvements and repairs to the acequia del Llano in Espanola in Rio Arriba county;

18. twenty thousand dollars (\$20,000) for improvements to the San Miguel acequia in San Miguel county;

19. ten thousand dollars (\$10,000) to plan, design and construct improvements to fence and protect the acequias de los Chupaderos watershed in San Miguel county;

20. ten thousand dollars (\$10,000) to repair and reconstruct the ditch in Villanueva in San Miguel county;

21. ten thousand dollars (\$10,000) to plan, design and construct improvements to the San Jose ditch for the San Jose mutual domestic water consumers association in San Miguel county; and

22. ten thousand dollars (\$10,000) to plan, design and construct improvements to El Llano de la Presa community ditch in San Miguel county.

Chapter 347 Section 36 Laws 2005

Section 36. ENVIRONMENT PROJECTS--DEPARTMENT OF ENVIRONMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of environment for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. three hundred eighty-five thousand dollars (\$385,000) to plan, design and construct the water system in Tijeras in Bernalillo county;

2. one million dollars (\$1,000,000) to plan, design and construct renovations to the wastewater treatment plant in Grants in Cibola county;

3. one hundred thousand dollars (\$100,000) to plan, design and construct water system improvements for the Moquino mutual domestic water consumers association in Cibola county;

4. thirty thousand dollars (\$30,000) to plan, design and construct improvements, including water line installation, to the water and wastewater systems in Maxwell in Colfax county;

5. forty-five thousand dollars (\$45,000) to plan, design and construct water system improvements for the French mutual domestic water consumers and mutual sewage works association in Colfax county;

6. one hundred twenty thousand dollars (\$120,000) to plan, design and construct water and wastewater system improvements, including sewer lagoons, in Eagle Nest in Colfax county;

7. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Dona Ana mutual domestic water consumers association water and wastewater system in Dona Ana county;

8. thirty thousand dollars (\$30,000) to design, purchase and install a sludge belt press for the Anthony water and sanitation district in Anthony in Dona Ana county;

9. forty thousand dollars (\$40,000) to plan, design and construct a sewage effluent line in Anthony in Dona Ana county;

10. one hundred thousand dollars (\$100,000) to plan, design, construct and equip water system and building and grounds improvements, including water meters, water lines, hydrants and an office building, for the Mesquite mutual domestic water consumers and mutual sewage works association serving the communities of Mesquite, Vado and Del Cerro in Dona Ana county;

11. thirty-five thousand dollars (\$35,000) to plan, design and construct improvements to the well in Talavera in Dona Ana county;

12. sixty thousand dollars (\$60,000) to purchase and equip a refuse collection truck in Loving in Eddy county;

13. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including sewer line replacements, to the wastewater treatment plant in Loving in Eddy county;

14. twenty thousand dollars (\$20,000) for construction of the effluent reuse project at the Carlsbad municipal golf course in Carlsbad in Eddy county;

15. twenty thousand dollars (\$20,000) to plan, design and construct improvements for the Otis water users cooperative in Eddy county;

16. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the water system in Hanover in Grant county;

17. thirty thousand dollars (\$30,000) to plan, design, construct and replace water lines and storage tanks, refurbish wells, add fire protection and expand water lines in Guadalupe county;

18. twenty-five thousand dollars (\$25,000) to plan, design and construct water and wastewater system improvements, including water storage and distribution, in Roy in Harding county;

19. fifty thousand dollars (\$50,000) to plan, design, construct and equip a water distribution system in Mosquero in Harding county;

20. thirty-five thousand dollars (\$35,000) to plan, design and construct water system improvements in Lordsburg in Hidalgo county;

21. one hundred seventy-five thousand dollars (\$175,000) to plan, design, construct and equip a wastewater treatment plant in Hobbs in Lea county;

22. two hundred thousand dollars (\$200,000) to design, construct and acquire land for a water storage tank in Jal in Lea county;

23. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct water system improvements for the Monument mutual domestic water users association in Monument in Lea county;

24. four hundred thousand dollars (\$400,000) to plan, design and construct a one-million-gallon water storage tank to provide forty-eight hours of water usage in an emergency for Jal in Lea county;

25. sixty-five thousand dollars (\$65,000) for construction, including additions and a heating, ventilation and air conditioning system, at the solid waste transfer station in Ruidoso in Lincoln county;

26. two hundred thousand dollars (\$200,000) to plan, design and construct water system improvements in Ruidoso Downs in Lincoln county;

27. two hundred forty thousand dollars (\$240,000) to plan, design, construct and equip wastewater system improvements in Columbus in Luna county;

28. two hundred thousand dollars (\$200,000) to close the existing landfill and to construct and purchase equipment for a new landfill and transfer station on property owned by Deming in Luna county;

29. seventy-five thousand dollars (\$75,000) for remediation, demolition, construction and reclamation at the Peru Hill mill in Luna county;

30. one hundred thousand dollars (\$100,000) for improvements to the Gamarco water and sanitation district water system in McKinley county;

31. twenty-eight thousand dollars (\$28,000) to purchase and install wastewater treatment standby generators and a transfer switch for the Ramah water and sanitation district in McKinley county;

32. twenty thousand dollars (\$20,000) to plan, design and construct an extension of the water line for the Agua Pura mutual domestic water consumers association in Chacon in Mora county;

33. twenty thousand dollars (\$20,000) to plan, design and construct water system improvements in Buena Vista in Mora county;

34. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the water system in Ojo Feliz in Mora county;

35. ten thousand dollars (\$10,000) to plan, design and construct water system and infrastructure improvements for the Cleveland mutual domestic water association in Mora county;

36. fifty thousand dollars (\$50,000) to plan, construct and install new water lines and extend existing water lines in Guadalupe in Mora county;

37. thirty-five thousand dollars (\$35,000) to purchase and install heavy equipment, including a truck, a backhoe and refuse containers, for the northwest New Mexico regional solid waste authority in Cibola and McKinley counties;

38. twenty thousand dollars (\$20,000) to purchase and equip solid waste collection vehicles in San Miguel and Mora counties;

39. one hundred thousand dollars (\$100,000) to plan, design and construct a regional landfill for the northwest New Mexico regional solid waste authority in Cibola and McKinley counties;

40. one hundred thousand dollars (\$100,000) to plan, design and construct water storage facilities and a wastewater reclamation system, including drilling water wells, in Cloudcroft in Otero county;

41. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the water and wastewater system in Cloudcroft in Otero county;
42. two hundred thousand dollars (\$200,000) to plan, design and construct water and wastewater system improvements in Tucumcari in Quay county;
43. seventy-five thousand dollars (\$75,000) to plan, design and construct water and wastewater system improvements and expansion in San Jon in Quay county;
44. forty thousand dollars (\$40,000) to plan, design and construct water system improvements for the Rio Chiquito mutual domestic water consumers and mutual sewage works association in Rio Arriba county;
45. ninety-five thousand dollars (\$95,000) to plan, design and construct improvements and extensions to la asociacion de agua de los Brazos water system in Rio Arriba county;
46. five hundred thousand dollars (\$500,000) to plan, design and construct the expansion of the wastewater treatment plant in Espanola in Rio Arriba county;
47. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the Tierra Amarilla mutual domestic water association water and wastewater system in Tierra Amarilla in Rio Arriba county;
48. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the water system to address drinking water standards in Floyd in Roosevelt county;
49. one hundred ninety thousand dollars (\$190,000) to plan, design and construct water system improvements, including connecting systems, for the Blanco mutual domestic water consumers and sewage works association in San Juan county;
50. fifty thousand dollars (\$50,000) to plan and design a wastewater system to identify the needs of the community of Flora Vista for the San Juan county water association in San Juan county;
51. ninety thousand dollars (\$90,000) to plan, design and construct water line infrastructure for the water distribution system for the North Star domestic water consumers and mutual sewage works cooperative in San Juan county;
52. five hundred eighty-five thousand nine hundred fifty-two dollars (\$585,952) to plan, design and construct a wastewater collection system in Kirtland in San Juan county;

53. fifty-five thousand dollars (\$55,000) to design and construct a radio read metering network for the West Hammond mutual domestic water consumers association in Bloomfield in San Juan county;

54. five thousand dollars (\$5,000) to plan, design, construct and improve a water supply well, including related technology, for the north San Isidro mutual domestic water consumers association in San Miguel county;

55. five hundred thousand dollars (\$500,000) to plan, design and construct a water and wastewater system in Pecos in San Miguel county;

56. thirteen thousand dollars (\$13,000) to construct improvements to the water system in Gonzales Ranch in San Miguel county;

57. twenty-five thousand dollars (\$25,000) to construct water system improvements to link La Cueva volunteer fire department system to the Hidden Valley mutual domestic water association system for fire suppression support in Sandoval county;

58. two hundred thousand dollars (\$200,000) to plan, design and construct water system improvements for the Jemez Springs domestic water association in Sandoval county;

59. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish water and wastewater system improvements for the San Luis-Cabazon mutual domestic water association in Sandoval county;

60. two hundred thousand dollars (\$200,000) to plan, design, construct and equip improvements to the Bernalillo wastewater treatment plant in Sandoval county;

61. one hundred thousand dollars (\$100,000) to plan, design, construct and improve the wastewater facility in San Ysidro in Sandoval county;

62. ninety-three thousand dollars (\$93,000) to plan, design, construct and equip improvements to the Canyon road water treatment plant in Santa Fe in Santa Fe county;

63. one million seventy thousand dollars (\$1,070,000) to plan, design, construct and improve a regional water and wastewater system to serve the Pojoaque Valley area of Santa Fe county;

64. five hundred thirty thousand dollars (\$530,000) to acquire water rights and land, including needed applications and transfers, and to plan, design and construct a domestic water system, including a well, water tank and delivery system, in Agua Fria in Santa Fe county;

65. forty thousand dollars (\$40,000) to plan, design and construct a supplemental well for La Bajada community ditch, incorporated, in Santa Fe county;

66. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the water system, including distribution and well house construction, for the Solacito mutual domestic water consumers association in Santa Fe county;

67. twenty thousand dollars (\$20,000) to plan, design and construct sewer line extensions between Agua Fria road and Rufina street in Santa Fe county;

68. fifty thousand dollars (\$50,000) to plan, design and construct water system improvements for the Cundiyo mutual domestic water consumers association in Santa Fe county;

69. one million thirty-one thousand one hundred sixteen dollars (\$1,031,116) to plan, design and construct phases 1 and 2 of a regional wastewater system in Elephant Butte in Sierra county;

70. two hundred thousand dollars (\$200,000) to plan, design and construct, including the acquisition of rights of way, an effluent water recycling project in Truth or Consequences in Sierra county;

71. five hundred thousand dollars (\$500,000) to plan, design and construct improvements to the wastewater system in Socorro in Socorro county;

72. forty-five thousand dollars (\$45,000) to plan, design and construct the El Rito mutual domestic water consumers and sewer association project in Taos county;

73. twenty-five thousand dollars (\$25,000) to construct a water line extension from the Penasco mutual domestic water consumers association main line to the Taos county housing authority in Penasco in Taos county;

74. two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to the wastewater system in Taos Ski Valley in Taos county;

75. two hundred fifty thousand dollars (\$250,000) to plan, design and construct wastewater system improvements and expansion in Moriarty in Torrance county;

76. five thousand dollars (\$5,000) for water system improvements, including a culvert for creek crossing, to the Tajique water system in Torrance county;

77. forty thousand dollars (\$40,000) for the landfill closure project in Valencia county;

78. fifty-one thousand six hundred dollars (\$51,600) to purchase solid waste transport trailers for the public works department in Valencia county;

79. forty-three thousand nine hundred thirty-three dollars (\$43,933) for design, drainage, erosion control, grading and slope stabilization, including a solar photovoltaic system on the erosion control slope, as part of a landfill reuse and renewable energy project on land owned by the state land office and the Albuquerque public school district in Albuquerque in Bernalillo county;

80. seventy-five thousand dollars (\$75,000) to plan, design and construct water system improvements, including drilling of a new well and pipeline improvements, in Hagerman in Chaves county;

81. fifty thousand dollars (\$50,000) to plan, design and construct improvements to water lines in the Cumberland cooperative water users association in Chaves county;

82. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Fambrough mutual domestic water consumers association water system in Chaves county;

83. fifty thousand dollars (\$50,000) to purchase equipment for the water and sewer department in Grants in Cibola county;

84. twenty-five thousand dollars (\$25,000) to plan, design and construct well and water system improvements for the Bluewater water and sanitation district in Cibola county;

85. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to the water reclamation system in Raton in Colfax county;

86. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the water and wastewater system and water meter system in Cimarron in Colfax county;

87. twelve thousand dollars (\$12,000) for a sewer cleaning system for Melrose in Curry county;

88. ninety thousand dollars (\$90,000) to purchase a sanitation truck for Melrose in Curry county;

89. fifty thousand dollars (\$50,000) to plan, design and construct upgrades at the wastewater treatment plant in Jal in Lea county;

90. one hundred thousand dollars (\$100,000) to design and construct a wastewater system in Corona in Lincoln county;

91. twenty-five thousand dollars (\$25,000) to plan, design, construct and equip the expansion of the treatment plant jointly owned by Ruidoso and Ruidoso Downs in Lincoln county;

92. twenty-five thousand dollars (\$25,000) to plan, design and construct, including drilling, a water well and chlorination facility in Ruidoso Downs in Lincoln county;

93. one hundred thousand dollars (\$100,000) to plan, design and construct a waste recycling center in Ruidoso Downs in Lincoln county;

94. twenty-eight thousand dollars (\$28,000) to purchase and install wastewater treatment standby generators and a transfer switch for the Ramah water and sanitation district in McKinley county;

95. thirty thousand dollars (\$30,000) to plan, design and construct a water treatment system, including a supply well and touch read water meters, for the Agua Pura mutual domestic water consumers association in Chacon in Mora county;

96. twenty thousand dollars (\$20,000) to purchase solid waste transport trucks and trailers for the northwest New Mexico regional solid waste authority in Cibola and McKinley counties;

97. six thousand five hundred dollars (\$6,500) for improvements to the maintenance shop of the northwest New Mexico regional solid waste authority in Cibola and McKinley counties;

98. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the Lumberton mutual domestic water consumers and sewage works association water system in Rio Arriba county;

99. forty thousand dollars (\$40,000) to plan, design and construct water system improvements for the Canjilon mutual domestic water consumers and mutual sewage works association in Rio Arriba county;

100. forty thousand dollars (\$40,000) to purchase and install a power generator for El Rito regional water and wastewater association in Rio Arriba county;

101. fifty thousand dollars (\$50,000) to plan, design and construct wastewater system improvements for the Cordova mutual domestic water consumers association in Rio Arriba county;

102. fifty thousand dollars (\$50,000) to plan, design and construct a new water storage tank in Dora in Roosevelt county;

103. twenty thousand dollars (\$20,000) to plan, design, construct and improve a water supply well, including related technology, for the south San Ysidro mutual domestic water consumers association in San Miguel county;

104. twenty thousand dollars (\$20,000) to plan, design and construct improvements, including acquisition of land, design and construction of a water tank and purchase and installation of water meters and water lines, for the Ilfeld mutual domestic water consumers association in San Miguel county;

105. ten thousand dollars (\$10,000) to plan, design and construct water and wastewater system improvements for El Ancon mutual domestic water consumers association in San Miguel county;

106. twenty thousand dollars (\$20,000) to plan, design and construct a wastewater system in San Ysidro in Sandoval county;

107. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Las Acequias of Placitas water system in Placitas in Sandoval county;

108. thirty-five thousand dollars (\$35,000) for a sewer line extension in the vicinity of paseo de Tercero and via don Toribio in Agua Fria in Santa Fe county;

109. thirty thousand dollars (\$30,000) to plan, design and construct water system improvements for the Canoncito at Apache Canyon mutual domestic water users association water system in Santa Fe county;

110. one hundred thirty-five thousand dollars (\$135,000) to plan, design and construct a connection between the New Mexico state fire training academy sewer system and the city sewer system in Socorro in Socorro county;

111. one hundred thousand dollars (\$100,000) to plan, design and construct a wastewater treatment plant in Questa in Taos county;

112. seventy-five thousand dollars (\$75,000) to plan, design and construct a transfer station for solid waste in Red River in Taos county; and

113. one hundred thousand dollars (\$100,000) to plan, design and construct water system improvements and additions in Moriarty in Tarrant county.

Chapter 347 Section 37 Laws 2005

Section 37. STATE FAIR PROJECTS--STATE FAIR COMMISSION--GENERAL FUND.--The following amounts are appropriated from the general fund to the state fair commission for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. two hundred sixty thousand dollars (\$260,000) to plan, design and construct a statewide African-American performing arts and exhibit hall at the state fairgrounds in Albuquerque in Bernalillo county;

2. thirty thousand dollars (\$30,000) to purchase artwork for the African-American performing arts and exhibit hall at the state fairgrounds in Albuquerque in Bernalillo county;

3. one million five hundred thousand dollars (\$1,500,000) to repair, replace and improve stalls for Expo New Mexico, the Palomino barn and Tingley horse show arena at the state fairgrounds in Albuquerque in Bernalillo county; and

4. five hundred fifty-three thousand dollars (\$553,000) for improvements and equipment at the Expo New Mexico arenas at the state fairgrounds in Albuquerque in Bernalillo county.

Chapter 347 Section 38 Laws 2005

Section 38. WATER, TRIBAL INFRASTRUCTURE, FILM AND AFFORDABLE HOUSING PROJECTS--DEPARTMENT OF FINANCE AND ADMINISTRATION--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of finance and administration for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. five million dollars (\$5,000,000) to provide matching funds for innovative water resource infrastructure projects that have applicability across the state or regionally; provided that the innovations are focused on water or wastewater technologies intended to advance solutions to water supply or water quality problems statewide;

2. three million dollars (\$3,000,000) to provide funding for tribal infrastructure projects related to water, wastewater, electrical, communications, roads, health, emergency facilities and economic development statewide;

3. ten million dollars (\$10,000,000) for infrastructure projects to implement the Affordable Housing Act statewide; and

4. two million dollars (\$2,000,000) for media production, education and training facilities, programs and initiatives statewide.

Chapter 347 Section 39 Laws 2005

Section 39. WILDLIFE AND CONSERVATION PROJECTS--DEPARTMENT OF GAME AND FISH--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of game and fish for expenditure in fiscal years 2005

through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one million dollars (\$1,000,000) to plan and acquire land and conservation easements to comply with the federal Endangered Species Act; and

2. four million dollars (\$4,000,000) to acquire property that has unique ecological value, acquire conservation easements in forested areas to reduce wildfire risk, protect open space and improve wildlife protection areas statewide.

Chapter 347 Section 40 Laws 2005

Section 40. DIGITAL RADIO SYSTEM CONVERSION PROJECT--GENERAL SERVICES DEPARTMENT--GENERAL FUND.--Five million dollars (\$5,000,000) is appropriated from the general fund to the general services department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to convert the analog microwave radio system to a digital system at sites statewide.

Chapter 347 Section 41 Laws 2005

Section 41. AIRCRAFT PURCHASE--GENERAL SERVICES DEPARTMENT--GENERAL FUND.--Five million dollars (\$5,000,000) is appropriated from the general fund to the general services department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to acquire and equip passenger aircraft for use statewide.

Chapter 347 Section 42 Laws 2005

Section 42. HEALTH PROJECTS--DEPARTMENT OF HEALTH--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of health for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. twenty thousand dollars (\$20,000) to purchase equipment and furniture for the office of the sickle cell council of New Mexico at the state fairgrounds in Albuquerque in Bernalillo county;

2. one million six thousand dollars (\$1,006,000) for technology and related infrastructure for the hepatitis C initiative; rural behavioral health; children, youth and families department telehealth sites; and school-based health center telehealth sites statewide;

3. two million dollars (\$2,000,000) to make improvements to school-based clinics and department of health facilities to meet the requirements of the school-based health initiative statewide;

4. five hundred thousand dollars (\$500,000) for equipment to plan, design and develop a web-based, twenty-four-hour health care hotline statewide;

5. one million dollars (\$1,000,000) for infrastructure repairs and renovation at department of health facilities statewide;

6. two hundred fifty thousand dollars (\$250,000) to purchase breathalyzers for use statewide; and

7. fifty thousand dollars (\$50,000) for comprehensive community-based cancer patient support services, including education, patient library services, one-to-one matching with cancer veterans, survivorship support groups and an annual statewide survivorship conference.

Chapter 347 Section 43 Laws 2005

Section 43. INDIAN AFFAIRS PROJECTS--INDIAN AFFAIRS DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the general fund to the Indian affairs department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one hundred forty-five thousand dollars (\$145,000) to plan, design and construct parking lot improvements, including resurfacing, at the Indian pueblo cultural center in Albuquerque in Bernalillo county;

2. fifty thousand dollars (\$50,000) to renovate, repair and upgrade the museum and collection storage at the Indian pueblo cultural center in Albuquerque in Bernalillo county;

3. forty thousand dollars (\$40,000) to renovate the community swimming pool at Pine Hill school in the Ramah chapter of the Navajo Nation in Cibola county;

4. twenty-five thousand dollars (\$25,000) to construct repairs, including glass replacement and framing, on the greenhouses at the Pine Hill school farm in the Ramah chapter of the Navajo Nation in Cibola county;

5. fifty thousand dollars (\$50,000) to purchase a new tractor for the Pine Hill school farm in the Ramah chapter of the Navajo Nation in Cibola county;

6. one hundred fifty thousand dollars (\$150,000) to plan, design and construct vendor spaces at the Sky City center and Ha'ak'u museum tribal outdoor marketplace in the Pueblo of Acoma in Cibola county;

7. forty thousand dollars (\$40,000) to purchase buses for the boys' and girls' club in the Pueblo of Acoma in Cibola county;

8. thirty thousand dollars (\$30,000) to plan, design, construct and equip a water system in the Ramah chapter of the Navajo Nation in Cibola county;

9. sixty thousand dollars (\$60,000) for water line extensions and bathroom additions to houses in the Manuelito chapter of the Navajo Nation in McKinley county;

10. fifty thousand dollars (\$50,000) to plan, design and renovate the community center in the Red Lake chapter of the Navajo Nation in McKinley county;

11. sixty thousand dollars (\$60,000) to purchase a passenger bus for St. Anthony Indian school at the Pueblo of Zuni in McKinley county;

12. twenty-one thousand dollars (\$21,000) to purchase and equip a truck to transport emergency equipment and haul firewood and water at the Iyanbito chapter of the Navajo Nation in McKinley county;

13. three hundred thousand dollars (\$300,000) to purchase and equip a computer tomography scanner and scanner housing for the Crownpoint Indian health service hospital in Crownpoint in McKinley county;

14. eighteen thousand dollars (\$18,000) to plan, design and construct a water and wastewater system in the Bluebird residential area of the Pueblo of Zuni in McKinley county;

15. one hundred thousand dollars (\$100,000) to purchase a road grader for the Thoreau chapter of the Navajo Nation in McKinley county;

16. forty-eight thousand dollars (\$48,000) to construct bathroom additions at the Red Rock chapter of the Navajo Nation in McKinley county;

17. sixty thousand dollars (\$60,000) to plan, design and construct a women, infants and children facility in the Pueblo of Zuni in McKinley county;

18. sixty thousand dollars (\$60,000) to plan, design and construct an extension to the powerline at the Chichiltah chapter of the Navajo Nation in McKinley county;

19. thirty-two thousand dollars (\$32,000) to plan, design and construct improvements to the old Zuni mission in the Pueblo of Zuni in McKinley county;

20. fifty-five thousand dollars (\$55,000) to purchase equipment for the eastern Navajo Nation veterans' agency sub-office in Crownpoint in McKinley county;

21. seven hundred seventy-five thousand dollars (\$775,000) to plan, design and construct a general classroom building and relocate and set up modular

classrooms at the main campus of the Crownpoint institute of technology in the Crownpoint chapter of the Navajo Nation in McKinley county;

22. one hundred seventy-five thousand dollars (\$175,000) to purchase and equip a dump truck for the Smith Lake chapter of the Navajo Nation in McKinley county;

23. seventy thousand dollars (\$70,000) to plan, design and construct a water line extension and bathroom additions in the Nageezi chapter of the Navajo Nation in McKinley county;

24. thirty-one thousand one hundred twenty-two dollars (\$31,122) to plan, design and provide wiring of homes at the Pueblo Pintado chapter of the Navajo Nation in McKinley county;

25. thirty-four thousand eleven dollars (\$34,011) to plan, design and construct powerlines to serve homes at the White Rock chapter of the Navajo Nation in McKinley county;

26. thirty-four thousand eleven dollars (\$34,011) to plan, design and construct powerlines to serve eighty homes at the White Horse Lake chapter of the Navajo Nation in McKinley county;

27. eighty-four thousand dollars (\$84,000) to plan, design and provide wiring and connections for homes at the Tohatchi chapter of the Navajo Nation in McKinley county;

28. seventy-seven thousand two hundred dollars (\$77,200) to plan, design and construct powerlines and provide wiring of homes at the Torreon chapter of the Navajo Nation in McKinley county;

29. fifty thousand dollars (\$50,000) to purchase and install computers for public education at Smith Lake in McKinley county;

30. ten thousand eight hundred dollars (\$10,800) to plan, design and provide wiring of homes in the Casamero Lake chapter of the Navajo Nation in McKinley county;

31. forty thousand dollars (\$40,000) to plan, design and provide wiring of homes and to extend powerlines at the Lake Valley chapter of the Navajo Nation in McKinley county;

32. eighty thousand dollars (\$80,000) to plan, design and construct bathroom additions for homes at Ojo Encino in McKinley county;

33. fifty thousand dollars (\$50,000) to purchase trucks and trailers for the Mexican Springs food distribution center in the Navajo Nation in McKinley county;

34. forty thousand dollars (\$40,000) for landscaping and improvements to the perimeter of the baseball field at the recreation center at the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties;

35. five thousand dollars (\$5,000) to purchase and install kitchen equipment in the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties;

36. one hundred fifty thousand dollars (\$150,000) to purchase school buses for the eight northern Indian pueblos for use in multiple counties;

37. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the community library in the Pueblo of San Juan in Rio Arriba county;

38. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a daycare facility for the Jicarilla Apache Nation in Dulce in Rio Arriba county;

39. two hundred eighty-seven thousand dollars (\$287,000) to plan, design and construct improvements to the Navajo preparatory school in the Navajo Nation in San Juan county;

40. twenty thousand dollars (\$20,000) to plan, design and construct electrical house wiring in the Nenahnezad chapter of the Navajo Nation in San Juan county;

41. forty-five thousand dollars (\$45,000) to purchase a backhoe for the Newcomb chapter of the Navajo Nation in San Juan county;

42. one hundred sixty thousand dollars (\$160,000) to purchase a truck and trailer for the Newcomb chapter of the Navajo Nation in San Juan county;

43. two hundred thirty-seven thousand five hundred seventy-eight dollars (\$237,578) to purchase trucks and trailers for the Kirtland food distribution center in the Navajo Nation in San Juan county;

44. two hundred seventy-five thousand dollars (\$275,000) to plan, design and construct renovations and additions to the Shiprock district court and police department in the Shiprock chapter of the Navajo Nation in San Juan county;

45. forty-six thousand nine hundred thirty-six dollars (\$46,936) to plan, design and provide power for forty-eight homes in the Burnham chapter of the Navajo Nation in San Juan county;

46. one hundred thousand dollars (\$100,000) to plan, design and construct a home for women and children in Shiprock in San Juan county;

47. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a food distribution center and administration office for the five Sandoval Indian pueblos in Sandoval county;

48. fifty thousand dollars (\$50,000) to plan, design and construct regional infrastructure development in the Pueblo of Santo Domingo in Sandoval county;

49. one hundred thousand dollars (\$100,000) to plan, design and construct water system improvements, including a water storage tank, plumbing and connection to an existing system, at the Pueblo of Santa Ana in Sandoval county;

50. two hundred thousand dollars (\$200,000) to plan, design and construct a multipurpose education and wellness center at the Pueblo of Santa Ana in Sandoval county;

51. fifty thousand dollars (\$50,000) to plan, design, construct and equip an ambulatory health center at the Pueblo of Zia in Sandoval county;

52. seventy-five thousand dollars (\$75,000) to plan, design and construct a water and wastewater system for the Pueblo of San Felipe in Sandoval county;

53. twenty-five thousand dollars (\$25,000) to purchase and install information technology for the five Sandoval Indian pueblos at the Pueblo of Santa Ana in Sandoval county;

54. twenty-five thousand dollars (\$25,000) to purchase and equip a vehicle for the head start program in the Pueblo of Santa Ana in Sandoval county;

55. fifty thousand dollars (\$50,000) to plan, design and construct water, sewer and electrical utilities improvements at the fire department building on the Torreon-Star Lake chapter of the Navajo Nation in Sandoval county;

56. one hundred twenty thousand dollars (\$120,000) to plan, design and improve the water and wastewater system at the Pueblo of Sandia in Sandoval county;

57. fifty thousand eight hundred twenty-six dollars (\$50,826) to plan, design and extend powerlines in Counselor in Sandoval county;

58. five hundred ninety-five thousand seven hundred forty-three dollars (\$595,743) to plan, design and construct the center for lifelong learning at the institute of American Indian arts in Santa Fe county;

~~[59. twenty thousand dollars (\$20,000) to purchase and equip passenger vans for the Pueblo of Pojoaque boys' and girls' club in Santa Fe county;] [LINE-ITEM VETO]~~

60. seventy-five thousand dollars (\$75,000) to plan, design, equip and construct, including lighting fixtures for, a soccer field and track at the Pueblo of Pojoaque in Santa Fe county;

61. two hundred twenty thousand dollars (\$220,000) for master planning of trust lands at Santa Fe Indian school in Santa Fe in Santa Fe county;

62. fifty thousand dollars (\$50,000) to plan, design and construct a wellness and health center, including a field house and an exercise facility, at Santa Fe Indian school in Santa Fe in Santa Fe county;

63. one hundred thirty-five thousand dollars (\$135,000) to plan, design and construct a multipurpose, wellness and senior center at the Pueblo of Nambe in Santa Fe county;

64. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish a library and museum archive center at the Pueblo of San Ildefonso in Santa Fe county;

65. fifty thousand dollars (\$50,000) to renovate and improve, including replacing the roof and related repairs, the administrative buildings at the Pueblo of Picuris in Taos county;

66. fifty thousand dollars (\$50,000) to plan, design and construct a native business leadership center and business education facility at the southwest Indian polytechnic institute in Albuquerque in Bernalillo county;

67. twenty-five thousand dollars (\$25,000) to renovate the pueblo house at the Indian pueblo cultural center in Albuquerque in Bernalillo county;

68. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including an enclosure, to the pool at the Ramah chapter of the Navajo Nation in Cibola county;

69. twenty-five thousand dollars (\$25,000) to plan, design and construct a detention facility at the Ramah chapter of the Navajo Nation in Cibola county;

70. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to and equip the water and wastewater system in the Ramah chapter of the Navajo Nation in Cibola county;

71. one hundred thousand dollars (\$100,000) to purchase and install equipment for the fire and rescue department at the Pueblo of Laguna in Cibola county;

72. ten thousand dollars (\$10,000) to plan, design and construct bathroom additions for the Iyanbito chapter house of the Navajo Nation in McKinley county;

73. twenty-five thousand dollars (\$25,000) to plan and design a culinary arts and hospitality training institute and Native American center in the Church Rock chapter of the Navajo Nation in McKinley county;

74. twenty-five thousand dollars (\$25,000) to plan, design and construct a community center at the Red Rock chapter of the Navajo Nation in McKinley county;

75. thirty thousand dollars (\$30,000) to plan and design renovations for the chapter house of the Tsa-Ya-Toh chapter of the Navajo Nation in McKinley county;

76. twenty thousand dollars (\$20,000) to purchase equipment for the computer lab at the Pinedale chapter of the Navajo Nation in McKinley county;

77. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the powerline project in the Tsa-Ya-Toh chapter of the Navajo Nation in McKinley county;

78. twenty thousand dollars (\$20,000) to plan, design, purchase, install and construct a multipurpose center for the Becenti chapter of the Navajo Nation in McKinley county;

79. three hundred thousand dollars (\$300,000) to plan, design and construct a water line for the White Horse Lake chapter of the Navajo Nation in McKinley county;

80. two hundred thousand dollars (\$200,000) to plan, design, construct and obtain necessary rights of way for a road project in the Nahodishgish chapter of the Navajo Nation in McKinley county;

81. fifteen thousand dollars (\$15,000) to equip the game room at the recreation center at the Pueblo of Isleta in Bernalillo, Tarrant and Valencia counties;

82. twenty-five thousand dollars (\$25,000) to purchase and equip buses for the Pueblo of Santa Clara in Rio Arriba county;

83. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the community library, language and cultural center in the Pueblo of Santa Clara in Rio Arriba county;

84. fifty thousand dollars (\$50,000) for building improvements, equipment and materials for the early childhood center at the Jicarilla Apache Tribe in Rio Arriba county;

85. one hundred thousand dollars (\$100,000) to equip and furnish the education department at Dine college in Shiprock in San Juan county;

86. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the multi-use center in the Nageezi chapter of the Navajo Nation in San Juan county;

87. twenty-five thousand dollars (\$25,000) to purchase a vehicle for the Huerfano chapter of the Navajo Nation in San Juan county;

88. one hundred fifty thousand dollars (\$150,000) to purchase a road grader for the Crystal chapter of the Navajo Nation in San Juan county;

89. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct powerline extensions in the Newcomb chapter of the Navajo Nation in San Juan county;

90. sixty thousand dollars (\$60,000) to plan and design a chapter house for the Sanostee chapter of the Navajo Nation in San Juan county;

~~[91. fifteen thousand dollars (\$15,000) to plan, design and construct the renovation of a traditional administrative building, including an addition, at the Pueblo of Pojoaque in Santa Fe county;~~

~~92. twenty thousand dollars (\$20,000) to plan, design and construct a field and running track at the Pueblo of Pojoaque wellness center in Santa Fe county;~~

~~93. ten thousand dollars (\$10,000) to plan, design and construct a water and wastewater system at the Pueblo of Pojoaque in Santa Fe county;] and [LINE-ITEM VETO]~~

94. fifty thousand dollars (\$50,000) to purchase and install lighting for the recreational fields at Santa Fe Indian school in Santa Fe in Santa Fe county.

Chapter 347 Section 44 Laws 2005

~~[Section 44. STATE CAPITOL PROJECT--LEGISLATIVE COUNCIL SERVICE--GENERAL FUND. The following amounts are appropriated from the general fund to the legislative council service for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:~~

~~1. thirty-five thousand dollars (\$35,000) to purchase and install exercise equipment at the state capitol in Santa Fe in Santa Fe county; and~~

~~2. fifty thousand dollars (\$50,000) to plan and design a system and purchase and install equipment required to webcast legislative sessions at the state capitol in Santa Fe in Santa Fe county.] [LINE-ITEM VETO]~~

Chapter 347 Section 45 Laws 2005

Section 45. LOCAL GOVERNMENT PROJECTS--LOCAL GOVERNMENT DIVISION--GENERAL FUND.--The following amounts are appropriated from the general fund to the local government division of the department of finance and administration for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Maloof remote control airfield in Albuquerque in Bernalillo county;

2. fifty thousand dollars (\$50,000) to acquire land for and plan, design and construct fire station 22 in Albuquerque in Bernalillo county;

3. five hundred eighty-five thousand dollars (\$585,000) to plan, design and construct a transitional housing facility for the metropolitan assessment and treatment services program in Bernalillo county;

4. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including landscaping, drainage and interior finishes, to the Lomas-Tramway library building in Albuquerque in Bernalillo county;

5. one hundred thousand dollars (\$100,000) to design and construct an expansion to the Carnue land grant community building in Bernalillo county;

6. one hundred fifteen thousand dollars (\$115,000) to plan, design, construct, equip and furnish a veterinary clinic at the Albuquerque zoological park in Bernalillo county;

7. seventy-five thousand dollars (\$75,000) to acquire land for, plan, design and construct secure storage facilities for the county sheriff's office in Bernalillo county;

8. one hundred ten thousand dollars (\$110,000) to repair and construct improvements, including drainage, stucco and landscaping, to Los Vecinos community center in Tijeras in Bernalillo county;

9. one hundred twenty-five thousand dollars (\$125,000) to construct and purchase a climbing wall and equipment for the Alamosa multiservice center in Albuquerque in Bernalillo county;

10. one hundred forty thousand dollars (\$140,000) to construct improvements, including grass replacement, at the West Mesa little league field in Albuquerque in Bernalillo county;

11. one million eight hundred ten thousand dollars (\$1,810,000) to plan, design, construct and equip a multipurpose center in the south valley in Bernalillo county;

12. sixty thousand dollars (\$60,000) to renovate a performing arts theater for persons with disabilities in the north valley of Albuquerque in Bernalillo county;

13. thirty-five thousand dollars (\$35,000) to make improvements to the Bataan memorial at Bataan memorial park in Albuquerque in Bernalillo county;

14. twenty-five thousand dollars (\$25,000) to develop a small business incubator in southeast Albuquerque in Bernalillo county;

15. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the north Domingo Baca dam and Altamont little league site in Bernalillo county;

16. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements to the Hubbell house in Bernalillo county;

17. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a women's softball field, including batting cages, at the city-owned Roadrunner little league site in Albuquerque in Bernalillo county;

18. ten thousand dollars (\$10,000) to purchase athletic equipment, exercise equipment and furnishings at Cesar Chavez community center in Albuquerque in Bernalillo county;

19. two hundred sixty-five thousand dollars (\$265,000) to plan, design, construct and equip a building for the New Mexico holocaust and intolerance museum and study center, which will also house the African-American museum and cultural center and offices of the New Mexico human rights coalition education foundation, in Albuquerque in Bernalillo county;

20. one hundred fifteen thousand dollars (\$115,000) to plan, design, construct, equip and furnish a multipurpose facility for persons with disabilities in the north valley of Albuquerque in Bernalillo county;

21. one hundred fifty thousand dollars (\$150,000) to purchase non-invasive alcohol screening and testing equipment for the sheriff's department in Bernalillo county;

22. fifty-five thousand dollars (\$55,000) to plan, design and construct a safety net at the city-owned Roadrunner little league complex in Albuquerque in Bernalillo county;

23. one hundred thirty-five thousand dollars (\$135,000) to plan, design, construct, improve and equip renovations and purchase equipment for the Albuquerque museum in Albuquerque in Bernalillo county;

24. five hundred ten thousand dollars (\$510,000) to design, construct and equip Balloon Fiesta park, including concessions, signage and access control, in Albuquerque in Bernalillo county;

25. one million one hundred one thousand eight hundred forty-five dollars (\$1,101,845) to design, construct and purchase equipment and furnishings for the Anderson-Abruzzo Albuquerque international balloon museum in Bernalillo county;

26. twenty-nine thousand dollars (\$29,000) to plan, design and construct improvements to the Jeanne Bellamah shelter community center in Albuquerque in Bernalillo county;

27. seventy-five thousand dollars (\$75,000) for site preparation and to plan, design and construct the Amistad crisis shelter in Bernalillo county;

28. twenty-five thousand dollars (\$25,000) to plan, design and construct the north Albuquerque Acres community center in Albuquerque in Bernalillo county;

29. one hundred forty-five thousand dollars (\$145,000) to design, construct, renovate and equip Villela park in Albuquerque in Bernalillo county;

30. four hundred five thousand dollars (\$405,000) to design, develop, construct, purchase and install exhibits, furniture, fixtures, equipment, facilities and portable buildings for the Explora science center and children's museum in Albuquerque in Bernalillo county;

31. fifty thousand dollars (\$50,000) for electronic monitoring equipment and a single unit satellite tracking device for domestic violence purposes in Bernalillo county;

32. twenty-five thousand dollars (\$25,000) to make improvements to the Jeanne Bellamah community center and park in Albuquerque in Bernalillo county;

33. fifty thousand dollars (\$50,000) to plan, design and construct improvements and renovations to the tennis courts at Los Altos park in Albuquerque in Bernalillo county;

34. one hundred twenty-seven thousand eight hundred dollars (\$127,800) to plan, design and construct improvements to the Sierra Vista tennis complex in Albuquerque in Bernalillo county;

35. twenty-five thousand dollars (\$25,000) to purchase equipment for the karate program at Los Padillas community center in Albuquerque in Bernalillo county;

36. eight thousand two hundred fifty dollars (\$8,250) to plan, design, construct and equip an exercise facility at the Pat Hurley community center in Albuquerque in Bernalillo county;

37. fifty thousand dollars (\$50,000) to make improvements to the city-owned Isshin Ryu club building and to purchase equipment for the karate program in Albuquerque in Bernalillo county;

38. three hundred fifty thousand dollars (\$350,000) to renovate, improve and equip a rape crisis center in Albuquerque in Bernalillo county;

39. twenty-five thousand dollars (\$25,000) to plan, design and construct handicap ramps at the Roadrunner little league complex in Albuquerque in Bernalillo county;

40. one hundred thousand dollars (\$100,000) to plan, design and construct renovations and improvements to the Wyoming library in Albuquerque in Bernalillo county;

41. seventy thousand dollars (\$70,000) to purchase and install information technology at the Wyoming library in Albuquerque in Bernalillo county;

42. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct a community recreation center and park improvements at the Jerry Cline park and Tom Bolack park in Albuquerque in Bernalillo county;

43. two hundred five thousand dollars (\$205,000) to plan, design and construct a gymnasium to be jointly used by East Mountain high school and Vista Grande community center in Bernalillo county;

44. sixty thousand dollars (\$60,000) to plan, design, construct and renovate tennis courts at the Barelvas community center in Albuquerque in Bernalillo county;

45. ninety-five thousand dollars (\$95,000) to plan, design, renovate and construct the mid-region council of governments office building in Albuquerque in Bernalillo county;

46. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct improvements and to purchase and install equipment at Alta Monte park in Albuquerque in Bernalillo county;

47. sixty-five thousand dollars (\$65,000) to purchase dental equipment for Albuquerque in Bernalillo county;

48. thirty thousand dollars (\$30,000) for pedestrian lighting scaled and located to provide illumination for pedestrians and to enhance streetscapes in house district 19 in Albuquerque in Bernalillo county;

49. twenty-five thousand dollars (\$25,000) to purchase and install recreation equipment for the east San Jose recreation center in Albuquerque in Bernalillo county;

50. twenty-five thousand dollars (\$25,000) to purchase and install recreation equipment for the Jack Candelaria recreation center in Albuquerque in Bernalillo county;

51. twenty-five thousand dollars (\$25,000) to purchase and install recreation equipment for the Thomas Bell recreation center in Albuquerque in Bernalillo county;

52. fifteen thousand dollars (\$15,000) to purchase therapeutic equipment for the Loma Linda recreation center in Albuquerque in Bernalillo county;

53. fifteen thousand dollars (\$15,000) to purchase and install recreation equipment for the Dennis Chavez recreation center in Albuquerque in Bernalillo county;

54. fifteen thousand dollars (\$15,000) to purchase and install a scoreboard for the Mountainview recreation center in Bernalillo county;

55. twenty thousand dollars (\$20,000) to purchase and install playground equipment at Eugene Field elementary school in the Albuquerque public school district in Bernalillo county;

56. two hundred thousand dollars (\$200,000) to plan, design and construct the Tower community park and Westgate little league field improvements, including ball fields, irrigation, turf, lighting, a concession building and landscaping, in house district 13 in Albuquerque in Bernalillo county;

57. one hundred thirty thousand dollars (\$130,000) to acquire and plan for the wheels museum in Albuquerque in Bernalillo county;

58. twenty thousand dollars (\$20,000) to plan, design, construct, equip and furnish a juvenile justice center in Bernalillo county;

59. forty-five thousand dollars (\$45,000) to construct improvements, including grading and infrastructure, at the Sawmill community land trust housing project in Albuquerque in Bernalillo county;

60. seventy-five thousand dollars (\$75,000) to plan, design and construct a skate park in the north valley of Albuquerque in Bernalillo county;

61. ten thousand dollars (\$10,000) to resurface the tennis courts at Columbus park in Albuquerque in Bernalillo county;

62. one million eighty-five thousand dollars (\$1,085,000) to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Los Ranchos de Albuquerque in Bernalillo county;

63. thirty thousand dollars (\$30,000) to purchase educational technology for the amigos and amigas program in Albuquerque in Bernalillo county;

64. twenty thousand dollars (\$20,000) to design and construct improvements at Tiguex park in Albuquerque in Bernalillo county;

65. fifteen thousand dollars (\$15,000) to purchase equipment for the police athletic league in Bernalillo county;

66. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the Eastdale little league complex in Albuquerque in Bernalillo county;

67. ten thousand dollars (\$10,000) to plan, design and construct an information kiosk for Las Terrezas neighborhood association in Albuquerque in Bernalillo county;

68. one hundred thousand dollars (\$100,000) for planning and design of the near heights metropolitan redevelopment plan in Albuquerque in Bernalillo county;

69. one million four hundred thousand dollars (\$1,400,000) for capital improvements and expenditures for the Albuquerque tricentennial in Bernalillo county;

70. fifty thousand dollars (\$50,000) to plan, design and construct an addition to the Catron county medical center in Reserve in Catron county;

71. one hundred twenty-five thousand dollars (\$125,000) to plan, design, construct and purchase portable classrooms, prepare fields and make road improvements, including chip seal and gravel, at the fire training academy in Chaves county;

72. seventy-five thousand dollars (\$75,000) to plan, design and construct a plaza across from the Chaves county courthouse, including a statue, demolition of property and construction of a parking lot, in Chaves county;

73. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish renovations and additions to the animal control facility in Roswell in Chaves county;

74. two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to the Cielo Grande sports complex in Roswell in Chaves county;

75. twenty-five thousand dollars (\$25,000) to purchase and install electronic signage in Hagerman in Chaves county;

76. twenty-five thousand dollars (\$25,000) to plan, design and construct renovations to the baseball field at the Noon Optimist baseball complex in Roswell in Chaves county;

~~77. twenty-five thousand dollars (\$25,000) to purchase equipment for the renegade youth wrestling program in Roswell in Chaves county;]~~ [*LINE-ITEM VETO*]

78. fifty thousand dollars (\$50,000) to purchase equipment for the hike it spike it program in Roswell in Chaves county;

~~79. twenty-five thousand dollars (\$25,000) to purchase equipment for the fall youth baseball league in Roswell in Chaves county;]~~ [*LINE-ITEM VETO*]

80. one hundred thousand dollars (\$100,000) to plan, design and construct the Blackdom memorial in Chaves county;

81. two hundred thirty thousand dollars (\$230,000) to plan, design, construct and remodel the energy library in Roswell in Chaves county;

82. one hundred fifty thousand dollars (\$150,000) for planning, design, construction, equipping and furnishing of the historical society for southeast New Mexico's museum archive building in Roswell in Chaves county;

83. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish improvements, including the locker room and storage facilities, at Coca-Cola field in Roswell in Chaves county;

84. twenty-one thousand dollars (\$21,000) to purchase and install a microscope for the police department in Roswell in Chaves county;

85. fifty thousand dollars (\$50,000) to equip and upgrade the community park in southeast Roswell in Chaves county;

86. one hundred thousand dollars (\$100,000) to plan, design and renovate the boys' and girls' club in Roswell in Chaves county;

87. ten thousand dollars (\$10,000) to plan and design a multipurpose center in Milan in Cibola county;

88. one hundred thousand dollars (\$100,000) to design and construct improvements to the parking lot at the Seboyeta fire department in Cibola county;

89. one hundred ten thousand dollars (\$110,000) to plan, design, construct and equip an animal shelter for Grants and Cibola county;

90. forty thousand dollars (\$40,000) to plan, design and construct a new park entrance, including necessary demolition, in Milan in Cibola county;

91. three hundred thousand dollars (\$300,000) to plan, design and construct a swimming pool in Grants in Cibola county;

92. one hundred thousand dollars (\$100,000) to plan, design and construct a courthouse in Grants in Cibola county;

93. sixty thousand dollars (\$60,000) to purchase equipment for the street department in Grants in Cibola county;

94. sixty-five thousand dollars (\$65,000) to purchase and equip vehicles for the police department in Grants in Cibola county;

95. thirty thousand dollars (\$30,000) to plan, design and construct a building for the region 1 housing authority in Grants in Cibola county;

96. five thousand dollars (\$5,000) to purchase and install information technology for the police department in Grants in Cibola county;

97. five thousand dollars (\$5,000) to furnish and equip the police department in Grants in Cibola county;

98. fifteen thousand dollars (\$15,000) to construct a parking lot, fencing, landscaping and site improvements at the city-owned head start building in Grants in Cibola county;

99. twenty thousand dollars (\$20,000) to construct streets, curbs, drainage and trails to develop Liberty square in Angel Fire in Colfax county;

100. thirty thousand dollars (\$30,000) to plan, design and construct improvements, including reroofing, to the village hall in Cimarron in Colfax county;

101. five thousand dollars (\$5,000) to plan, design and construct improvements to the parking lot and walking areas at the Taos Colfax community service building in Raton in Colfax county;

102. five thousand dollars (\$5,000) to plan, design and construct improvements to the fairgrounds in Colfax county;

103. twenty thousand dollars (\$20,000) to purchase a vehicle for the sheriff's department in Colfax county;

104. one hundred thousand dollars (\$100,000) to plan and design a courthouse in Raton in Colfax county;

105. one hundred twenty-five thousand dollars (\$125,000) to renovate and expand the county courthouse and offsite office space for the district attorney's office in Clovis in Curry county;

106. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip, renovate and expand the city-owned building, including construction of a parking lot, for the Life Saver food bank in Clovis in Curry county;

107. five hundred thousand dollars (\$500,000) to plan, design, construct, equip and furnish a wellness and youth development center in Clovis in Curry county;

108. twenty-two thousand five hundred dollars (\$22,500) to plan, design and construct a veterans' memorial in Melrose in Curry county;

109. two hundred fifty thousand dollars (\$250,000) to plan, design, construct and equip the Urioste wellness center in house district 63 in Clovis in Curry county;

110. twenty thousand dollars (\$20,000) to plan, design and construct a courthouse in De Baca county;

111. thirty-three thousand dollars (\$33,000) to plan, design and construct improvements to the courthouse in De Baca county;

112. thirty-five thousand dollars (\$35,000) to plan, design, construct and landscape the veterans' memorial wall in Dona Ana county;

113. one hundred seventy-five thousand dollars (\$175,000) for planning, design and construction of a community center, including site infrastructure, in Butterfield park in Dona Ana county;

114. twenty-five thousand dollars (\$25,000) to plan, design and construct an open space designated park in Las Cruces in Dona Ana county;

115. one hundred thousand dollars (\$100,000) to purchase, remodel and equip a county-owned building for La Pinon sexual assault recovery service in Las Cruces in Dona Ana county;

116. five hundred thousand dollars (\$500,000) to plan, design and construct a building for the Valley community library in Anthony in Dona Ana county;

117. sixty-eight thousand dollars (\$68,000) to purchase equipment, including fitness, boxing and computer equipment, for the Anthony youth activity center in Dona Ana county;

118. two hundred sixty thousand dollars (\$260,000) to plan, design and construct development and streetscape improvements in conjunction with the downtown revitalization project in Las Cruces in Dona Ana county;

119. three hundred sixty-five thousand dollars (\$365,000) to plan, design and construct improvements to the city-owned La Casa domestic violence center in Las Cruces in Dona Ana county;

120. ninety-five thousand dollars (\$95,000) to plan, design and construct improvements to Burn lake and Esslinger park in Las Cruces in Dona Ana county;

121. sixty-five thousand dollars (\$65,000) to plan, design and construct the High Noon soccer complex in Las Cruces in Dona Ana county;

122. seventy-five thousand dollars (\$75,000) to plan, design and construct the veterans' memorial wall in Las Cruces in Dona Ana county;

123. twenty-five thousand dollars (\$25,000) to plan, design and construct the Benavidez community center in Las Cruces in Dona Ana county;

124. one hundred thousand dollars (\$100,000) to plan, design and construct an indoor swimming pool and recreation center in Las Cruces in Dona Ana county;

125. seventeen thousand dollars (\$17,000) to plan, design and construct improvements to the community parks in Sunland Park in Dona Ana county;

126. thirty-five thousand dollars (\$35,000) to plan, design, purchase and install information technology for the property tax collection and distribution system at the Dona Ana county treasurer's office;

127. one hundred fifty thousand dollars (\$150,000) for site development and construction of the visitors' center and an addition to house the marshal and fire department in Mesilla in Dona Ana county;

128. twenty thousand dollars (\$20,000) to equip and furnish the Valley community library in Anthony in Dona Ana county;

129. fifty thousand dollars (\$50,000) to plan, design and construct a swim training facility in Hatch in Dona Ana county;

130. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a transitional living facility in Dona Ana county;

131. forty-five thousand dollars (\$45,000) to plan, design, install, landscape, equip and improve the Mesquite environmental park near Mesquite elementary school in Dona Ana county;

132. twenty-five thousand dollars (\$25,000) to plan, design and construct housing for use by the grandparents raising grandchildren program in Las Cruces in Dona Ana county;

133. two hundred forty thousand dollars (\$240,000) to plan, design and construct improvements, including paving, landscaping, lighting and a gazebo multipurpose facility, at the Andy Nunez Hatch health and human services building in Hatch in Dona Ana county;

134. twenty thousand dollars (\$20,000) to plan, design and construct a trail with landscaping and irrigation from Tortugas to A mountain in Dona Ana county;

135. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to and to purchase and install equipment at Guadalupe park in Tortugas in Dona Ana county;

136. forty thousand dollars (\$40,000) to plan, design and construct improvements to Colquitt park in Chaparral in Dona Ana county;

137. one hundred forty thousand dollars (\$140,000) to plan, design, construct and equip improvements, including soccer equipment, concession and restroom facilities, paving and lighting, at Dolores Wright memorial park in Chaparral in Dona Ana county;

138. twenty-five thousand dollars (\$25,000) to purchase equipment for the football and basketball programs in Las Cruces in Dona Ana county;

139. forty thousand dollars (\$40,000) for construction and expansion of the Talavera fire station in Talavera in Dona Ana county;

140. thirty thousand dollars (\$30,000) to purchase fire and emergency medical equipment for Las Alturas fire department in Dona Ana county;

141. forty thousand dollars (\$40,000) to purchase fire and emergency medical equipment for the Anthony volunteer fire department in Anthony in Dona Ana county;

142. twenty thousand dollars (\$20,000) to repair and renovate the county-owned La Clinica de Familia facility in Chaparral in Dona Ana county;

143. one hundred one thousand six hundred six dollars (\$101,606) to purchase and install an electronic health and oral records system for La Clinica de Familia in Dona Ana county;

144. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the Community of Hope center in Las Cruces in Dona Ana county;

145. sixty thousand dollars (\$60,000) to purchase equipment for the South Valley, Fairacres and Mesilla fire departments in Dona Ana county;

146. twenty-five thousand dollars (\$25,000) to plan, design and construct infrastructure improvements, including lighting, in the historic Mesquite district of Las Cruces in Dona Ana county;

147. five million dollars (\$5,000,000) to plan, design and construct infrastructure improvements related to the Dona Ana colonias initiative in Dona Ana county;

148. forty thousand dollars (\$40,000) to plan, design and construct improvements to the Carlsbad tennis courts in Carlsbad in Eddy county;

149. thirty-five thousand dollars (\$35,000) to plan, design and construct improvements to the Carlsbad community kitchen in Carlsbad in Eddy county;

150. one hundred forty thousand dollars (\$140,000) to plan, design and construct improvements to roads and pathways in the Carlsbad cemetery in Carlsbad in Eddy county;

151. eighty thousand dollars (\$80,000) to plan, design and construct improvements to the Carlsbad adult softball complex in Carlsbad in Eddy county;

152. sixty-five thousand dollars (\$65,000) to plan, design, construct and equip the Carlsbad roller hockey park in Carlsbad in Eddy county;

153. twenty thousand dollars (\$20,000) to furnish and equip the cave and karst research institute in Carlsbad in Eddy county;

154. one hundred fifteen thousand dollars (\$115,000) to plan, design and construct a youth sports complex in Carlsbad in Eddy county;

155. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the Walter Gerrells performing arts and exhibition center in Carlsbad in Eddy county;

156. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the St. Francis hospital building in Carlsbad in Eddy county;

157. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct a domestic violence shelter in Carlsbad in Eddy county;

158. forty thousand dollars (\$40,000) to purchase equipment for and improve exhibit and storage areas at the Carlsbad museum and fine arts center in Carlsbad in Eddy county;

159. ninety thousand dollars (\$90,000) to plan, design and construct an animal shelter in Carlsbad in Eddy county;

160. one hundred thousand dollars (\$100,000) to plan, design, construct and equip classrooms and a laboratory for the city-owned New Mexico state university center in Artesia in Eddy county;

161. one hundred sixty thousand dollars (\$160,000) to plan, design and construct the industrial park in Artesia in Eddy county;

162. two hundred five thousand dollars (\$205,000) to plan, design and construct the Martin Luther King, Jr., recreational complex in Artesia in Eddy county;

163. one hundred fifteen thousand dollars (\$115,000) for improvements, including renovations to comply with the Americans with Disabilities Act of 1990, at the horse council arena in Eddy county;

164. thirty thousand dollars (\$30,000) to plan, design, construct and equip improvements to the community center in Loving in Eddy county;

165. eleven thousand dollars (\$11,000) to plan, design and construct a park adjacent to the Malaga volunteer fire station in Eddy county;

166. thirty-five thousand dollars (\$35,000) to plan, design and construct an arts park, including landscaping, at the Carlsbad library and museum complex in Carlsbad in Eddy county;

167. fifty thousand dollars (\$50,000) to equip and furnish the obstetrics and gynecology department at the Artesia general hospital in Artesia in Eddy county;

168. twenty thousand dollars (\$20,000) to plan, design and construct landscaping improvements to the industrial park in Carlsbad in Eddy county;

169. one hundred twenty-two thousand eighty-eight dollars (\$122,088) to design and construct or remodel a consolidated dispatch center for law enforcement in Carlsbad in Eddy county;

170. ten thousand dollars (\$10,000) to plan, design and construct a park adjacent to Malaga volunteer fire station in Eddy county;

171. eighteen thousand dollars (\$18,000) to purchase a passenger bus for Grant county;

172. one hundred thousand dollars (\$100,000) to plan, design and construct renovations at the county courthouse in Silver City in Grant county;

173. one hundred thousand dollars (\$100,000) to plan, design and construct an emergency medical center at Gila regional medical center in Silver City in Grant county;

174. two hundred fifty thousand dollars (\$250,000) to purchase a linear accelerator dosimetry treatment and other ancillary equipment, to build a vault for the linear accelerator and to plan, design and construct the relocation of the oncology department at the Gila regional medical center in Silver City in Grant county;

175. one hundred thousand dollars (\$100,000) for asbestos remediation and improvements at Silver City hospital in Silver City in Grant county;

176. sixty thousand dollars (\$60,000) to purchase maintenance vehicles and safety equipment for Santa Clara in Grant county;

177. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including an addition, to the municipal buildings, including the police station, municipal court and city hall, in Hurley in Grant county;

178. two hundred eighty-eight thousand dollars (\$288,000) to plan, design and construct improvements and a parking lot at La Capilla heritage park in Silver City in Grant county;

179. thirty thousand dollars (\$30,000) to plan, design and construct infrastructure and landscaping improvements at the veterans' memorial in Bayard in Grant county;

180. fifty thousand dollars (\$50,000) to purchase and install information technology and related equipment and furnishings at Bayard in Grant county;

181. one hundred thousand dollars (\$100,000) to purchase vehicles and equipment for the police, maintenance and emergency medical services departments and for the town hall in Hurley in Grant county;

182. eighty-one thousand dollars (\$81,000) to construct improvements to Bataan memorial park in Grant county;

183. twenty-five thousand dollars (\$25,000) to plan, design and construct Casa de Cuentos in Silver City in Grant county;

184. twenty thousand dollars (\$20,000) to plan, design and construct a Vietnam memorial and gazebo in Bataan park in Santa Clara in Grant county;

185. twenty-five thousand dollars (\$25,000) to purchase minibuses for Grant county;

186. two hundred thousand dollars (\$200,000) to plan, design, construct, equip and furnish a boys' and girls' club in Grant county;

187. one million dollars (\$1,000,000) to plan, design, construct, equip and furnish a cancer treatment center in Silver City in Grant county;

188. thirty-five thousand dollars (\$35,000) to plan, design and construct repairs and improvements to the swimming pool in Vaughn in Guadalupe county;

189. thirty thousand dollars (\$30,000) to purchase and install park equipment in Vaughn in Guadalupe county;

190. twenty thousand dollars (\$20,000) to plan, design and construct a library in Anton Chico in Guadalupe county;

191. seventy thousand dollars (\$70,000) to repair and equip parks in Santa Rosa in Guadalupe county;

192. one hundred twenty-nine thousand five hundred two dollars (\$129,502) to purchase and install or plan, design, construct, equip and furnish a building to serve as an economic and community development multipurpose facility in Harding county;

193. thirty-five thousand dollars (\$35,000) to plan, design and construct improvements to the county courthouse in Lordsburg in Hidalgo county;

194. two hundred thousand dollars (\$200,000) to plan and design a new detention facility in Lordsburg in Hidalgo county;

195. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the parking lot, including fencing and striping, at the county fairgrounds in Lea county;

196. three hundred thousand dollars (\$300,000) to plan, design and construct a roof replacement for the county event center in Lea county;

197. three hundred thousand dollars (\$300,000) to plan, design and construct an outdoor swimming pool at Chaparral park in Lovington in Lea county;

198. one hundred thirty-seven thousand dollars (\$137,000) to purchase and equip a fire truck in Tatum in Lea county;

199. eighty-five thousand dollars (\$85,000) to purchase and install equipment for a cardiac rehabilitation unit at Nor-Lea general hospital in Lovington in Lea county;

200. three hundred thousand dollars (\$300,000) to plan, design, construct and equip a public school sports facility in Hobbs in Lea county;

201. one hundred thousand dollars (\$100,000) to plan, design, construct, furnish and equip a domestic shelter in Ruidoso in Lincoln county;

202. thirty thousand dollars (\$30,000) to plan, design and make improvements to the Los Alamos historical museum Romero cabin in Los Alamos county;

203. one hundred fifty thousand dollars (\$150,000) to plan, design and construct improvements at the amphitheater and open air pavilion complex in Deming in Luna county;

204. twenty-five thousand dollars (\$25,000) for repairs and renovation to facilities, including improvements to comply with the Americans with Disabilities Act of 1990, at the southwest New Mexico fairgrounds in Luna county;

205. forty thousand dollars (\$40,000) to plan, design and construct a shooting range in Gallup in McKinley county;

206. ninety-five thousand dollars (\$95,000) to construct a veterans' memorial park in Gallup in McKinley county;

207. forty thousand dollars (\$40,000) to plan, design and construct improvements that comply with the Americans with Disabilities Act of 1990 in museums, including construction of a multipurpose learning center and museum, in McKinley county;

208. fifty thousand dollars (\$50,000) to plan, design and construct a horse preservation holding facility and observation area as part of the adventure Gallup and beyond project in McKinley county;

209. two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish a domestic violence shelter in Gallup in McKinley county;

210. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish an administrative office for the northwest New Mexico council of governments in Gallup in McKinley county;

211. one hundred thousand dollars (\$100,000) to plan, design and construct paving, fencing, erosion control and community gardens for the community pantry project in Gallup in McKinley county;

212. twenty-five thousand dollars (\$25,000) to equip, furnish and construct improvements to the kitchen and bathroom at the Ocate community center in Mora county;

213. thirty thousand dollars (\$30,000) to plan, design and construct renovations at the community center in Rainsville in Mora county;

214. twenty-five thousand dollars (\$25,000) to plan, design and construct renovations to the Cleveland, Holman, Encinal and Tramperos volunteer fire department building in Mora county;

215. twenty thousand dollars (\$20,000) to plan, design and construct a park in Wagon Mound in Mora county;

216. thirty thousand dollars (\$30,000) to plan, design and construct a community center in Guadalupita in Mora county;

217. twenty-five thousand dollars (\$25,000) to design and construct improvements to and purchase equipment for municipal offices in Wagon Mound in Mora county;

218. ten thousand dollars (\$10,000) to plan, design and equip, including a technology room, a cultural institute in Mora county;

219. thirty thousand dollars (\$30,000) for improvements to the Rio Grande alcoholism treatment facility in Mora in Mora county;

220. twenty-five thousand dollars (\$25,000) to plan, design, purchase and install an information technology system, including wiring, for the southeastern New Mexico economic development district's council of governments that serves Chaves, Eddy, Lea, Lincoln and Otero counties;

221. two hundred thousand dollars (\$200,000) to plan, design and construct a fire station in La Luz in Otero county;

222. forty thousand dollars (\$40,000) to plan, design and construct the renovation, including needed roof, electrical and heating and cooling improvements, of the Otero county fair facilities in Alamogordo in Otero county;

223. fifty thousand dollars (\$50,000) to plan, design, construct and renovate a county road shop in Otero county;

224. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct roof improvements to the Weed community center in Weed in Otero county;

225. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish a veterans' memorial in Tularosa in Otero county;

226. one hundred thousand dollars (\$100,000) to plan, design, construct, equip and clear land, including the purchase of additional land, for an armed forces museum in Alamogordo in Otero county;

227. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip, furnish and renovate the Flickinger performing arts center in Otero county;

228. twenty-five thousand dollars (\$25,000) to plan, design and construct drainage improvements and a retaining wall at the veterans' memorial in Espanola in Rio Arriba county;

229. one hundred ten thousand dollars (\$110,000) to plan, design and construct improvements to Las Cumbres learning services center in Espanola in Rio Arriba county;

230. fifty thousand dollars (\$50,000) to plan, design and construct an additional bay for El Rito volunteer fire station in El Rito in Rio Arriba county;

231. forty thousand dollars (\$40,000) to plan, design, construct, equip and furnish the Agua Sana fire station in Hernandez in Rio Arriba county;

232. fifty thousand dollars (\$50,000) to plan, design, purchase and install a water storage tank at the fire station in Coyote in Rio Arriba county;

233. twenty thousand dollars (\$20,000) to acquire land for, plan, design and construct a county health facility to house the health centers of northern New Mexico, Las Cumbres learning services and the Espanola public health office in Rio Arriba county;

234. forty thousand dollars (\$40,000) to plan, design and construct a community center in Truchas in Rio Arriba county;

235. fifty thousand dollars (\$50,000) to renovate the multipurpose youth education building in Espanola in Rio Arriba county;

236. ten thousand dollars (\$10,000) to equip a horse search and rescue team in Rio Arriba county;

237. thirty thousand dollars (\$30,000) to purchase information technology for use by las clinicas del norte in Rio Arriba county;

238. forty thousand dollars (\$40,000) to construct and equip a safe and sanitary disposal facility in Espanola for companion animals from Rio Arriba, Santa Fe and Los Alamos counties;

239. forty thousand dollars (\$40,000) to plan, design and construct improvements to the Espanola Valley little league baseball fields in Espanola in Rio Arriba county;

240. sixty thousand dollars (\$60,000) to plan, design, purchase and install dry fire hydrants in Velarde in Rio Arriba county;

241. ninety thousand dollars (\$90,000) to construct parking lot and landscaping improvements and to purchase equipment for the Alcalde community center in Rio Arriba county;

242. fifty thousand dollars (\$50,000) to plan, design and acquire land and a prefabricated building, including infrastructure, for the crime prevention organization facility in Chimayo in Rio Arriba county;

243. thirty-three thousand dollars (\$33,000) to purchase and equip vehicles for the county sheriff's department in Roosevelt county;

244. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the memorial park in Causey in Roosevelt county;

245. fifty thousand dollars (\$50,000) to purchase an ambulance and a twelve-wire defibrillator for the Arch volunteer fire department in Arch in Roosevelt county;

246. ninety thousand dollars (\$90,000) to acquire land for and plan, design and construct a domestic violence shelter and center in Farmington in San Juan county;

247. three hundred forty thousand dollars (\$340,000) to purchase and install radio console equipment at the 911 communications center for the San Juan county communications authority in Aztec;

248. three hundred forty thousand dollars (\$340,000) to construct the family aquatic center, including renovating the existing high school pool and constructing outdoor facilities, in Bloomfield in San Juan county;

249. fifty thousand dollars (\$50,000) to purchase and install medical and dental equipment for the medical center in Farmington in San Juan county;

250. one hundred thousand dollars (\$100,000) to plan, design and construct the south side multipurpose neighborhood facility in Farmington in San Juan county;

251. two hundred fifty thousand dollars (\$250,000) to purchase a class A pumper fire truck for the fire department in Las Vegas in San Miguel county;

252. one million dollars (\$1,000,000) to plan, design, renovate, remodel, construct, expand, furnish and equip the county courthouse and district court annex in San Miguel county;

253. twenty thousand dollars (\$20,000) to purchase and install recreation equipment for the San Juan community center in San Miguel county;

254. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the community center in San Geronimo in San Miguel county;

255. sixteen thousand dollars (\$16,000) for improvements, including cleanup, to the arroyos in Pecos in San Miguel county;

256. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the detention center in San Miguel county;

257. thirty thousand dollars (\$30,000) to purchase a vehicle for the maintenance department in San Miguel county;

258. ten thousand dollars (\$10,000) to equip and furnish the foster grandparent program in San Miguel county;

259. ten thousand dollars (\$10,000) to plan, design and construct Commerce street park in Las Vegas in San Miguel county;

260. twenty thousand dollars (\$20,000) to plan, design and construct bleachers at the recreation center in Las Vegas in San Miguel county;

261. three hundred twenty thousand dollars (\$320,000) to plan, design and construct the county health commons building in Sandoval county;

262. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including expanding the kennel run, at the animal control center in Rio Rancho in Sandoval county;

263. sixty-seven thousand eight hundred dollars (\$67,800) to construct and equip improvements, including a skateboard area, a shade structure and a water fountain, at parks in Rio Rancho in Sandoval county;

264. sixty-five thousand dollars (\$65,000) for park improvements in San Ysidro in Sandoval county;

265. one hundred thousand dollars (\$100,000) to plan, design and construct a library addition in Jemez Springs in Sandoval county;

266. one hundred twenty-five thousand dollars (\$125,000) to drill wells and purchase and install tanks and equipment for fire suppression in Corrales in Sandoval county;

267. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a skate park in Corrales in Sandoval county;

~~268. twenty thousand dollars (\$20,000) to design and construct tennis courts in Corrales in Sandoval county;~~ [LINE-ITEM VETO]

269. one hundred thirteen thousand dollars (\$113,000) to plan, design and construct an expansion to the boys' and girls' club in Rio Rancho in Sandoval county;

270. thirty-five thousand dollars (\$35,000) to purchase an animal control unit in Corrales in Sandoval county;

271. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct improvements, including a visitors' center, restrooms, landscaping and road work, at Casa San Ysidro in Corrales in Sandoval county;

272. two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish a community regional learning resource center and library in Cuba in Sandoval county;

273. two hundred twenty thousand dollars (\$220,000) for infrastructure improvements and equipment at the New Mexico soccer complex in Bernalillo in Sandoval county;

274. twenty-five thousand dollars (\$25,000) to purchase information technology for El Pueblo health services in Bernalillo in Sandoval county;

275. fifteen thousand dollars (\$15,000) to acquire a bust of Edmund "Joe" Lang for the Sandoval county courthouse in Bernalillo;

276. two hundred fifty thousand dollars (\$250,000) to plan, design and complete a parking lot in Rio Rancho in Sandoval county;

277. eighty thousand dollars (\$80,000) to plan, design, renovate and expand, including the emergency department, facilities at St. Vincent hospital in Santa Fe in Santa Fe county;

278. fifty thousand dollars (\$50,000) to plan, design, construct and renovate studio and office space at the museo cultural, including upgrading the performance space for use by the Maria Benitez institute for Spanish arts, in Santa Fe in Santa Fe county;

279. thirty thousand dollars (\$30,000) to plan, design, construct, equip, furnish and acquire land for the first judicial district courthouse in Santa Fe county;

280. one hundred thirty thousand dollars (\$130,000) to acquire land for, plan, design, construct, equip and furnish the Esperanza shelter administrative complex in Santa Fe county;

281. five hundred twenty-five thousand dollars (\$525,000) to acquire land and a building for and to plan, design, construct, renovate, equip and furnish the women's health services complex in Santa Fe county;

282. one hundred fifty-five thousand dollars (\$155,000) to construct and renovate the youth development facility in Santa Fe county;

283. fifty thousand dollars (\$50,000) to plan, design, construct, equip and acquire land for La Cienega community park in Santa Fe county;

284. twenty thousand dollars (\$20,000) to plan, design, construct, equip and acquire land for a senior housing project in Santa Fe county;

285. seventy-five thousand dollars (\$75,000) to plan, design and construct the Santa Fe rail yard plaza in Santa Fe in Santa Fe county;

286. twenty thousand dollars (\$20,000) to purchase and install equipment for the Genoveva Chavez community center in Santa Fe in Santa Fe county;

287. twenty-five thousand dollars (\$25,000) to purchase and equip a vehicle equipped with a lift gate for Santa Fe in Santa Fe county;

288. one hundred fifty thousand dollars (\$150,000) to acquire land for, plan, design, construct, equip and furnish the Pojoaque Valley community center in Santa Fe county;

289. one hundred seventy-five thousand dollars (\$175,000) to plan, design, construct, equip and furnish an expansion to the La Familia medical center on Alto street in Santa Fe in Santa Fe county;

290. one hundred ten thousand dollars (\$110,000) to plan, design, construct and acquire land for a multipurpose park on paseo de la Conquistadora in Santa Fe in Santa Fe county;

291. thirty thousand dollars (\$30,000) to plan, design and construct improvements to Larragoite park in Santa Fe in Santa Fe county;

292. twenty thousand dollars (\$20,000) to purchase and install playground equipment for the Agua Fria preschool project in Santa Fe county;

293. twenty thousand dollars (\$20,000) to plan, design and construct improvements to Ortiz park in Santa Fe in Santa Fe county;

294. ninety-five thousand dollars (\$95,000) to design and construct a teen arts center at the rail yard property in Santa Fe in Santa Fe county;

295. seventy-five thousand dollars (\$75,000) to plan, design, construct, equip and furnish a youth center in Santa Fe in Santa Fe county;

296. seventy-five thousand dollars (\$75,000) to purchase vehicles for the Santa Fe boys' and girls' club in Santa Fe in Santa Fe county;

297. twenty thousand dollars (\$20,000) to purchase and construct a metal building for the northern New Mexico Rio Grande sportsmen club in Santa Fe county;

298. twenty-five thousand dollars (\$25,000) for equipment for the Santa Fe mountain center ropes course in Santa Fe county;

299. twenty-five thousand dollars (\$25,000) to design and construct a soccer field in Eldorado, contingent upon Santa Fe county and the Santa Fe public school district executing an agreement for a joint-use county-school soccer field in Santa Fe county;

300. twenty-five thousand dollars (\$25,000) to plan, design, construct, equip and furnish Vista del Sol at Tierra Contenta community park in Santa Fe in Santa Fe county;

301. ten thousand dollars (\$10,000) to purchase video equipment for youth instruction at the municipal recreation complex in Santa Fe in Santa Fe county;

302. fifty thousand dollars (\$50,000) to plan, design, construct and equip additions and improvements to Ragle park in Santa Fe in Santa Fe county;

303. fifteen thousand dollars (\$15,000) for improvements to comply with the Americans with Disabilities Act of 1990 and safety requirements at a family resource center in Chimayo in Santa Fe county;

304. fifteen thousand dollars (\$15,000) to purchase medical equipment for women's health services in Santa Fe county;

305. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including restoring the grandstand and retaining walls, at the Oscar Huber memorial ballpark in Madrid in Santa Fe county;

306. fifty thousand dollars (\$50,000) to plan, design and improve the Lensic theater in Santa Fe in Santa Fe county;

307. four hundred thousand dollars (\$400,000) to plan, design and improve a wetland system in Santa Fe county;

308. fifty thousand dollars (\$50,000) to purchase and upgrade equipment for the Elephant Butte emergency medical services in Sierra county;

309. one hundred thousand dollars (\$100,000) to expand and renovate the public health multipurpose facility in Socorro in Socorro county;

310. one hundred fifty thousand dollars (\$150,000) to purchase and install playground and exercise equipment at Clark field, Western hills and Sedillo park in Socorro in Socorro county;

311. one hundred thousand dollars (\$100,000) to plan, design, construct and equip a community center in Abeytas in Socorro county;

312. thirty thousand dollars (\$30,000) to plan, design, equip and construct a building, including a water storage tank, offices and training and operations facilities, for the county fire department in Socorro county;

313. seven hundred thousand dollars (\$700,000) for development, support and training for the statewide rodeo initiative;

314. ninety-five thousand dollars (\$95,000) to improve, upgrade, equip and furnish the Talpa community center in Taos county;

315. eighty thousand dollars (\$80,000) to purchase land for, plan, design and construct a fire station for Pot Creek and Ranchos de Taos in Taos county;

316. one hundred seventy-five thousand dollars (\$175,000) to plan, design and construct a regional command dispatch and homeland security center in Taos in Taos county;

317. seventy thousand dollars (\$70,000) to plan, design, construct and equip the community center in Cerro in Taos county;

318. fifty thousand dollars (\$50,000) to plan, design and construct a parking lot, purchase a scissor lift and replace the heating system at the Juan I. Gonzales memorial agricultural center in Taos county;

319. three hundred fifty thousand dollars (\$350,000) to plan, design, construct, furnish and equip a building for the road department in Taos county;

320. forty thousand dollars (\$40,000) to plan, design, construct, equip and furnish renovations to the Llano community center in Taos county;

321. fifty thousand dollars (\$50,000) to plan, design and construct improvements and an expansion to the community against violence facility in Taos in Taos county;

322. fifteen thousand dollars (\$15,000) to plan, design, construct, equip and furnish a community center in Amalia in Taos county;

323. twenty-five thousand dollars (\$25,000) to furnish and equip the Rio Grande alcohol treatment facility in Embudo in Rio Arriba county;

324. twenty thousand dollars (\$20,000) to purchase land for, plan, design and construct a veterans' memorial in Questa in Taos county;

325. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the hacienda de los Martinez and Taos morada historical sites in Taos in Taos county;

326. twenty thousand dollars (\$20,000) to purchase equipment for the Pot Creek wildcard urban interface fuel reduction program in Taos county;

327. twenty thousand dollars (\$20,000) to purchase vans to be used for a transitional living project in Taos in Taos county;

328. thirty-five thousand dollars (\$35,000) to plan, design and construct a building for the agri-wheat project on the Taos land grant in Taos county;

329. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct an addition to the Arroyo Hondo-Arroyo Seco fire department in Taos county;

330. two hundred thousand dollars (\$200,000) to plan, design and purchase a mobile meat processing unit for Taos county;

331. fifty thousand dollars (\$50,000) for feasibility studies and engineering plans for a Taos business assets inventory in Taos county;

332. one hundred thousand dollars (\$100,000) for improvements related to the mainstreet program in Taos in Taos county;

333. two hundred thousand dollars (\$200,000) to plan, design and construct the DWI memorial of perpetual tears park in Moriarty in Torrance county;

334. eighty thousand dollars (\$80,000) to purchase and equip vehicles for the sheriff's department in Torrance county;

335. twenty thousand dollars (\$20,000) to purchase a vehicle for the animal shelter in Torrance county;

336. thirty thousand dollars (\$30,000) to renovate the old courthouse, including code compliance and roof repairs, in Torrance county;

337. one hundred thousand dollars (\$100,000) to plan, design, construct and furnish a fine arts facility in Moriarty in Torrance county;

338. five hundred seventy-five thousand dollars (\$575,000) to construct improvements, including a gymnasium, at the multipurpose community center in Belen in Valencia county;

339. five hundred thousand dollars (\$500,000) to construct an addition to and renovations on the public library in Belen in Valencia county;

340. one hundred ninety thousand dollars (\$190,000) to plan, design and construct improvements to parks and recreation facilities, including the Enchantment little league complex, the Los Lunas sports complex and Daniel Fernandez memorial park, in Los Lunas in Valencia county;

341. one hundred thousand dollars (\$100,000) to plan, design, construct and furnish improvements and expansion to the Meadowlake community center in Valencia county;

342. one hundred forty-five thousand dollars (\$145,000) for remodeling and renovation of the Jarales senior and community center and sheriff's substation in Valencia county;

343. four hundred forty thousand dollars (\$440,000) to plan, design and construct the El Cerro fire station in Valencia county;

344. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish Los Chavez fire department in Valencia county;

345. one hundred thirty thousand dollars (\$130,000) to plan, design and construct improvements to the animal control facility in Valencia county;

346. forty thousand dollars (\$40,000) to plan, design, construct and equip, including an addition to, the Meadow Lake fire station in Valencia county;

347. six hundred thousand dollars (\$600,000) to plan, design, construct, equip and furnish the fire and police station in Bosque Farms in Valencia county;

348. sixty-seven thousand six hundred twenty dollars (\$67,620) to plan, design and construct a public courtyard in Bosque Farms in Valencia county;

349. one million dollars (\$1,000,000) to construct, equip and furnish a public health building in Belen in Valencia county;

350. four million two hundred forty-one thousand dollars (\$4,241,000) to plan, design, construct, furnish and equip Los Morros business park in Los Lunas in Valencia county;

351. fifty thousand dollars (\$50,000) for landscaping improvements, including the design and installation of xeric landscaping, at Pinnacle reservoir in Albuquerque in Bernalillo county;

352. forty thousand dollars (\$40,000) to plan, design and construct renovations to Alamosa park in Albuquerque in Bernalillo county;

353. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including an activity room and restrooms, at the West Mesa community center in Albuquerque in Bernalillo county;

354. seventy-five thousand dollars (\$75,000) for equipment and improvements to the site, facility and field, including improvements to comply with the Americans with Disabilities Act of 1990, for the Atrisco little league in Bernalillo county;

355. ninety thousand dollars (\$90,000) to plan, design and construct improvements to the Martineztown park and walkway in Albuquerque in Bernalillo county;

356. one hundred thousand dollars (\$100,000) for construction of Valle del Bosque park in Bernalillo county;

357. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the city-owned Roadrunner little league fields and facilities in Albuquerque in Bernalillo county;

358. fifty thousand dollars (\$50,000) to expand the Lomas-Tramway linear park in Albuquerque in Bernalillo county;

359. forty thousand dollars (\$40,000) for improvements to Graves park in Albuquerque in Bernalillo county;

360. eighty-eight thousand dollars (\$88,000) for improving and constructing trails at the open space visitors' center on the west side of Albuquerque in Bernalillo county;

361. fifty thousand dollars (\$50,000) to plan, design, construct and equip a multipurpose center at Bachechi park in Bernalillo county;

362. fifty thousand dollars (\$50,000) to plan, design, construct and equip the Albuquerque Indian center in Bernalillo county;

363. thirty thousand dollars (\$30,000) to design, construct, renovate and equip Los Duranes park in Albuquerque in Bernalillo county;

364. fifty thousand dollars (\$50,000) to plan, design, construct and equip a play area at Matthew Meadows park in Albuquerque in Bernalillo county;

365. fifty-five thousand dollars (\$55,000) to purchase and equip an animal control vehicle for Los Ranchos de Albuquerque in Bernalillo county;

366. thirty thousand dollars (\$30,000) for mainstreet program improvements to Fourth street in Los Ranchos de Albuquerque in Bernalillo county;

367. one hundred ninety-four thousand five hundred twenty-three dollars (\$194,523) to plan, design, construct and equip a multigenerational center at north Domingo Baca park in Albuquerque in Bernalillo county;

368. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish improvements, including a concession stand and equipment, for the Alameda little league complex in Albuquerque in Bernalillo county;

369. twenty thousand dollars (\$20,000) to design and construct streetscape improvements on Gold avenue from Yale boulevard to Sycamore street in Albuquerque in Bernalillo county;

370. ten thousand dollars (\$10,000) for exhibition and office space renovations at the city-owned DeAnza motel in Albuquerque in Bernalillo county;

371. sixty thousand dollars (\$60,000) to plan, design and construct or purchase and renovate a facility for use as a rape crisis center in Bernalillo county;

372. twenty thousand dollars (\$20,000) to develop the site for, plan, design, renovate and improve existing facilities, including equipment for the game and meeting rooms, and construct an addition at the Westside community center in the south valley of Albuquerque in Bernalillo county;

373. fifteen thousand dollars (\$15,000) to resurface the tennis courts, including backboard and hitting surfaces replacement, at Stardust Skies park in Albuquerque in Bernalillo county;

374. one hundred twenty-five thousand dollars (\$125,000) for the metropolitan redevelopment area project for public improvements, including improvements to streets, sidewalks and transit stops, in the Nob Hill area of Albuquerque in Bernalillo county;

375. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including ventilation, roofing, acoustics and interior finishing, to the special collections building of the Albuquerque public library system in Bernalillo county;

376. seventy-five thousand dollars (\$75,000) to design and construct improvements at the Rio Grande dog park in Albuquerque in Bernalillo county;

377. twenty-five thousand dollars (\$25,000) to plan, design and construct renovations at a facility for runaway youth in the south valley of Albuquerque in Bernalillo county;

378. twenty thousand dollars (\$20,000) to plan, design, construct, equip and furnish La Semilla environmental education center in Albuquerque in Bernalillo county;

379. twenty thousand dollars (\$20,000) to equip and improve the Mountain View community center in Bernalillo county;

380. twenty thousand dollars (\$20,000) to equip and improve Los Padillas community center in Bernalillo county;

381. twenty thousand dollars (\$20,000) to equip and furnish improvements for the Loma Linda community center in Albuquerque in Bernalillo county;

382. twenty thousand dollars (\$20,000) to equip and furnish improvements for the Thomas Bell community center in Albuquerque in Bernalillo county;

383. twenty thousand dollars (\$20,000) to equip and furnish improvements for the Jack Candelaria community center in Albuquerque in Bernalillo county;

384. twenty thousand dollars (\$20,000) to equip and furnish improvements for the Barelvas community center in Albuquerque in Bernalillo county;

385. one hundred thousand dollars (\$100,000) for design, construction and furnishing, including site improvements, paving, walkways, a shade pavilion, exterior lighting and landscaping, of the village center in Tijeras in Bernalillo county;

~~386. seventy thousand dollars (\$70,000) to plan, design, construct and renovate the tennis courts at Rio Bravo park in Bernalillo county;~~ [LINE-ITEM VETO]

387. ten thousand dollars (\$10,000) for signage for Los Duranes community center in the Duranes neighborhood of Albuquerque in Bernalillo county;

388. fifty thousand dollars (\$50,000) for improvements to the Mile High little league fields in Albuquerque in Bernalillo county;

~~389. twenty thousand dollars (\$20,000) to purchase and install banners for the west Central avenue area in Albuquerque in Bernalillo county;~~ [LINE-ITEM VETO]

390. fifty thousand dollars (\$50,000) to plan, design and construct a health facility in the south valley of Albuquerque in Bernalillo county;

391. fifty thousand dollars (\$50,000) to design and construct improvements and a visitor center at the Tijeras pueblo ruins in Bernalillo county;

392. seventy-five thousand dollars (\$75,000) to plan, design and construct a fire station in Los Ranchos de Albuquerque in Bernalillo county;

393. one hundred fifteen thousand seventy-four dollars (\$115,074) to construct improvements, including a gate, a pedestrian crossing, signal lights, lighting and fencing, at the Albuquerque biological park in Albuquerque in Bernalillo county;

394. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Petroglyph little league field in Albuquerque in Bernalillo county;

395. fifty thousand dollars (\$50,000) for the sports authority to support the city of Albuquerque in hosting the United States and Spanish national rugby teams in a sports event;

396. fifty thousand dollars (\$50,000) to purchase and install equipment and information technology for the mid-region council of governments in Albuquerque in Bernalillo county;

397. twenty-five thousand dollars (\$25,000) for reroofing and renovation, including the purchase and installation of a fire alarm system, at the head start program building in Reserve in Catron county;

398. one hundred thousand dollars (\$100,000) to purchase an aerial ladder truck for the east Grand Plains volunteer fire department in Chaves county;

399. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Wool Bowl track and field, including a sprinkler system installation, in Roswell in Chaves county;

400. twenty-five thousand dollars (\$25,000) to plan, design and construct a walking path in Lake Arthur in Chaves county;

401. fifty thousand dollars (\$50,000) to purchase a dump truck for Dexter in Chaves county;

402. twenty-five thousand dollars (\$25,000) to purchase, install and furnish a portable building for the working mothers' day nursery in Roswell in Chaves county;

403. fifty thousand dollars (\$50,000) to plan, design and construct a park at the industrial air center in Roswell in Chaves county;

404. fifty thousand dollars (\$50,000) to drill a water well, install plumbing and construct an addition for the Dunken volunteer fire department in Chaves county;

405. fifty thousand dollars (\$50,000) to purchase and install handicapped-accessible playground equipment at Sertoma park in Roswell in Chaves county;

406. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including reroofing, plumbing and stucco, to the county court complex in Cibola county;

407. twenty-five thousand dollars (\$25,000) to purchase road maintenance equipment for Cibola county;

408. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including equipment purchase, to the parks in Milan in Cibola county;

409. fifty thousand dollars (\$50,000) for improvements, including construction or purchase of a storage building, at the cemetery in Grants in Cibola county;

410. one hundred thousand dollars (\$100,000) for a master facility plan and design and engineering for the expansion of Cibola county general hospital in Cibola county;

411. two hundred twenty thousand dollars (\$220,000) to plan, design and construct renovations to buildings in Grants in Cibola county;

412. fifty thousand dollars (\$50,000) to purchase a van for Roberta's place, a shelter for domestic abuse victims in Grants in Cibola county;

413. twenty-five thousand dollars (\$25,000) to plan, design and construct a soccer training complex and soccer fields in Angel Fire in Colfax county;

414. twenty-five thousand dollars (\$25,000) to purchase equipment for the Raton child care program and education center in Raton in Colfax county;

415. two hundred ten thousand dollars (\$210,000) to purchase land for and plan, design and construct improvements, including furnishings, or to purchase, renovate and furnish a building for the county business enterprise center in Clovis in Curry county;

416. fifty thousand dollars (\$50,000) to plan, design and construct housing for the grandparents raising grandchildren program in Las Cruces in Dona Ana county;

417. twenty-five thousand dollars (\$25,000) to purchase and install a heating, ventilation and air conditioning system at the Club Fusion youth recreational facility in Las Cruces in Dona Ana county;

418. fifty thousand dollars (\$50,000) to acquire land for, develop the site for and plan, design and construct an industrial park to house a manufacturing and business incubator in Dona Ana county;

419. fifteen thousand dollars (\$15,000) to acquire a fifteen-acre park and nature refuge in Dona Ana county;

420. forty thousand dollars (\$40,000) to construct an amphitheater and plan, design and equip a visitors' center at the Chihuahuan Desert nature park in Las Cruces in Dona Ana county;

421. fifty thousand dollars (\$50,000) for building improvements and equipment for La Casa for battered women in Las Cruces in Dona Ana county;
422. twenty-five thousand dollars (\$25,000) to purchase and install information technology, including related furniture, equipment and infrastructure, for a community weaving program in Dona Ana county;
423. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the Carlsbad riverwalk recreation center in Carlsbad in Eddy county;
424. thirteen thousand two hundred seventy-one dollars (\$13,271) to purchase equipment and fixtures for area parks in Carlsbad in Eddy county;
425. twenty thousand dollars (\$20,000) to plan, design, construct and equip a community park in Malaga in Eddy county;
426. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to the Bayard community and veterans' parks in Bayard in Grant county;
427. seventy-five thousand dollars (\$75,000) to construct repairs to sidewalks in Silver City in Grant county;
428. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a skate park at Penny park in Silver City in Grant county;
429. one hundred thousand dollars (\$100,000) to plan, design and construct renovations to the county detention center in Silver City in Grant county;
430. one hundred thousand dollars (\$100,000) to plan, design and construct a playground in Gila in Grant county;
431. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the Cliff-Gila community park in Cliff in Grant county;
432. sixteen thousand dollars (\$16,000) to purchase recording equipment for the county clerk's office in Harding county;
433. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a learning center in conjunction with the Lordsburg municipal school district in Hidalgo county;
434. twenty-five thousand dollars (\$25,000) to remove buildings, structures, ruins, rubbish, wreckage and debris in Jal in Lea county;

435. eighty thousand dollars (\$80,000) to equip and furnish the patient rooms at Nor-Lea general hospital in Lovington in Lea county;

436. fifteen thousand dollars (\$15,000) to purchase dental equipment for Hobbs in Lea county;

437. two hundred twenty-five thousand dollars (\$225,000) to plan, design, construct, equip and furnish a domestic violence shelter in Lincoln county;

438. fifty thousand dollars (\$50,000) to design and renovate a bathhouse at the swimming pool in Carrizozo in Lincoln county;

439. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the multipurpose facility at the county fairgrounds in Capitan in Lincoln county;

440. one hundred fifty thousand dollars (\$150,000) to renovate and make improvements, including improvements to comply with the Americans with Disabilities Act of 1990, to the Deming-Luna museum in Luna county;

441. thirty-five thousand nine hundred sixty-seven dollars (\$35,967) to plan, design and construct a sheriff's department building in McKinley county;

442. five thousand dollars (\$5,000) to repair and renovate Nakai park, the Tohatchi softball field and other softball fields in McKinley county;

443. thirty-five thousand dollars (\$35,000) to purchase vehicles for use by community-based programs for the disabled in Gallup in McKinley county;

444. twenty thousand dollars (\$20,000) to purchase equipment for a community-based program for children with developmental delays or disabilities and children at risk for developmental delays in Gallup in McKinley county;

445. fifteen thousand five hundred dollars (\$15,500) to purchase equipment, including radios, radio repeaters and AR-15 rifles, for the Mora police department in Mora county;

446. twenty thousand dollars (\$20,000) to plan, design and construct a fire station for the Mora fire department in Mora county;

447. twenty thousand dollars (\$20,000) to construct electrical and plumbing improvements at the Cleveland, Holman, Encinal and Tramperos volunteer fire department building in Cleveland in Mora county;

448. fifty thousand dollars (\$50,000) to purchase and install a public safety communications system in Mora county;

449. seventy thousand dollars (\$70,000) to purchase and equip a backhoe for the public works department in Wagon Mound in Mora county;

450. forty thousand dollars (\$40,000) to construct a maintenance garage and bus barn in Mora in Mora county;

451. fifty thousand dollars (\$50,000) to purchase land within the Santa Cruz de la Canada community land grant boundaries, to be added to the common lands for future use as determined by the land grant board of trustees, in Rio Arriba and Santa Fe counties;

~~452. thirty thousand dollars (\$30,000) to purchase and install playground equipment, a safety surface and a border to comply with the Americans with Disabilities Act of 1990 at University park in Alamogordo in Otero county;] [LINE-ITEM VETO]~~

453. one hundred twenty-two thousand eight hundred eleven dollars (\$122,811) to plan, design and renovate the Otero county jail in Otero county;

~~454. fifty thousand dollars (\$50,000) to renovate the red brick schoolhouse in Tularosa in Otero county;] [LINE-ITEM VETO]~~

455. seventy-five thousand dollars (\$75,000) to purchase and install playground equipment for parks in Tularosa in Otero county;

456. one hundred thousand dollars (\$100,000) to plan, design and construct a library in Tularosa in Otero county;

457. twenty-five thousand dollars (\$25,000) to renovate and construct tennis courts at Zenith park in Cloudcroft in Otero county;

458. fifty thousand dollars (\$50,000) to purchase and equip a four-wheel-drive ambulance for the High Rolls volunteer fire department and emergency services department in Otero county;

459. fifty thousand dollars (\$50,000) to purchase a domestic violence shelter in Alamogordo in Otero county;

460. thirty thousand dollars (\$30,000) to plan, design, construct, equip and furnish restrooms at Village park in San Jon in Quay county;

461. twenty-five thousand dollars (\$25,000) to purchase equipment for the county-owned Casa de Corazon youth facility in Espanola in Rio Arriba county;

462. twenty-five thousand dollars (\$25,000) for phases 1 and 2 planning, design and construction of a fire department facility in Velarde in Rio Arriba county;

463. twenty-five thousand dollars (\$25,000) to renovate the tourism facility at the plaza de Espanola in Rio Arriba county;

464. fifteen thousand dollars (\$15,000) to plan, design and construct improvements to the community center in Petaca in Rio Arriba county;

465. fifty thousand dollars (\$50,000) to purchase land for a community center and fire station in Truchas in Rio Arriba county;

466. one hundred thousand dollars (\$100,000) to purchase equipment for the highway department in Roosevelt county;

467. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the county fairgrounds facilities in Roosevelt county;

468. fifty thousand dollars (\$50,000) for improvements, equipment and additions to facilities in the Roosevelt special hospital district in Portales in Roosevelt county;

469. fifty thousand dollars (\$50,000) to purchase and equip a vehicle for the sheriff's department in Portales in Roosevelt county;

470. ten thousand dollars (\$10,000) to equip and furnish La Casa health center in Roosevelt county;

471. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the emergency room in the Roosevelt county hospital in Portales in Roosevelt county;

472. thirty thousand dollars (\$30,000) to resurface the parking lot at La Casa health center in Portales in Roosevelt county;

473. fifty thousand dollars (\$50,000) to purchase a wheelchair-accessible van for the veterans' center in San Juan county;

474. three hundred fifty-eight thousand four hundred seventy-seven dollars (\$358,477) to plan, design and construct or acquire a building for the Farmington public health department in Farmington in San Juan county;

475. five hundred thousand dollars (\$500,000) to plan, design, construct, equip and furnish the east tower project at San Juan regional medical center in San Juan county;

476. fifty thousand dollars (\$50,000) to plan, design and construct the expansion of the police and fire departments and improvements to the park facilities at the administrative complex in Bloomfield in San Juan county;

477. forty-five thousand dollars (\$45,000) to purchase and equip a vehicle for the county detention center in San Miguel county;

478. twenty-five thousand dollars (\$25,000) to purchase and equip an ambulance for the Pecos Valley ambulance service in San Miguel county;

479. twenty thousand dollars (\$20,000) to acquire land for, plan, design and construct baseball fields and related infrastructure in Pecos in San Miguel county;

480. twenty thousand dollars (\$20,000) for sewer line repairs and improvements at the county detention center in San Miguel county;

481. three thousand five hundred dollars (\$3,500) to construct and install a septic tank and a leach field at El Pueblo fire station in San Jose in San Miguel county;

482. one hundred thousand dollars (\$100,000) to acquire land for, plan, design, construct, equip and furnish a senior housing project in Santa Fe county;

483. twenty thousand dollars (\$20,000) to plan, design, construct, equip, furnish and renovate the county fairgrounds in Santa Fe county;

484. twenty-five thousand dollars (\$25,000) to plan, design and construct a medical facility for the southside La Familia medical center in Santa Fe county;

485. ten thousand dollars (\$10,000) to furnish and equip, including purchasing and installing computers, the Alto street boys' and girls' club site in Santa Fe in Santa Fe county;

486. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish the Marcos P. Trujillo teen center in Arroyo Seco in Santa Fe county;

487. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the basketball court in La Puebla in Santa Fe county;

488. one hundred thousand dollars (\$100,000) to plan, design, construct and equip a facility for the farmers' market in Santa Fe in Santa Fe county;

489. fifty thousand dollars (\$50,000) to plan, design and construct an expansion of the Vista Grande library in Eldorado in Santa Fe county;

490. twenty thousand dollars (\$20,000) to plan, design and construct a rape crisis center in Santa Fe in Santa Fe county;

491. ten thousand dollars (\$10,000) to plan, design and construct the Zona del Sol youth complex in Tierra Contenta in Santa Fe in Santa Fe county;

492. forty thousand dollars (\$40,000) to plan, design and construct a joint training facility for the police and fire departments in Santa Fe in Santa Fe county;

493. ten thousand dollars (\$10,000) to plan, design and construct office space at the Concha Ortiz y Pino building in Santa Fe in Santa Fe county;

494. fifty thousand dollars (\$50,000) to purchase the Parker property east of Santa Fe in Santa Fe county;

495. sixty-five thousand dollars (\$65,000) for a sculpture garden of American heroes in Santa Fe county;

496. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a building, sidewalks, bathrooms, electrical wiring and improvements to comply with the Americans with Disabilities Act of 1990 at the fairgrounds in Sierra county;

497. fifty-five thousand dollars (\$55,000) to plan, design and construct infrastructure improvements to the public library in Socorro in Socorro county;

498. fifty thousand dollars (\$50,000) for exhibit construction and furnishings at El Camino Real international heritage center in Socorro in Socorro county;

499. thirty thousand dollars (\$30,000) to purchase a van for a traveling exhibit at El Camino Real international heritage center in Socorro in Socorro county;

500. one hundred thousand dollars (\$100,000) to supplement expenses for police agencies and county sheriffs to enforce arrest and bench warrants statewide;

501. twenty-five thousand dollars (\$25,000) for renovations at the Cerro community center in Costilla in Taos county;

502. twenty thousand dollars (\$20,000) to plan, design and construct a gymnasium at the youth center in Ranchos de Taos in Taos county;

503. seventy-five thousand dollars (\$75,000) to plan, design, construct, renovate, furnish and equip the Taos center for the arts in Taos county;

504. one hundred five thousand dollars (\$105,000) to purchase road equipment for Taos county;

505. fifty thousand dollars (\$50,000) to reroof and make improvements to the Taos detoxification facility in Taos county;

506. ten thousand dollars (\$10,000) to plan, design, construct, equip and furnish a medical center in Talpa in Taos county;

507. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the city park, including purchasing playground equipment, in Mountainair in Torrance county;

508. one hundred thousand dollars (\$100,000) to plan, design and construct a maintenance and equipment storage building in Willard in Torrance county;

509. seventy-five thousand dollars (\$75,000) to purchase road equipment for Torrance county;

510. thirty-four thousand three hundred ninety-two dollars (\$34,392) to plan, design, construct and equip improvements to playgrounds, parks, ball fields and picnic areas in Clayton in Union county;

511. one hundred ten thousand dollars (\$110,000) to plan, design, construct, equip and furnish an emergency medical services building in Des Moines in Union county; and

512. fifty thousand dollars (\$50,000) to purchase and equip a crime scene unit for the county sheriff's department in Valencia county.

Chapter 347 Section 46 Laws 2005

Section 46. NEW MEXICO YOUTH CHALLENGE PROGRAM PROJECT--DEPARTMENT OF MILITARY AFFAIRS--GENERAL FUND.--Thirty-five thousand dollars (\$35,000) is appropriated from the general fund to the department of military affairs for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to purchase vehicles for the New Mexico youth challenge program in Roswell in Chaves county.

Chapter 347 Section 47 Laws 2005

Section 47. SCHOOL-BASED HEALTH CENTER PROJECT--APPROPRIATION TO THE PRIMARY CARE CAPITAL FUND--GENERAL FUND.--Five hundred thousand dollars (\$500,000) is appropriated from the general fund to the primary care capital fund for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, to plan, purchase, install and set up hospital equipment for school-based health centers in New Mexico.

Chapter 347 Section 48 Laws 2005

Section 48. PUBLIC EDUCATION PROJECTS--PUBLIC EDUCATION DEPARTMENT--GENERAL FUND.--The following amounts are appropriated from the

general fund to the public education department for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. fifty thousand dollars (\$50,000) to plan, design, construct, equip and furnish research, writing and publishing laboratories at Hubert H. Humphrey elementary school in the Albuquerque public school district in Bernalillo county;

2. eighty-five thousand dollars (\$85,000) to purchase and install fitness equipment for southwest secondary learning center in the Albuquerque public school district in Bernalillo county;

3. one hundred seventy thousand dollars (\$170,000) to construct improvements to the track at West Mesa high school in the Albuquerque public school district in Bernalillo county;

4. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Dolores Gonzales elementary school in the Albuquerque public school district in Bernalillo county;

5. ten thousand dollars (\$10,000) to plan, design, construct and equip a concession building and restrooms for the baseball and softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;

6. fifty thousand dollars (\$50,000) to plan, design and construct improvements to the baseball and softball field dugouts at Cibola high school in the Albuquerque public school district in Bernalillo county;

7. seventy thousand dollars (\$70,000) to purchase and install educational technology at Alameda elementary school in the Albuquerque public school district in Bernalillo county;

8. one hundred thousand dollars (\$100,000) to purchase books for the library and media center at Manzano Mesa elementary school in the Albuquerque public school district in Bernalillo county;

9. thirty thousand dollars (\$30,000) to purchase and install educational technology at Wherry elementary school in the Albuquerque public school district in Bernalillo county;

10. forty-three thousand five hundred dollars (\$43,500) to purchase and install educational technology at Sandia Base elementary school in the Albuquerque public school district in Bernalillo county;

11. twenty thousand dollars (\$20,000) for grounds improvements at Whittier elementary school in the Albuquerque public school district in Bernalillo county;

12. ten thousand dollars (\$10,000) to purchase library books for Whittier elementary school in the Albuquerque public school district in Bernalillo county;

13. twenty thousand dollars (\$20,000) to purchase and install playground equipment at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

14. one hundred twenty-five thousand dollars (\$125,000) to purchase and install educational technology at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

15. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

16. fifteen thousand dollars (\$15,000) to purchase and install safety equipment for the north campus walkway at Highland high school in the Albuquerque public school district in Bernalillo county;

17. one hundred twenty-five thousand dollars (\$125,000) to purchase and install educational technology at Highland high school in the Albuquerque public school district in Bernalillo county;

18. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Emerson elementary school in the Albuquerque public school district in Bernalillo county;

19. fifty-five thousand dollars (\$55,000) to make improvements to the bathrooms at Kirtland elementary school in the Albuquerque public school district in Bernalillo county;

20. seventy-five thousand dollars (\$75,000) to purchase and install educational technology at Los Ranchos elementary school in the Albuquerque public school district in Bernalillo county;

21. seventy-five thousand dollars (\$75,000) to purchase and install educational technology at Alvarado elementary school in the Albuquerque public school district in Bernalillo county;

22. one hundred twenty thousand dollars (\$120,000) to purchase and install educational technology at Taft middle school in the Albuquerque public school district in Bernalillo county;

23. ninety-five thousand dollars (\$95,000) to purchase and install athletic equipment, including a baseball scoreboard, at Valley high school in the Albuquerque public school district in Bernalillo county;

24. ninety-five thousand nine hundred fourteen dollars (\$95,914) to purchase and install security equipment at Valley high school in the Albuquerque public school district in Bernalillo county;

25. seventy thousand dollars (\$70,000) to furnish and equip East Mountain high school, a charter school in the Albuquerque public school district in Bernalillo county;

26. eighty-five thousand dollars (\$85,000) to purchase and install educational technology at A. Montoya elementary school in the Albuquerque public school district in Bernalillo county;

27. three hundred thirty thousand dollars (\$330,000) to plan, design and construct and to purchase and remodel modular buildings for La Promesa early childhood learning center charter school in the Albuquerque public school district in Bernalillo county;

28. fifty thousand dollars (\$50,000) to purchase and install playground equipment at southwest secondary learning center in the Albuquerque public school district in Bernalillo county;

29. seventy thousand dollars (\$70,000) to purchase and install playground equipment at Alameda elementary school in the Albuquerque public school district in Bernalillo county;

30. twenty-five thousand dollars (\$25,000) to purchase library books for Hayes middle school in the Albuquerque public school district in Bernalillo county;

31. sixty thousand dollars (\$60,000) to purchase library books for La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

32. sixty-two thousand dollars (\$62,000) to purchase and install educational technology at La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

33. twenty-nine thousand dollars (\$29,000) to equip and furnish the family resource center at La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

34. twenty thousand dollars (\$20,000) to construct shade structures and safety upgrades at the playground of La Mesa elementary school in the Albuquerque public school district in Bernalillo county;

35. sixty-four thousand dollars (\$64,000) to plan, design, construct, equip and furnish a smart lab for southwest secondary learning center in the Albuquerque public school district in Bernalillo county;

36. eighty thousand dollars (\$80,000) to purchase and install educational technology at Cochiti elementary school in the Albuquerque public school district in Bernalillo county;

37. sixty thousand dollars (\$60,000) to purchase and install shelving in the library at Griegos elementary school in the Albuquerque public school district in Bernalillo county;

38. eighty-five thousand dollars (\$85,000) to purchase and install educational technology at La Luz elementary school in the Albuquerque public school district in Bernalillo county;

39. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Douglas MacArthur elementary school in the Albuquerque public school district in Bernalillo county;

40. one hundred thousand dollars (\$100,000) for improvements to landscaping, a physical fitness course and an addition to the amphitheater at Mission Avenue elementary school in the Albuquerque public school district in Bernalillo county;

41. one hundred fifteen thousand dollars (\$115,000) to purchase research books for the Del Norte high school library in the Albuquerque public school district in Bernalillo county;

42. eighty thousand dollars (\$80,000) to purchase and install educational technology at Roosevelt middle school in the Albuquerque public school district in Bernalillo county;

43. eighty thousand dollars (\$80,000) to purchase and install educational technology at Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

44. ninety-nine thousand dollars (\$99,000) to purchase and install educational technology at Osuna elementary school in the Albuquerque public school district in Bernalillo county;

45. one hundred twenty thousand dollars (\$120,000) to purchase and install educational technology at McKinley middle school in the Albuquerque public school district in Bernalillo county;

46. seventy-two thousand nine hundred dollars (\$72,900) to purchase and install educational technology at Edmund G. Ross elementary school in the Albuquerque public school district in Bernalillo county;

47. fifty-five thousand dollars (\$55,000) to purchase and install educational technology at Del Norte high school in the Albuquerque public school district in Bernalillo county;

48. two hundred fifty-five thousand dollars (\$255,000) for purchase and installation of equipment for a smart lab at Creative Education preparatory institute number 1, a charter high school in the Albuquerque public school district in Bernalillo county;

49. three hundred thirty-five thousand dollars (\$335,000) to remodel, equip and furnish the former federal post office building in downtown Albuquerque for use as Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county;

50. sixty-two thousand dollars (\$62,000) to purchase and install educational technology at Eisenhower middle school in the Albuquerque public school district in Bernalillo county;

51. seventy-five thousand dollars (\$75,000) to purchase and install educational technology at Wilson middle school in the Albuquerque public school district in Bernalillo county;

52. ninety-one thousand eighty-six dollars (\$91,086) to plan, design, demolish, construct and equip the tennis courts at Cibola high school in the Albuquerque public school district in Bernalillo county;

53. two hundred thousand dollars (\$200,000) to purchase and install educational technology at Grant middle school in the Albuquerque public school district in Bernalillo county;

54. twenty thousand dollars (\$20,000) to upgrade the basketball office at Highland high school in the Albuquerque public school district in Bernalillo county;

55. ten thousand dollars (\$10,000) to plan, design and construct classrooms and purchase and install educational technology at Edward Gonzales elementary school in the Albuquerque public school district in Bernalillo county;

56. seventy thousand dollars (\$70,000) to plan, design and construct improvements, including artificial turf, scoreboard and overall field improvements, to the baseball field at Sandia high school in the Albuquerque public school district in Bernalillo county;

57. seventy-one thousand dollars (\$71,000) to plan, design and construct improvements to the kindergarten building at Osuna elementary school in the Albuquerque public school district in Bernalillo county;

58. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the locker room at Eldorado high school in the Albuquerque public school district in Bernalillo county;

59. fifty-five thousand dollars (\$55,000) to plan, design, construct and equip improvements for the library at Hoover middle school in the Albuquerque public school district in Bernalillo county;

60. thirty thousand dollars (\$30,000) to plan, design, construct and equip Sombra del Monte elementary school in the Albuquerque public school district in Bernalillo county;

61. twenty-five thousand dollars (\$25,000) to expand and renovate Inez elementary school in the Albuquerque public school district in Bernalillo county;

62. one hundred twenty-seven thousand dollars (\$127,000) to purchase and install educational technology at Governor Bent elementary school in the Albuquerque public school district in Bernalillo county;

63. one hundred thousand dollars (\$100,000) to plan, design, construct and purchase improvements for the library at Cleveland middle school in the Albuquerque public school district in Bernalillo county;

64. forty-three thousand dollars (\$43,000) to purchase and install educational technology at Acoma elementary school in the Albuquerque public school district in Bernalillo county;

65. thirty-two thousand dollars (\$32,000) to purchase and install educational technology and related furniture at Oñate elementary school in the Albuquerque public school district in Bernalillo county;

66. one hundred twenty thousand dollars (\$120,000) for upgrades to the playground at San Antonito elementary school in the Albuquerque public school district in Bernalillo county;

67. thirty thousand dollars (\$30,000) to purchase and install educational technology at Matheson Park elementary school in the Albuquerque public school district in Bernalillo county;

68. forty thousand dollars (\$40,000) to resurface the basketball courts at Matheson Park elementary school in the Albuquerque public school district in Bernalillo county;

69. thirty thousand dollars (\$30,000) to purchase library books for Matheson Park elementary school in the Albuquerque public school district in Bernalillo county;

70. twenty thousand dollars (\$20,000) to upgrade the patio areas at Collet Park elementary school in the Albuquerque public school district in Bernalillo county;

71. seventy thousand dollars (\$70,000) to purchase and install educational technology at Zia elementary school in the Albuquerque public school district in Bernalillo county;

72. one hundred thousand dollars (\$100,000) to purchase and install educational technology at schools in house district 13, including Carlos Rey, Edward Gonzales, Alamosa and Mary Ann Binford elementary schools and Jimmy E. Carter and Truman middle schools in the Albuquerque public school district in Bernalillo county;

73. fifteen thousand dollars (\$15,000) to purchase and install playground equipment at Lowell elementary school in the Albuquerque public school district in Bernalillo county;

74. twenty-five thousand dollars (\$25,000) to purchase and install educational technology, including dedicated electrical outlets and related technology, at Madison middle school in the Albuquerque public school district in Bernalillo county;

75. twenty thousand dollars (\$20,000) to purchase and install weight training equipment at Del Norte high school in the Albuquerque public school district in Bernalillo county;

76. fifty thousand dollars (\$50,000) for capital improvements to the library at Mark Twain elementary school in the Albuquerque public school district in Bernalillo county;

77. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Sandia high school in the Albuquerque public school district in Bernalillo county;

78. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Madison middle school in the Albuquerque public school district in Bernalillo county;

79. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Comanche elementary school in the Albuquerque public school district in Bernalillo county;

80. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Osuna elementary school in the Albuquerque public school district in Bernalillo county;

81. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Del Norte high school in the Albuquerque public school district in Bernalillo county;

82. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Cleveland middle school in the Albuquerque public school district in Bernalillo county;

83. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Arroyo del Oso elementary school in the Albuquerque public school district in Bernalillo county;

84. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Governor Bent elementary school in the Albuquerque public school district in Bernalillo county;

85. ten thousand dollars (\$10,000) to purchase non-textbook books for the library at Zuni elementary school in the Albuquerque public school district in Bernalillo county;

86. twenty thousand dollars (\$20,000) to purchase and install athletic equipment for Albuquerque high school in the Albuquerque public school district in Bernalillo county;

87. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Garfield middle school in the Albuquerque public school district in Bernalillo county;

88. thirty-five thousand dollars (\$35,000) to construct landscaping improvements at Hayes middle school in the Albuquerque public school district in Bernalillo county;

89. forty thousand dollars (\$40,000) to purchase and install mobile computer labs at Van Buren middle school in the Albuquerque public school district in Bernalillo county;

90. ten thousand dollars (\$10,000) to purchase science equipment for Van Buren middle school in the Albuquerque public school district in Bernalillo county;

91. twelve thousand five hundred dollars (\$12,500) to purchase and install surveillance equipment at Van Buren middle school in the Albuquerque public school district in Bernalillo county;

92. one hundred forty-six thousand one hundred nineteen dollars (\$146,119) to purchase and install educational technology at Edward Gonzales elementary school in the Albuquerque public school district in Bernalillo county;

93. ten thousand dollars (\$10,000) to purchase books for the library at Cibola high school in the Albuquerque public school district in Bernalillo county;

94. ten thousand dollars (\$10,000) to purchase books for the library at Lyndon B. Johnson middle school in the Albuquerque public school district in Bernalillo county;

95. ten thousand dollars (\$10,000) to purchase books for the library at James Monroe middle school in the Albuquerque public school district in Bernalillo county;

96. ten thousand dollars (\$10,000) to purchase books for the library at Chamisa elementary school in the Albuquerque public school district in Bernalillo county;

97. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Comanche elementary school in the Albuquerque public school district in Bernalillo county;

98. twenty thousand dollars (\$20,000) to purchase and install library shelving for Comanche elementary school in the Albuquerque public school district in Bernalillo county;

99. thirty thousand dollars (\$30,000) to purchase and install educational technology at Sandia high school in the Albuquerque public school district in Bernalillo county;

100. ten thousand dollars (\$10,000) to purchase books for the library at Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

101. eighty-five thousand dollars (\$85,000) to purchase and equip a van and additional equipment for KANW educational radio station in Albuquerque in Bernalillo county;

102. eight thousand dollars (\$8,000) to purchase athletic equipment, including video cameras, at Highland high school in the Albuquerque public school district in Bernalillo county;

103. twenty thousand dollars (\$20,000) to purchase and install educational technology at Montessori of the Rio Grande charter school in the Albuquerque public school district in Bernalillo county;

104. forty-four thousand dollars (\$44,000) to plan, design and construct common areas at Montessori of the Rio Grande charter school in the Albuquerque public school district in Bernalillo county;

105. forty thousand dollars (\$40,000) to purchase a vehicle for the Quemado independent school district in Catron county;

106. sixty thousand dollars (\$60,000) to plan, design and construct improvements to the baseball field at Goddard high school in the Roswell independent school district in Chaves county;

107. fifty thousand dollars (\$50,000) to purchase and install educational technology at Berrendo elementary school in the Roswell independent school district in Chaves county;

~~108. twenty-five thousand dollars (\$25,000) to purchase baseball equipment for Goddard high school in the Roswell independent school district in Chaves county;~~ [LINE-ITEM VETO]

109. fifty thousand dollars (\$50,000) to purchase football equipment and technology for Goddard high school in the Roswell independent school district in Chaves county;

110. fifty thousand dollars (\$50,000) to plan and construct a sprinkler system for the football field at Berrendo middle school in the Roswell independent school district in Chaves county;

111. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Del Norte elementary school in the Roswell independent school district in Chaves county;

112. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Berrendo middle school in the Roswell independent school district in Chaves county;

113. twenty thousand dollars (\$20,000) to purchase equipment for the basketball programs, including basketball goals, bleachers and a scoreboard, in the Hagerman public school district in Chaves county;

114. twenty-five thousand dollars (\$25,000) to purchase and install football lockers for the field house in the Hagerman public school district in Chaves county;

115. twenty-five thousand dollars (\$25,000) to purchase, plan, design and construct tennis courts for the Hagerman public school district in Chaves county;

116. fifty thousand dollars (\$50,000) to purchase and install educational technology for graphics, multimedia and music production in the Lake Arthur municipal school district in Chaves county;

117. fifty thousand dollars (\$50,000) for construction and landscaping of a playground activity center in the Dexter consolidated school district in Chaves county;

118. twenty thousand dollars (\$20,000) to purchase and install educational technology at Dexter middle school in the Dexter consolidated school district in Chaves county;

119. twenty thousand dollars (\$20,000) to purchase and install educational technology in the Dexter consolidated school district in Chaves county;

120. seventy-five thousand dollars (\$75,000) to purchase and install playground equipment at Dexter elementary school in the Dexter consolidated school district in Chaves county;

~~121. thirty five thousand dollars (\$35,000) to plan, design and construct a walking track at Del Norte elementary school in the Roswell independent school district in Roswell in Chaves county;~~

~~122. twenty five thousand dollars (\$25,000) to plan, design, construct and equip improvements for the wrestling facility at Goddard high school in the Roswell independent school district in Chaves county;] [LINE-ITEM VETO]~~

123. forty-five thousand dollars (\$45,000) for the purchase of an activity bus for the Springer municipal school district in Colfax county;

124. forty thousand dollars (\$40,000) to plan, design and construct a multipurpose facility for Moreno Valley high school in the Cimarron municipal school district in Colfax county;

125. forty-five thousand dollars (\$45,000) to purchase a school bus for the Maxwell municipal school district in Colfax county;

126. thirty thousand dollars (\$30,000) to plan, design and construct security system improvements in the Raton public school district in Colfax county;

127. two hundred fifty thousand dollars (\$250,000) to plan, design and construct a charter school in Angel Fire in Colfax county;

128. ninety thousand dollars (\$90,000) to plan, design, construct and install new bleachers that comply with the Americans with Disabilities Act of 1990 for the Melrose public school district in Curry county;

129. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a border performing arts and conference center in the Gadsden independent school district in Dona Ana county;

130. twenty-four thousand six hundred forty-six dollars (\$24,646) to purchase and install educational technology and other equipment for the library at Sunrise elementary school in the Las Cruces public school district in Dona Ana county;

131. thirty thousand dollars (\$30,000) to plan, design and construct improvements to bring the stadium into compliance with the Americans with Disabilities Act of 1990 in the Carlsbad municipal school district in Eddy county;

132. one hundred thirty thousand dollars (\$130,000) to plan, design and construct improvements to playgrounds and to bring the playgrounds into compliance with the Americans with Disabilities Act of 1990 in the Carlsbad municipal school district in Eddy county;

133. ninety thousand dollars (\$90,000) to design, purchase and install a security system in the Carlsbad municipal school district in Eddy county;

134. fifty thousand dollars (\$50,000) to purchase and install a new heating, ventilation and air conditioning system in the Loving high school in Loving municipal school district in Eddy county;

135. two hundred seventy-five thousand dollars (\$275,000) to plan, design and construct renovations to comply with the Americans with Disabilities Act of 1990 at the Hobbs high school in Hobbs municipal school district in Lea county;

136. one hundred seventy-five thousand dollars (\$175,000) to plan, design, construct and equip playground improvements for the Yarbrow, Llano, Jefferson, Lea and Ben Alexander elementary schools and the Lovington junior high schools in the Lovington municipal school district in Lea county;

137. sixty-five thousand dollars (\$65,000) to design, construct, purchase and install a stadium lighting system for Lovington high school in the Lovington municipal school district in Lea county;

138. seventy-five thousand dollars (\$75,000) to plan, design and construct a new roof for the Lovington schools administration building in the Lovington municipal school district in Lea county;

139. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip and furnish a joint-use multipurpose facility in Hobbs municipal school district in Lea county;

140. seventy-five thousand dollars (\$75,000) to purchase an activity bus for the Hondo Valley public school district in Lincoln county;

141. seventy-five thousand dollars (\$75,000) to purchase and install a sprinkler system at the football field in the Carrizozo municipal school district in Lincoln county;

142. twenty-five thousand dollars (\$25,000) to purchase equipment for the baseball and golf programs at Capitan high school in the Capitan municipal school district in Lincoln county;

143. twenty-five thousand dollars (\$25,000) to purchase football equipment for Carrizozo high school in the Carrizozo municipal school district in Lincoln county;

144. thirty thousand dollars (\$30,000) to plan, design and construct improvements to the track at Ruidoso high school in the Ruidoso municipal school district in Lincoln county;

145. twenty-five thousand dollars (\$25,000) to purchase athletic equipment for the Capitan municipal school district in Lincoln county;

146. forty thousand dollars (\$40,000) to purchase an activity bus for the Wagon Mound public school district in Mora county;

147. fifty thousand dollars (\$50,000) to plan, design and construct the athletic facilities project in the Cloudcroft municipal school district in Otero county;

148. thirty-five thousand dollars (\$35,000) to plan, design, construct and equip renovations, including lighting fixtures and doors in compliance with the Americans with Disabilities Act of 1990, to El Rito library in Rio Arriba county;

149. sixty-five thousand dollars (\$65,000) to purchase and install cafeteria equipment in the Espanola public school district in Rio Arriba county;

150. ninety-five thousand dollars (\$95,000) to construct, equip and furnish improvements, including water and wastewater improvements, at Tony Quintana Sombrillo elementary school in the Espanola public school district [~~in Rio Arriba county~~];[LINE-ITEM VETO]

151. eighty thousand dollars (\$80,000) to purchase and install educational technology for Espanola military academy, a charter school in the Espanola public school district in Rio Arriba county;

152. seventy-five thousand dollars (\$75,000) to plan, design and make improvements to the Espanola military academy in the Espanola public school district in Rio Arriba county;

153. sixty-nine thousand one hundred forty-three dollars (\$69,143) to construct improvements at Portales high school in the Portales municipal school district in Roosevelt county;

154. fifty thousand dollars (\$50,000) to plan, design and construct a multipurpose facility for the Elida municipal school district in Roosevelt county;

155. one hundred sixty-five thousand dollars (\$165,000) to plan, design and construct renovations to the sports complex in the Aztec municipal school district in San Juan county;

156. ten thousand dollars (\$10,000) to purchase mariachi equipment for the Las Vegas city public school district in San Miguel county;

157. twenty-five thousand dollars (\$25,000) to purchase a mower and an all-terrain vehicle for the Las Vegas city public school district in San Miguel county;

158. twelve thousand dollars (\$12,000) to purchase and install educational technology and equipment at Bridge Academy charter high school in the Las Vegas city public school district in San Miguel county;

159. twenty thousand dollars (\$20,000) to install safety fencing and purchase furniture and equipment for Rio Gallinas charter school in the west Las Vegas public school district in San Miguel county;

160. twenty thousand dollars (\$20,000) to purchase equipment for the bilingual program in the west Las Vegas public school district in San Miguel county;

161. twenty-nine thousand nine hundred dollars (\$29,900) to purchase and install educational technology for the west Las Vegas public school district in San Miguel county;

162. ten thousand dollars (\$10,000) to construct and purchase equipment for a football field at Valley middle school in the west Las Vegas public school district in San Miguel county;

163. fifteen thousand dollars (\$15,000) to purchase and install safety equipment and seatbelts on buses for the head start program in the west Las Vegas public school district in San Miguel county;

164. forty-five thousand dollars (\$45,000) to purchase and install educational technology for schools in the west Las Vegas public school district and the Las Vegas city public school district in San Miguel county;

165. two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish a gymnasium in the west Las Vegas public school district in San Miguel county;

166. eighty-one thousand dollars (\$81,000) to plan, design and construct batting cages and storage facilities and landscaping and drainage improvements at the baseball field at Rio Rancho high school in the Rio Rancho public school district in Sandoval county;

167. seven hundred thousand dollars (\$700,000) to acquire land for an education park and the new high school in the Rio Rancho public school district in Sandoval county;

168. twenty-seven thousand dollars (\$27,000) to purchase and install liquid crystal display projectors and educational technology at Corrales elementary school in the Albuquerque public school district in Sandoval county;

169. ten thousand dollars (\$10,000) to purchase books for the library at Corrales elementary school in the Albuquerque public school district in Sandoval county;

170. seventy thousand dollars (\$70,000) to plan, design and construct a playing field to accommodate youth soccer at Wood Gormley elementary school in the Santa Fe public school district in Santa Fe county;

171. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the turf at Wood Gormley and Cesar Chavez elementary schools in the Santa Fe public school district in Santa Fe county;

172. five thousand dollars (\$5,000) to purchase baseball and softball equipment for the Pojoaque Valley little league in the Pojoaque Valley public school district in Santa Fe county;

173. seventy-five thousand dollars (\$75,000) to purchase school bus inspection equipment statewide;

174. one million dollars (\$1,000,000) to purchase laptops for seventh grade students statewide;

175. one million dollars (\$1,000,000) to plan and purchase library books for students statewide;

176. seventy-five thousand dollars (\$75,000) to purchase and install cameras and editing equipment for use in rural schools statewide;

177. six hundred thousand dollars (\$600,000) to purchase school buses for public schools statewide;

178. eighty thousand dollars (\$80,000) to plan, design and construct bleachers for the football stadium at the Moriarty municipal school district in Torrance county;

179. twenty-five thousand dollars (\$25,000) to plan, design and construct the wetlands project at La Promesa elementary school in the Belen consolidated school district in Valencia county;

180. thirty-three thousand dollars (\$33,000) to furnish classrooms and a computer lab to comply with the Americans with Disabilities Act of 1990 at Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

181. fifty thousand dollars (\$50,000) to construct improvements to the drainage system at the West Mesa high school track in the Albuquerque public school district in Bernalillo county;

182. fifty thousand dollars (\$50,000) to plan, design and construct a girls' softball field at West Mesa high school in the Albuquerque public school district in Bernalillo county;

183. forty-five thousand dollars (\$45,000) to plan, design, construct and equip bleachers, an awning and a press box for the baseball and softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;

184. twenty-five thousand dollars (\$25,000) to purchase library books for Susie R. Marmon elementary school in the Albuquerque public school district in Bernalillo county;

185. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Armijo elementary school in the Albuquerque public school district in Bernalillo county;

186. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Atrisco elementary school in the Albuquerque public school district in Bernalillo county;

187. one hundred thousand dollars (\$100,000) to plan, design, construct, purchase and install improvements to the baseball and softball field at Cibola high school in the Albuquerque public school district in Bernalillo county;

188. forty thousand dollars (\$40,000) to purchase and install safety signage and gymnasium seating at Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

189. twenty-five thousand dollars (\$25,000) to purchase books for Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;

190. twenty-five thousand dollars (\$25,000) to purchase and install playground equipment at Dennis Chavez elementary school in the Albuquerque public school district in Bernalillo county;

191. fifty thousand dollars (\$50,000) to purchase and install educational technology at the James Monroe middle school in the Albuquerque public school district in Bernalillo county;

192. ten thousand dollars (\$10,000) to purchase safety signs and gymnasium equipment to comply with the Americans with Disabilities Act of 1990 for Southwest Secondary learning center in the Albuquerque public school district in Bernalillo county;

193. seventy-five thousand dollars (\$75,000) for improvements to the library at Eldorado high school in the Albuquerque public school district in Bernalillo county;

194. two hundred thirty thousand dollars (\$230,000) to purchase and install educational technology in the Eldorado high school cluster in the Albuquerque public school district in Bernalillo county;

195. one hundred fifty-four thousand one hundred fifty-three dollars (\$154,153) to plan, design and construct improvements to the Eldorado high school cluster libraries in the Albuquerque public school district in Bernalillo county;

196. fifty thousand dollars (\$50,000) to purchase and install educational technology for the Manzano high school cluster in the Albuquerque public school district in Bernalillo county;

197. ninety thousand dollars (\$90,000) to purchase and install educational technology in the La Cueva high school cluster in the Albuquerque public school district in Bernalillo county;

198. one hundred thousand dollars (\$100,000) to purchase and install educational technology at Cibola high school in the Albuquerque public school district in Bernalillo county;

199. one hundred thousand dollars (\$100,000) to purchase and install educational technology at Albuquerque high school in the Albuquerque public school district in Bernalillo county;

200. fifty thousand dollars (\$50,000) to purchase and install educational technology at Montezuma elementary school in the Albuquerque public school district in Bernalillo county;

201. fifty thousand dollars (\$50,000) to purchase and install educational technology at Jefferson middle school in the Albuquerque public school district in Bernalillo county;

202. fifty thousand dollars (\$50,000) to purchase and install educational technology at Monte Vista elementary school in the Albuquerque public school district in Bernalillo county;

203. fifty thousand dollars (\$50,000) to improve and equip the playground at Sandia Base elementary school in the Albuquerque public school district in Bernalillo county;

204. one hundred thousand dollars (\$100,000) to make improvements to the playground and drop-off area at Alvarado elementary school in the Albuquerque public school district in Bernalillo county;

205. fifty thousand dollars (\$50,000) for phone system improvements, including lines and switches, at Los Ranchos elementary school in the Albuquerque public school district in Bernalillo county;

206. twenty-five thousand dollars (\$25,000) for reroofing Douglas MacArthur elementary school in the Albuquerque public school district in Bernalillo county;

207. twenty-five thousand dollars (\$25,000) to purchase library books at Reginald Chavez elementary school in the Albuquerque public school district in Bernalillo county;

208. sixty thousand dollars (\$60,000) for baseball field improvements and to purchase and install athletic equipment for the baseball team at Del Norte high school in the Albuquerque public school district in Bernalillo county;

209. seventy thousand dollars (\$70,000) to plan, design, construct and equip improvements to the football and athletic fields at Manzano high school in the Albuquerque public school district in Bernalillo county;

210. fifty thousand dollars (\$50,000) to purchase and install educational technology at Apache elementary school in the Albuquerque public school district in Bernalillo county;

211. fifty thousand dollars (\$50,000) to plan, design and construct a kindergarten area for the A. Montoya elementary school in the Albuquerque public school district in Bernalillo county;

212. fifty thousand dollars (\$50,000) to purchase and install educational technology at Jackson middle school in the Albuquerque public school district in Bernalillo county;

213. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including purchase of equipment and furnishings, to the rifle range at La Cueva high school in the Albuquerque public school district in Bernalillo county;

214. fifty-five thousand dollars (\$55,000) to plan, design and construct a multipurpose field at Taft middle school in the Albuquerque public school district in Bernalillo county;

215. fifty thousand dollars (\$50,000) to purchase and install educational technology at the Twenty-First Century public academy in the Albuquerque public school district in Bernalillo county;

216. fifty thousand dollars (\$50,000) to purchase and install educational technology at Chaparral elementary school in the Albuquerque public school district in Bernalillo county;

217. fifty thousand dollars (\$50,000) to purchase and install educational technology at West Mesa high school in the Albuquerque public school district in Bernalillo county;

218. forty-five thousand dollars (\$45,000) to purchase and install educational technology at Bellehaven elementary school in the Albuquerque public school district in Bernalillo county;

219. fifty thousand dollars (\$50,000) for asbestos abatement and replacement of tile and carpet at Zuni elementary school in the Albuquerque public school district in Bernalillo county;

220. seventy-one thousand nine hundred twenty-nine dollars (\$71,929) for asbestos abatement and new carpet at Hodgin elementary school in the Albuquerque public school district in Bernalillo county;

221. fifty thousand dollars (\$50,000) to purchase and install educational technology at Hodgin elementary school in the Albuquerque public school district in Bernalillo county;

222. forty-one thousand five hundred dollars (\$41,500) to purchase and install library equipment and educational technology for Arroyo del Oso elementary school in the Albuquerque public school district in Bernalillo county;

223. twenty-five thousand dollars (\$25,000) to plan, design and construct, including purchasing classrooms for, the Twenty-First Century charter middle school in the Albuquerque public school district in Bernalillo county;

224. one thousand eight hundred dollars (\$1,800) to purchase a magazine shelf unit for Eisenhower middle school in the Albuquerque public school district in Bernalillo county;

225. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Hoover middle school in the Albuquerque public school district in Bernalillo county;

226. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Mitchell elementary school in the Albuquerque public school district in Bernalillo county;

227. twenty-five thousand dollars (\$25,000) for landscaping improvements at Mitchell elementary school in the Albuquerque public school district in Bernalillo county;

228. five thousand dollars (\$5,000) to purchase library materials for Bellehaven elementary school in the Albuquerque public school district in Bernalillo county;

229. fifty thousand dollars (\$50,000) to plan, design and construct upgrades to the lighting system in the auditorium at West Mesa high school in the Albuquerque public school district in Bernalillo county;

230. fifty thousand dollars (\$50,000) to purchase and install educational technology at Sierra Vista elementary school in the Albuquerque public school district in Bernalillo county;

231. fifty thousand dollars (\$50,000) to purchase and install educational technology at Chamisa elementary school in the Albuquerque public school district in Bernalillo county;

232. seventy thousand dollars (\$70,000) to purchase and install educational technology at Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

233. fifty thousand dollars (\$50,000) to purchase and install educational technology at Lyndon B. Johnson middle school in the Albuquerque public school district in Bernalillo county;

234. fifty thousand dollars (\$50,000) to purchase and install educational technology at Marie Hughes elementary school in the Albuquerque public school district in Bernalillo county;

235. twenty-five thousand dollars (\$25,000) to plan, design and restore the painted murals at Lincoln middle school in the Albuquerque public school district in Bernalillo county;

236. twenty thousand dollars (\$20,000) for playground and athletic facility improvements at Roosevelt middle school in the Albuquerque public school district in Bernalillo county;

237. twenty thousand dollars (\$20,000) for landscaping and fencing at Adobe Acres elementary school in the Albuquerque public school district in Bernalillo county;

238. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Los Padillas elementary school in the Albuquerque public school district in Bernalillo county;

239. ten thousand dollars (\$10,000) to purchase and install soundproofing for the cafeteria at Los Padillas elementary school in the Albuquerque public school district in Bernalillo county;

240. thirty-five thousand dollars (\$35,000) for playground construction and equipment at Mountain View elementary school in the Albuquerque public school district in Bernalillo county;

241. ten thousand dollars (\$10,000) to purchase and install a sound system for the gymnasium at Ernie Pyle middle school in the Albuquerque public school district in Bernalillo county;

242. sixty thousand dollars (\$60,000) for gym bleacher expansion, locker room improvements and parking lot improvements at Harrison middle school in the Albuquerque public school district in Bernalillo county;

243. twenty-five thousand dollars (\$25,000) for gymnasium and skate area renovations and construction at Polk middle school in the Albuquerque public school district in Bernalillo county;

244. twenty-five thousand dollars (\$25,000) for equipment for the phone system at Rio Grande high school in the Albuquerque public school district in Bernalillo county;

245. forty-seven thousand dollars (\$47,000) for fencing and landscaping improvements and equipment at the kindergarten playground at Bandelier elementary school in the Albuquerque public school district in Bernalillo county;

246. twenty thousand dollars (\$20,000) to renovate, refurbish and purchase and install lockers and bathroom fixtures and plumbing at the athletic varsity locker rooms and coaches' office area at Highland high school in the Albuquerque public school district in Bernalillo county;

247. eight thousand dollars (\$8,000) to purchase and install acoustics and a sound system in the main gymnasium area at Highland high school in the Albuquerque public school district in Bernalillo county;

248. fifty thousand dollars (\$50,000) to purchase and install educational technology at Rio Grande high school in the Albuquerque public school district in Bernalillo county;

249. twenty thousand dollars (\$20,000) to purchase and install educational technology at Polk middle school in the Albuquerque public school district in Bernalillo county;

250. twenty thousand dollars (\$20,000) to purchase and install educational technology at Harrison middle school in the Albuquerque public school district in Bernalillo county;

251. twenty thousand dollars (\$20,000) to purchase and install educational technology at Ernie Pyle middle school in the Albuquerque public school district in Bernalillo county;

252. twenty thousand dollars (\$20,000) to purchase and install educational technology at Truman middle school in the Albuquerque public school district in Bernalillo county;

253. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Navajo elementary school in the Albuquerque public school district in Bernalillo county;

254. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Adobe Acres elementary school in the Albuquerque public school district in Bernalillo county;

255. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Pajarito elementary school in the Albuquerque public school district in Bernalillo county;

256. twenty-five thousand dollars (\$25,000) to purchase and install educational technology at Carlos Rey elementary school in the Albuquerque public school district in Bernalillo county;

257. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Barcelona elementary school in the Albuquerque public school district in Bernalillo county;

258. fifteen thousand dollars (\$15,000) to purchase and install educational technology at Kit Carson elementary school in the Albuquerque public school district in Bernalillo county;

259. five thousand dollars (\$5,000) to purchase library books for Rio Grande high school in the Albuquerque public school district in Bernalillo county;

260. five thousand dollars (\$5,000) to purchase library books for West Mesa high school in the Albuquerque public school district in Bernalillo county;

261. five thousand dollars (\$5,000) to purchase library books for Polk middle school in the Albuquerque public school district in Bernalillo county;

262. five thousand dollars (\$5,000) to purchase library books for Harrison middle school in the Albuquerque public school district in Bernalillo county;

263. five thousand dollars (\$5,000) to purchase library books for Ernie Pyle middle school in the Albuquerque public school district in Bernalillo county;

264. five thousand dollars (\$5,000) to purchase library books for Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county;

265. five thousand dollars (\$5,000) to purchase library books for Truman middle school in the Albuquerque public school district in Bernalillo county;

266. five thousand dollars (\$5,000) to purchase library books for Atrisco elementary school in the Albuquerque public school district in Bernalillo county;

267. five thousand dollars (\$5,000) to purchase library books for Armijo elementary school in the Albuquerque public school district in Bernalillo county;

268. five thousand dollars (\$5,000) to purchase library books for Navajo elementary school in the Albuquerque public school district in Bernalillo county;

269. five thousand dollars (\$5,000) to purchase library books for Adobe Acres elementary school in the Albuquerque public school district in Bernalillo county;

270. five thousand dollars (\$5,000) to purchase library books for Pajarito elementary school in the Albuquerque public school district in Bernalillo county;

271. five thousand dollars (\$5,000) to purchase library books for Los Padillas elementary school in the Albuquerque public school district in Bernalillo county;

272. five thousand dollars (\$5,000) to purchase library books for Carlos Rey elementary school in the Albuquerque public school district in Bernalillo county;

273. five thousand dollars (\$5,000) to purchase library books for Barcelona elementary school in the Albuquerque public school district in Bernalillo county;

274. five thousand dollars (\$5,000) to purchase library books for Kit Carson elementary school in the Albuquerque public school district in Bernalillo county;

275. five thousand dollars (\$5,000) to purchase library books for Edward Gonzales elementary school in the Albuquerque public school district in Bernalillo county;

276. five thousand dollars (\$5,000) to purchase library books for Mary Ann Binford elementary school in the Albuquerque public school district in Bernalillo county;

277. fifty thousand dollars (\$50,000) to purchase and install educational technology at Ventana Ranch elementary school in the Albuquerque public school district in Bernalillo county;

278. fifty thousand dollars (\$50,000) to purchase and install educational technology for Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;

~~279. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Petroglyph elementary school in the Albuquerque public school district in Bernalillo county;~~ [LINE-ITEM VETO]

280. fifty thousand dollars (\$50,000) to purchase library books for the Manzano and Highland high school clusters in the Albuquerque public school district in Bernalillo county;

281. twenty-five thousand dollars (\$25,000) to equip and to plan, design and construct improvements to the athletic facilities, including lighting, bleachers, dugouts, restrooms and fields, at Roswell high school in the Roswell independent school district in Chaves county;

282. thirty thousand dollars (\$30,000) to purchase and install educational technology at Mesa middle school in the Roswell independent school district in Chaves county;

283. fifty thousand dollars (\$50,000) to purchase and install educational technology at Sierra middle school in the Roswell independent school district in Chaves county;

284. fifty thousand dollars (\$50,000) to purchase and install educational technology at Military Heights elementary school in the Roswell independent school district in Chaves county;

285. fifty thousand dollars (\$50,000) to purchase and install playground equipment at Sunset elementary school in the Roswell independent school district in Chaves county;

286. seventy thousand dollars (\$70,000) to renovate the interior and exterior of the head start building in the Grants-Cibola county school district in Cibola county;

287. eighty thousand dollars (\$80,000) to plan, design, construct and purchase improvements for the youth entrepreneurial and teen center in the Maxwell municipal school district in Colfax county;

288. sixty thousand dollars (\$60,000) to purchase a tractor for the Texico municipal school district in Curry county;

289. twenty-five thousand dollars (\$25,000) to plan, design and construct a baseball field in the Texico municipal school district in Curry county;

290. one hundred forty-five thousand dollars (\$145,000) to purchase, install and equip weight room facilities at high schools in the Gadsden independent school district in Dona Ana county;

291. twenty-five thousand dollars (\$25,000) to plan, design, construct and purchase equipment for an exercise track and basic walking track at Anthony elementary school in the Gadsden independent school district in Dona Ana county;

292. fifty thousand dollars (\$50,000) to plan, design and construct grounds improvements at Desert Trail elementary school in the Gadsden independent school district in Dona Ana county;

293. fifty thousand dollars (\$50,000) to plan, design and construct grounds improvements at Chaparral middle school in the Gadsden independent school district in Dona Ana county;

294. twenty-one thousand five hundred dollars (\$21,500) to purchase and install educational technology at Valley View elementary school in the Las Cruces public school district in Dona Ana county;

295. eighty thousand dollars (\$80,000) to plan, design and construct improvements to the playground at G.W. Stout elementary school in the Silver consolidated school district in Grant county;

296. ninety thousand dollars (\$90,000) to purchase an activity bus for the Santa Rosa consolidated school district in Guadalupe county;

297. seventy-five thousand dollars (\$75,000) to construct and install roof improvements on buildings in the Jal public school district in Lea county;

298. fifty thousand dollars (\$50,000) to plan, design, construct and equip improvements to the cafeteria at Caton middle school in the Eunice public school district in Lea county;

299. ten thousand dollars (\$10,000) to purchase, furnish and equip improvements for the agricultural education program at Capitan middle and high schools in the Capitan municipal school district in Lincoln county;

300. twenty thousand dollars (\$20,000) for a five-year master facility development plan for the Capitan municipal school district in Lincoln county;

301. two hundred thousand dollars (\$200,000) to plan, design, construct, equip and furnish ball fields and recreation facilities in the Capitan municipal school district in Lincoln county;

302. fifty thousand dollars (\$50,000) to purchase and install playground equipment and sun shades that comply with the Americans with Disabilities Act of 1990 in the Alamogordo public school district in Otero county;

303. two hundred thousand dollars (\$200,000) to construct improvements, including new field turf, for the Tularosa municipal school district in Otero county;

304. twenty-five thousand dollars (\$25,000) to purchase and install improvements to the weight room at Espanola valley high school in the Espanola public school district in Rio Arriba county;

305. fifty thousand dollars (\$50,000) to repair and replace windows and renovate entryways in Portales schools in the Portales municipal school district in Roosevelt county;

306. thirty thousand dollars (\$30,000) to purchase an activity vehicle for the Elida municipal school district in Roosevelt county;

307. seventy thousand dollars (\$70,000) to purchase and install educational technology at Kirtland elementary school in the Central consolidated school district in San Juan county;

308. ninety thousand dollars (\$90,000) to improve and equip the Donaldo Martinez administration building in the West Las Vegas public school district in San Miguel county;

309. ten thousand dollars (\$10,000) to purchase and equip a dump truck with a salt spreader for the Pecos independent school district in San Miguel county;

310. ninety thousand dollars (\$90,000) to purchase and equip an activity bus for the Las Vegas city public school district in San Miguel county;

311. twenty thousand dollars (\$20,000) to purchase a generator for Mike "Mateo" Sena elementary school in the Las Vegas city public school district in San Miguel county;

312. fifty thousand dollars (\$50,000) to purchase and install educational technology at Puesta del Sol elementary school in the Rio Rancho public school district in Sandoval county;

313. fifty thousand dollars (\$50,000) to purchase and install educational technology at Martin Luther King, Jr. elementary school in the Rio Rancho public school district in Sandoval county;

314. ten thousand dollars (\$10,000) for improvements to and equipment and materials for the performing arts theater at Acequia Madre elementary school in the Santa Fe public school district in Santa Fe county;

315. twenty-five thousand dollars (\$25,000) for materials and equipment for the grand national tournament at Santa Fe high school in the Santa Fe public school district in Santa Fe county;

316. five thousand dollars (\$5,000) to plan, design and construct improvements to comply with the Americans with Disabilities Act of 1990 in the Penasco independent school district in Taos county;

317. one hundred thousand dollars (\$100,000) to plan, design and construct a walking field and track in the Penasco independent school district in Taos county;

318. two hundred fifty thousand dollars (\$250,000) to plan, design and construct dressing rooms, bathrooms and a concession facility for the north side of the athletic complex at Belen high school in the Belen consolidated school district in Valencia county;

319. one hundred five thousand dollars (\$105,000) to plan, design, construct and equip a weight room and field house at Los Lunas high school in the Los Lunas public school district in Valencia county;

320. forty thousand dollars (\$40,000) to purchase a wrestling mat and construct improvements to the wrestling room at Belen high school in the Belen consolidated school district in Valencia county;

321. forty thousand dollars (\$40,000) to purchase a wrestling mat and construct improvements at the Los Lunas high school wrestling room in the Los Lunas public school district in Valencia county; and

322. one hundred fifty thousand dollars (\$150,000) to renovate the track at Los Lunas high school in the Los Lunas public school district in Valencia county.

Chapter 347 Section 49 Laws 2005

Section 49. PUBLIC RECORDS PROJECTS--STATE COMMISSION OF PUBLIC RECORDS--GENERAL FUND.--The following amounts are appropriated from the general fund to the state commission of public records for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. eighty thousand dollars (\$80,000) to purchase a hybrid digital and microfilm camera for the state commission of public records in Santa Fe in Santa Fe county;

2. twenty thousand dollars (\$20,000) to purchase and install a poster printer and motion picture digital transfer equipment for the state commission of public records in Santa Fe in Santa Fe county; and

3. forty thousand dollars (\$40,000) to equip and furnish the state records center and archives in Santa Fe in Santa Fe county.

Chapter 347 Section 50 Laws 2005

Section 50. PUBLIC SAFETY PROJECTS--DEPARTMENT OF PUBLIC SAFETY--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of public safety for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. five hundred thousand dollars (\$500,000) to plan and design a building at the port of entry in Lordsburg in Hidalgo county;

2. five hundred thousand dollars (\$500,000) to purchase police pursuit vehicles for the department of public safety; and

3. one hundred five thousand dollars (\$105,000) to plan, design and construct a communications tower for the Tularosa safety building in Otero county.

Chapter 347 Section 51 Laws 2005

Section 51. MOTOR VEHICLE DIVISION OFFICES PROJECT--TAXATION AND REVENUE DEPARTMENT--GENERAL FUND.--Nine hundred thousand dollars (\$900,000) is appropriated from the general fund to the taxation and revenue department for expenditure in fiscal years 2005 through 2010, unless otherwise provided for in Section 2 of this act, for repairs and renovations at motor vehicle division field offices in Clovis, Belen and Los Lunas.

Chapter 347 Section 52 Laws 2005

Section 52. TRANSPORTATION PROJECTS--DEPARTMENT OF TRANSPORTATION--GENERAL FUND.--The following amounts are appropriated from the general fund to the department of transportation for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. seventy thousand dollars (\$70,000) to plan, design and construct landscape improvements on Golf Course road in Albuquerque in Bernalillo county;

~~2. ten thousand dollars (\$10,000) to plan, design and construct landscaping improvements to paseo del Norte in Albuquerque in Bernalillo county;~~
[LINE-ITEM VETO]

3. sixty thousand dollars (\$60,000) to plan, design and construct improvements, including paving, to Primera Agua road in Bernalillo county;

4. one hundred thousand dollars (\$100,000) for a storm drain system and lighting on Sunflower place in Bernalillo county;

5. seventy-eight thousand dollars (\$78,000) for asphalt overlay, base preparation and reconstruction paving on Kelly road from the intersection with Foothill drive east to the intersection with Atrisco drive and from the Isleta drain east to the dead end in the south valley area of Bernalillo county;

6. one hundred forty-two thousand dollars (\$142,000) for construction and improvements, including drainage, to Sunset Gardens road from Atrisco drive east to the Arenal ditch, including sections of this street both inside and outside the city of Albuquerque in Bernalillo county;

7. two thousand dollars (\$2,000) for asphalt overlay and base preparation on El Serrano road southwest and other dirt roads in the Atrisco, Armijo and Five Points areas of the south valley of Bernalillo county;

8. one hundred ninety thousand dollars (\$190,000) for acquisition of rights of way, planning, designing and construction of roadway drainage and paving improvements to Five Points road from Gatewood avenue to Atrisco drive in the south valley, including sections of this road both inside and outside the city of Albuquerque in Bernalillo county;

9. forty-three thousand dollars (\$43,000) for asphalt overlay on Rosendo Garcia road from the intersection with Foothill drive east to the intersection with Atrisco drive in the south valley of Bernalillo county;

10. ten thousand dollars (\$10,000) for asphalt overlay and base preparation on Castanada road north of La Fonda drive to the end of the road in the south valley of Bernalillo county;

11. one hundred forty-seven thousand dollars (\$147,000) to plan, design and construct drainage improvements for various county roads in the Vista del Rio area of Bernalillo county;

12. eight hundred thousand dollars (\$800,000) to plan, design, construct and acquire rights of way for a continuous-flow intersection at Fourth street and Montano road in the north valley of Albuquerque in Bernalillo county;

13. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Ladera drive in Bernalillo county;

14. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Arroyo Vista road in Bernalillo county;

15. one hundred eighty-four thousand one hundred forty-three dollars (\$184,143) to design and construct median landscaping on Candelaria road from Chelwood street to Juan Tabo boulevard in Albuquerque in Bernalillo county;

16. twenty thousand dollars (\$20,000) to plan, design and construct improvements to Glendale avenue, from Holbrook to Eubank, in Bernalillo county;

17. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Oakland avenue, from Holbrook street to Eubank boulevard, in Bernalillo county;

18. ninety thousand dollars (\$90,000) to plan, design and construct improvements to Oakland avenue, from Ventura street to Holbrook street, in Bernalillo county;

19. seventy thousand dollars (\$70,000) to pave and widen Holbrook street north of San Francisco road in Bernalillo county;

20. forty-five thousand dollars (\$45,000) for median landscaping on Carlisle boulevard from Candelaria road to Comanche boulevard in Albuquerque in Bernalillo county;

21. forty thousand dollars (\$40,000) to convert existing mercury vapor lights in the Bel Air neighborhood to high pressure sodium lights in Albuquerque in Bernalillo county;

22. ninety thousand dollars (\$90,000) to plan, design and construct improvements to the parking lot at Kit Carson elementary school in the Albuquerque public school district in Bernalillo county;

23. one hundred twenty-five thousand dollars (\$125,000) to design and construct median landscaping on Spain boulevard northeast between Juan Tabo boulevard and Lowell street northeast in Albuquerque in Bernalillo county;

~~24. fifty thousand dollars (\$50,000) to plan, design and construct median improvements on Indian School road between Pennsylvania avenue and Eubank boulevard in Albuquerque in Bernalillo county;~~

~~25. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements to the median on Menaul boulevard, between Wyoming boulevard and Morris avenue, in Albuquerque in Bernalillo county;] [LINE-ITEM VETO]~~

26. forty thousand dollars (\$40,000) to design and install streetlights in the Huning Highland area of Albuquerque in Bernalillo county;

27. one hundred fifteen thousand dollars (\$115,000) to purchase, design, construct and install streetlights in the south Broadway area of Albuquerque in Bernalillo county;

28. twenty-five thousand dollars (\$25,000) to plan, design and construct crosswalk and intersection improvements in house district 19 in Albuquerque in Bernalillo county;

29. seventy-five thousand dollars (\$75,000) to design and construct landscaping improvements and signage on medians on Bataan southwest from Gonzales road southwest in Albuquerque in Bernalillo county;

30. fifty thousand dollars (\$50,000) to plan, design and construct improvements to an alleyway in Glenwood Hills near Montgomery boulevard in Albuquerque in Bernalillo county;

31. fifty thousand dollars (\$50,000) to plan, design and construct medians on Glenwood Hills boulevard and Cedarbrook avenue northeast in Albuquerque in Bernalillo county;

32. twenty thousand dollars (\$20,000) to plan, design and construct median landscaping improvements on Coors boulevard from Montano to Eagle Ranch road in Albuquerque in Bernalillo county;

33. one hundred thousand dollars (\$100,000) to plan, design and construct medians on Alamosa street in Albuquerque in Bernalillo county;

34. one million dollars (\$1,000,000) to plan, design and improve Mesa del Sol road in Albuquerque in Bernalillo county;

35. twenty-six thousand dollars (\$26,000) to plan, design and construct improvements to Main street and other downtown area streets in Lake Arthur in Chaves county;

36. ninety thousand dollars (\$90,000) to acquire rights of way for roads in the Navajo Nation in Cibola county;

37. three hundred thousand dollars (\$300,000) to plan, design and construct improvements, including resurfacing, to roads in Curry county;

38. three hundred thousand dollars (\$300,000) to plan, design and construct an overpass on New Mexico highway 467 in Clovis in Curry county;

39. one hundred thousand dollars (\$100,000) to plan, design and construct the Martin Luther King, Jr. bridge in Clovis in Curry county;

~~40. twenty-five thousand dollars (\$25,000) to plan, design and construct an arroyo crossing at the extension of Leasburg Dam road in Dona Ana county;~~ [*LINE-ITEM VETO*]

41. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to El Molino boulevard in Las Cruces in Dona Ana county;

42. four hundred thousand dollars (\$400,000) to plan, design and construct improvements to Reynolds drive in Las Cruces in Dona Ana county;

43. one hundred fifty thousand dollars (\$150,000) to plan, design and construct a drainage system for the Central and Calico streets area in Las Cruces in Dona Ana county;

44. ninety thousand dollars (\$90,000) to plan, design and construct improvements to Oak, Manso and Bell streets in Las Cruces in Dona Ana county;

45. twenty thousand dollars (\$20,000) to plan, design and construct improvements to the storm water drainage and pumping system in Mesilla in Dona Ana county;

46. seventy thousand dollars (\$70,000) to plan, design and construct improvements to Visnaga street in La Union in Dona Ana county;
47. one hundred seven thousand five hundred dollars (\$107,500) to plan, design and construct road improvements and paving on Rusty Spur lane from New Mexico highway 28 to Montes road in La Mesa in Dona Ana county;
48. one hundred eighty thousand dollars (\$180,000) to plan, design and construct improvements to streets in Sunland Park in Dona Ana county;
49. one hundred thousand dollars (\$100,000) to resurface and improve roads in Mosquero in Harding county;
50. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct improvements, including chip seal, to roads in Lea county;
51. five thousand dollars (\$5,000) to plan, design and construct median improvements and landscaping in Deming in Luna county;
52. seventy-five thousand dollars (\$75,000) for a comprehensive plan for traffic and transportation needs, including a truck bypass, in Deming in Luna county;
53. eighty thousand dollars (\$80,000) to plan, design and construct improvements to county road 1 in McKinley county;
54. forty thousand dollars (\$40,000) to plan, design and construct improvements, including surfacing, to county road 61 in McKinley county;
55. twenty-five thousand dollars (\$25,000) for road improvements, including surfacing, in the Homer C. Jones subdivision in McKinley county;
56. five thousand five hundred dollars (\$5,500) to plan, design and construct road improvements to Cousins road in the Chichiltah chapter of the Navajo Nation in McKinley county;
57. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct improvements to county road 19 in McKinley county;
58. one hundred seventy thousand dollars (\$170,000) to construct road, drainage and shaping improvements, including chip seal, to Morphy Lake road in Mora county;
59. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including widening and an extension, to south Florida avenue in Alamogordo in Otero county;

60. five hundred seven thousand one hundred forty-three dollars (\$507,143) to plan, design and construct improvements, including an extension, to First street in Alamogordo in Otero county;

61. thirty thousand dollars (\$30,000) to plan, design and construct sidewalks that comply with the Americans with Disabilities Act of 1990 along Tenth street, Florida avenue and Cuba avenue in Alamogordo in Otero county;

62. one hundred thousand dollars (\$100,000) to purchase and install culverts at arroyo crossings on Riata road in Otero county;

63. one hundred twenty-five thousand dollars (\$125,000) to plan, design and construct improvements at the Timberon airport in Timberon in Otero county;

64. fifty thousand dollars (\$50,000) to plan, design and construct road improvements in Logan in Quay county;

65. five thousand dollars (\$5,000) to plan, design and construct road improvements to county road 36 in Rio Arriba county;

66. five thousand dollars (\$5,000) to plan, design and construct road improvements to county road 35 in Rio Arriba county;

67. fifty-five thousand dollars (\$55,000) to plan, design and construct road improvements to county road 89A in Rio Arriba county;

68. ten thousand dollars (\$10,000) to plan, design and construct road improvements to county roads 107 and 108 in La Mesilla in Rio Arriba county;

69. twenty-five thousand dollars (\$25,000) to plan, design and purchase material for improvements on county roads 0144, 107, 108, 44 and 41, including widening and paving, in county commission district 2 in Rio Arriba county;

70. seventy-five thousand dollars (\$75,000) to plan and acquire land for the realignment of paseo de Onate and New Mexico highway 30 in Espanola in Rio Arriba county;

71. twenty-five thousand dollars (\$25,000) to plan, design and construct road improvements to roads in Lindrith in Rio Arriba county;

72. twenty thousand dollars (\$20,000) to repair and improve the bridge in Canones in Rio Arriba county;

73. fifty thousand dollars (\$50,000) to construct improvements, including the purchase of materials, for various streets in Portales in Roosevelt county;

74. twenty-five thousand dollars (\$25,000) to resurface railroad crossing approaches in Portales in Roosevelt county;

75. one hundred thousand dollars (\$100,000) to plan, design and construct road improvements to north avenue O in Portales in Roosevelt county;

76. two hundred fifty thousand dollars (\$250,000) to plan, design and construct improvements to the United States highway 70 truck bypass in Portales in Roosevelt county;

77. fifty thousand dollars (\$50,000) to plan, design and construct road improvements in the Two Grey Hills chapter of the Navajo Nation in San Juan county;

78. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Bergin lane in Bloomfield in San Juan county;

79. ninety thousand dollars (\$90,000) to improve and pave county road 3004 in San Juan county;

80. three hundred thousand dollars (\$300,000) to plan, design and construct improvements to county road 5290 in San Juan county;

81. fifty-three thousand dollars (\$53,000) to construct improvements, including chip seal, for county road 5500 in San Juan county;

82. twenty thousand dollars (\$20,000) to plan, design and construct road improvements to El Ancon road in San Miguel county;

83. seventy-five thousand dollars (\$75,000) to plan, design and make improvements to El Cerrito road in San Miguel county;

84. forty thousand dollars (\$40,000) to plan, design and construct road improvements, including surfacing, to various roads in Regina in Sandoval county;

85. one hundred fifteen thousand dollars (\$115,000) to plan, design and construct improvements, including paving, to camino de San Francisco in Sandoval county;

86. five hundred thirty thousand five hundred ten dollars (\$530,510) to plan, design and construct paseo del Volcan in Rio Rancho in Sandoval county;

87. one hundred forty thousand dollars (\$140,000) to construct improvements, including repairing and replacing drainage, installing a box culvert and replacing a bridge, to Vincente road in Sandoval county;

88. fifty thousand dollars (\$50,000) to plan, design and construct pathways for pedestrian, bicycle and equestrian use along Don Tomas in Bernalillo in Sandoval county;

89. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including paving and drainage, on Sile road in Sandoval county;

90. six hundred thirty-five thousand dollars (\$635,000) to plan, design and construct a lighted intersection with a traffic signal at New Mexico highway 528 and Northern boulevard in Corrales and Rio Rancho in Sandoval county;

91. forty-five thousand dollars (\$45,000) to plan, design and construct road improvements to Loma Larga road in Corrales in Sandoval county;

~~92. twenty thousand dollars (\$20,000) to plan, design and construct a footbridge, including approach work, in Corrales in Sandoval county;]~~ [*LINE-ITEM VETO*]

93. forty-five thousand dollars (\$45,000) to improve Cerro del Alamo, Sunset and Sunrise roads as part of the C.R. Mayfield road project in La Cienega in Santa Fe county;

94. thirty-five thousand dollars (\$35,000) to plan, design and construct paving and drainage improvements to Churchill road in Santa Fe county;

95. eighty thousand dollars (\$80,000) for improvements, including curbs, gutters, sidewalks, surfacing and signal hardware, to the Old Pecos trail and Cordova road intersection in Santa Fe in Santa Fe county;

96. forty-five thousand dollars (\$45,000) for reconstruction, including base course and drainage improvements, to Cerro del Alamo and Sunset and Sunrise roads in Santa Fe county;

97. twenty-five thousand dollars (\$25,000) to purchase materials and construct improvements to La Barberia road in Santa Fe county;

98. seven thousand dollars (\$7,000) to plan, design and construct improvements, including surfacing, curbs, gutters and retaining walls, to Cuchilla Hill road in Taos county;

99. sixty thousand dollars (\$60,000) to plan, design and construct improvements, including drainage and surfacing, to Santa Barbara road in Taos county;

100. two hundred thousand dollars (\$200,000) to plan, design and reconstruct state road 64 in Taos in Taos county;

101. twenty-five thousand dollars (\$25,000) to plan, design and reconstruct state road 240 in Taos in Taos county;
102. fifty thousand dollars (\$50,000) to plan, design and construct an airplane hangar for the civil air patrol in Taos in Taos county;
103. fifty thousand dollars (\$50,000) to plan, design and construct improvements to St. Lavender road in Taos county;
104. sixty-two thousand five hundred dollars (\$62,500) for drainage structures and chip sealing of roads in Mountainair in Torrance county;
105. one hundred seventy-five thousand dollars (\$175,000) to construct improvements, including installing sidewalks and gutters, lighting, drainage, sewer lines and road extensions, to Christopher road in Belen in Valencia county;
106. twenty-nine thousand thirty-eight dollars (\$29,038) to plan, design and construct road improvements, including resurfacing, to Marquez road in Valencia county;
107. forty-eight thousand eight hundred twenty-eight dollars (\$48,828) to plan, design and construct road improvements, including paving, to Maestas road in Valencia county;
108. seven thousand three hundred eighteen dollars (\$7,318) to plan, design and construct road improvements, including paving, to El Fuego place in Valencia county;
109. seven thousand five hundred fourteen dollars (\$7,514) to plan, design and construct road improvements, including paving, to El Sol road in Valencia county;
110. nineteen thousand five hundred thirteen dollars (\$19,513) to plan, design and construct road improvements, including paving, on Sombreo loop in Valencia county;
111. four thousand three hundred ninety dollars (\$4,390) to plan, design and construct road improvements, including paving, to Sombreo place in Valencia county;
112. fifteen thousand dollars (\$15,000) to plan, design and construct road improvements, including paving, to Otero road in Valencia county;
113. fifteen thousand dollars (\$15,000) to plan, design and construct road improvements, including paving, to Firestation road in Valencia county;

114. forty-five thousand dollars (\$45,000) to plan, design and construct improvements to Harrison road in Valencia county;

115. sixty-five thousand dollars (\$65,000) to plan, design and construct improvements, including surfacing and drainage, to Monterrey boulevard in Valencia county;

116. twenty-three thousand five hundred dollars (\$23,500) to plan, design and construct road improvements, including paving, to Hill street in Valencia county;

117. eighty thousand dollars (\$80,000) to plan, design and make improvements to Golf Course road in Valencia county;

~~118. fifty thousand dollars (\$50,000) to plan, design and construct landscaping improvements on Paradise boulevard in Albuquerque in Bernalillo county;]~~
[LINE-ITEM VETO]

119. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, to La Madera road in Bernalillo county;

120. one hundred four thousand eight hundred thirty-five dollars (\$104,835) to construct improvements to Trujillo and Townsend streets in southwest Albuquerque in Bernalillo county;

121. two thousand two hundred dollars (\$2,200) to plan, design and construct speed bumps on Estancia drive northwest, Las Humanes street and Tampino drive northwest in Albuquerque in Bernalillo county;

122. two hundred fifteen thousand four hundred dollars (\$215,400) to plan, design and construct road improvements to Eubank boulevard between Academy boulevard and paseo del Norte in Bernalillo county;

123. one hundred fifty thousand dollars (\$150,000) to plan, design and construct road and drainage improvements to Edith boulevard from Candelaria road to Montano road in Bernalillo county;

124. fifty thousand dollars (\$50,000) to design, construct and renovate landscaping for interstates 25 and 40 in Albuquerque in Bernalillo county;

125. fifty thousand dollars (\$50,000) to design and construct median landscaping on Candelaria road from Morris road to San Mateo boulevard in Albuquerque in Bernalillo county;

126. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including paving, to the community housing road from Rio Puerco to To'hajilee in the To'hajilee chapter of the Navajo Nation in Bernalillo county;

127. fifty thousand dollars (\$50,000) to plan, design and construct road improvements, including paving, to Oakland avenue from Ventura street to Holbrook street, from Holbrook street to Eubank boulevard and to Glendale road from Holbrook street to Eubank boulevard in Albuquerque in Bernalillo county;

128. twenty-five thousand dollars (\$25,000) to plan, design and construct road improvements, including paving, to Oakland avenue from Browning street to Eubank boulevard and for speed humps from Browning street to Lowell street in Albuquerque in Bernalillo county;

129. seventy-five thousand dollars (\$75,000) to plan, design and construct road improvements, including paving, to Glendale road from Eubank boulevard to Browning street, to Holly avenue from Eubank boulevard to Browning street and to Palomas avenue from Tennyson street to Lowell street, and to construct a temporary light at Eubank and San Francisco road in Albuquerque in Bernalillo county;

130. twenty-five thousand dollars (\$25,000) to design and construct landscape median improvements on Rio Bravo boulevard in Bernalillo county;

131. two hundred fifteen thousand four hundred dollars (\$215,400) to design and construct landscaping improvements on interstate highways 40 and 25 in Albuquerque in Bernalillo county;

132. thirty thousand dollars (\$30,000) to plan, design and construct improvements to roads in the south valley in Bernalillo county;

133. one hundred thousand dollars (\$100,000) to plan, design and construct landscaping improvements to Irving boulevard between Unser avenue and Golf Course road in Albuquerque in Bernalillo county;

134. seventy-five thousand dollars (\$75,000) to repave and improve roads in the south valley of Bernalillo county, including La Mora lane, Santa Anita, El Porvenir, Entrada Bonita, Santa Maria avenue, Santa Rosa, Tobacco road and Saunders road;

135. fifty thousand dollars (\$50,000) to construct street improvements, including paving, curbs, gutters, sidewalks and handicapped access, in the northeast quadrant of Dexter in Chaves county;

136. fifty thousand dollars (\$50,000) to plan, design and construct street improvements, including paving, sidewalks, curbs, gutters, handicapped access and street signs, near the Dexter public schools in Dexter in Chaves county;

137. fifty thousand dollars (\$50,000) to plan, design and construct a parking lot for the field house at Goddard high school in the Roswell independent school district in Chaves county;

138. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to county roads in Cibola county;

139. twenty thousand dollars (\$20,000) to plan, design and construct improvements, including drainage structures, cattle guards and surfacing, to roads in the Timberlake subdivision in Cibola county;

140. one hundred thousand dollars (\$100,000) to resurface and reconstruct roads and highways in Angel Fire in Colfax county;

141. one hundred thousand dollars (\$100,000) to repair streets in Clovis in Curry county;

~~142. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, flood drainage and emergency access improvements and acquisition of rights of way, to Webb road in the east mesa area of Las Cruces in Dona Ana county;~~

~~143. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, flood drainage and emergency access improvements and acquisition of rights of way, to Pueblo trail in the east mesa area of Las Cruces in Dona Ana county;] [LINE-ITEM VETO]~~

144. fifty thousand dollars (\$50,000) to plan, design and construct improvements, including paving, flood drainage and emergency access improvements and acquisition of rights of way, to Mescalero road in the east mesa area of Las Cruces in Dona Ana county;

145. one hundred sixteen thousand five hundred dollars (\$116,500) to plan, design and construct improvements to an extension of Shrode road, including paving, acquisition of rights of way and utilities relocation, in Berino in Dona Ana county;

146. two hundred ninety thousand dollars (\$290,000) to plan, design and construct improvements to Elks drive in Las Cruces in Dona Ana county;

147. two hundred thousand dollars (\$200,000) to plan, design and construct improvements to Crawford road and Santa Teresa drive in Sunland Park in Dona Ana county;

148. seventy-five thousand dollars (\$75,000) to plan, design and construct improvements, including surveying, subgrade, base course and paving, at Alvillar road in Dona Ana county;

149. fifty-five thousand dollars (\$55,000) for phases 1 and 2 planning, design and construction of flood control drainage and emergency access improvements to roads in Dona Ana county;

150. seventy thousand dollars (\$70,000) to plan, design and construct improvements to County Line drive in Chaparral in Dona Ana county;

151. one hundred thousand dollars (\$100,000) to plan, design and construct improvements to Prescott Anthony drive in Chaparral in Dona Ana county;

152. twenty-five thousand dollars (\$25,000) to construct repairs to the Dog Town bridge on county road 788 in Eddy county;

153. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements, including streets, drainage and sidewalks, at the Morningside area housing projects in Eddy county;

154. three thousand three hundred eighty-eight dollars (\$3,388) to plan, design, acquire and survey an airport facility in Harding county;

155. one hundred thousand dollars (\$100,000) to design, purchase, install and construct switches for a railroad siding in the north industrial park in Deming in Luna county;

156. thirty-five thousand dollars (\$35,000) to plan, design and construct road improvements to Coyote Canyon N96 in McKinley county;

157. thirty-five thousand dollars (\$35,000) for improvements, including surfacing, to Twin Buttes-Crestview road in McKinley county;

158. twenty-five thousand dollars (\$25,000) to plan, design and construct an extension of Sundance road in McKinley county;

159. fifty thousand dollars (\$50,000) to plan, design and construct improvements to Nizhoni and Mendoza roads in McKinley county;

160. fifty thousand dollars (\$50,000) to plan improvements for the Hassler Valley East road and corridor in McKinley county;

161. fifty thousand dollars (\$50,000) to plan, design and construct a bridge in the Rock Springs chapter of the Navajo Nation in McKinley county;

162. forty thousand dollars (\$40,000) to construct improvements, including resurfacing, grading, culverts and drainage, to El Camino del Monte Quemado road in Chacon in Mora county;

163. one hundred thirty-five thousand dollars (\$135,000) for road improvements in the Rock Springs chapter of the Navajo Nation in San Juan and McKinley counties;

164. ninety-four thousand dollars (\$94,000) to plan, design and construct various roads and make road improvements, including drainage, surfacing and a maintenance yard, in the Navajo Nation in McKinley, San Juan and Sandoval counties;

165. one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including the purchase of materials, for county roads in Roosevelt county;

166. fifty thousand dollars (\$50,000) for design, engineering, archaeological clearances, environmental assessments and construction related to extending Main avenue and improving the intersection of United States highway 550 and New Mexico highway 516 in Aztec in San Juan county;

167. fifty thousand dollars (\$50,000) to plan, design and construct road improvements, including archaeological and environmental surveys, property acquisition, rights of way, sidewalks, curbs and gutters, in Aztec in San Juan county;

168. two hundred thousand dollars (\$200,000) to chip seal county road 4990 in Bloomfield in San Juan county;

169. twenty-five thousand dollars (\$25,000) for drainage improvements to Cinder road in Las Vegas in San Miguel county;

170. fifty thousand dollars (\$50,000) to plan, design and construct road improvements to El Llano road in San Miguel county;

171. forty thousand dollars (\$40,000) to plan, design and construct drainage and road improvements to Las Dispensas road in San Miguel county;

172. thirty thousand dollars (\$30,000) to plan, design and construct improvements to county roads B-47-A and B-47-B in San Miguel county;

173. twenty thousand dollars (\$20,000) to construct road improvements to county road B-36 in San Miguel county;

174. twenty thousand dollars (\$20,000) to construct improvements, including paving, shaping, base course and drainage, to county road B-59 in San Miguel county;

175. twenty thousand dollars (\$20,000) to construct road improvements, including paving, base course and drainage, to county road B-58 in San Miguel county;

176. sixty thousand six hundred ninety dollars (\$60,690) to resurface Sheriff's Posse road in Bernalillo in Sandoval county;

177. twenty thousand dollars (\$20,000) to acquire land for and plan, design and construct a pedestrian walkway in Jemez Springs in Sandoval county;

178. twenty thousand dollars (\$20,000) to acquire land for, plan, design and construct the South Meadows bridge and to make related roadway improvements in Santa Fe county;

179. twenty-five thousand dollars (\$25,000) to plan, design and construct roadway and bridge improvements to camino Alire between west Alameda street and Alto street in Santa Fe in Santa Fe county;

180. forty thousand dollars (\$40,000) to plan, design, replace or rehabilitate the Closson street bridge in Santa Fe in Santa Fe county;

181. twenty-five thousand dollars (\$25,000) to plan, design and construct improvements to the intersection of Airport road and Constellation drive in Santa Fe in Santa Fe county;

182. sixty thousand dollars (\$60,000) to plan, design and construct improvements to United States highway 64 north in Taos county; and

183. fifty thousand dollars (\$50,000) for improvements to Don Andres road and Los Chavez loop in Valencia county.

Chapter 347 Section 53 Laws 2005

Section 53. UNIVERSITIES AND COLLEGES--GENERAL FUND.--The following amounts are appropriated from the general fund to the following institutions of higher learning for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

A. to the governing board of Albuquerque technical-vocational institute, two hundred twenty-five thousand dollars (\$225,000) to plan, design, construct, equip and furnish a new wing at Albuquerque technical-vocational institute in Albuquerque in Bernalillo county;

B. to the board of regents of eastern New Mexico university:

(1) one hundred sixty-five thousand dollars (\$165,000) to plan, design and construct athletic facilities at eastern New Mexico university in Portales in Roosevelt county;

(2) two hundred thousand dollars (\$200,000) to plan, design, construct and make improvements to the athletic facilities at eastern New Mexico university in Portales in Roosevelt county;

(3) eighty-five thousand dollars (\$85,000) to purchase and install distance education equipment at eastern New Mexico university in Portales in Roosevelt county;

(4) one hundred thousand dollars (\$100,000) to purchase and install instructional equipment for the community building at eastern New Mexico university in Portales in Roosevelt county;

(5) two hundred nine thousand six hundred seventy dollars (\$209,670) to plan, design, construct, upgrade, expand and equip the dental clinic facilities at eastern New Mexico university in Roswell in Chaves county;

(6) thirty-five thousand dollars (\$35,000) to purchase, install and furnish information technology for eastern New Mexico university in Roswell in Chaves county;

(7) fifty-one thousand one hundred forty-one dollars (\$51,141) to purchase and install a security and telephone system at eastern New Mexico university in Roswell in Chaves county;

(8) twenty-five thousand dollars (\$25,000) to plan, design, construct and renovate residence halls at eastern New Mexico university in Roswell in Chaves county;

(9) eighty-five thousand dollars (\$85,000) to equip the studio at the communications center at eastern New Mexico university in Portales in Roosevelt county; and

(10) fifty-three thousand dollars (\$53,000) to plan, design and construct improvements to the anthropology department curation facility at eastern New Mexico university in Portales in Roosevelt county;

C. to the board of regents of New Mexico highlands university:

(1) one hundred fifty thousand dollars (\$150,000) to purchase vehicles for transit services at New Mexico highlands university in San Miguel county;

(2) forty thousand dollars (\$40,000) to purchase and install track and field equipment for the athletic department at New Mexico highlands university in Las Vegas in San Miguel county;

(3) fifty thousand dollars (\$50,000) to plan, design and construct improvements to the health facility at New Mexico highlands university in Las Vegas in San Miguel county;

(4) three thousand dollars (\$3,000) to purchase and install equipment for the New Mexico academy of science visiting scientist program at New Mexico highlands university in Las Vegas in San Miguel county;

(5) thirty-five thousand dollars (\$35,000) to purchase vehicles for the motor pool and plan, design, construct and renovate a building for the motor pool at New Mexico highlands university in Las Vegas in San Miguel county;

(6) three thousand dollars (\$3,000) to purchase and install information technology for the college migrant program at New Mexico highlands university in Las Vegas in San Miguel county;

(7) thirty thousand dollars (\$30,000) to purchase and install equipment and renovate facilities for the institute of public policy at New Mexico highlands university in Las Vegas in San Miguel county;

(8) one million five hundred fifty thousand dollars (\$1,550,000) for acquisition, construction and infrastructure improvements for New Mexico highlands university in Las Vegas in San Miguel county;

(9) twenty thousand dollars (\$20,000) to improve and equip the despertarse coffee shop at New Mexico highlands university in Las Vegas in San Miguel county;

(10) sixty-five thousand dollars (\$65,000) for infrastructure renovation and expansion and transportation system improvements at New Mexico highlands university in Las Vegas in San Miguel county;

(11) fifty thousand dollars (\$50,000) to establish a flag display depicting diverse cultures at New Mexico highlands university in Las Vegas in San Miguel county; and

(12) fifty thousand dollars (\$50,000) to recruit international students to attend New Mexico highlands university in Las Vegas in San Miguel county;

D. to the governing board of Luna vocational-technical institute:

(1) two hundred fifty thousand dollars (\$250,000) to plan, design, construct and equip a community-use auditorium at Luna vocational-technical institute in San Miguel county;

(2) five thousand dollars (\$5,000) to plan, design and construct improvements to the King stadium at Luna vocational-technical institute in San Miguel county;

(3) twenty-five thousand dollars (\$25,000) to purchase baseball equipment for Luna vocational-technical institute in San Miguel county;

(4) fifty thousand dollars (\$50,000) to purchase a vehicle for the Santa Rosa satellite campus of Luna vocational-technical institute in Guadalupe county;
and

(5) one hundred thousand dollars (\$100,000) to plan, design, construct and equip a baseball field at Luna vocational-technical institute in Las Vegas in San Miguel county;

E. one hundred thousand dollars (\$100,000) to the governing board of New Mexico junior college to plan, design and construct the remodeling of the testing center at New Mexico junior college in Hobbs in Lea county;

F. twenty-five thousand dollars (\$25,000) to the board of regents of New Mexico military institute for infrastructure renovation, expansion and deferred maintenance at New Mexico military institute in Roswell in Chaves county;

G. to the community college board of Mesalands community college, twenty-five thousand dollars (\$25,000) to plan, design, construct and equip the wind energy pilot project at Mesalands community college in Quay county;

H. to the board of regents of New Mexico institute of mining and technology:

(1) fifty thousand dollars (\$50,000) to equip an information security and assurance laboratory at New Mexico institute of mining and technology in Socorro in Socorro county;

(2) one hundred thousand dollars (\$100,000) to develop the site for, plan, design and construct a facility for the New Mexico bureau of geology at New Mexico institute of mining and technology in Socorro in Socorro county;

(3) two hundred thousand dollars (\$200,000) to construct, equip and furnish the Joseph A. Fidel student services center at New Mexico institute of mining and technology in Socorro in Socorro county;

(4) forty thousand dollars (\$40,000) for improvements to the golf course at New Mexico institute of mining and technology in Socorro in Socorro county;
and

(5) fifty thousand dollars (\$50,000) to equip a professional lab for use by New Mexico mesa at New Mexico institute of mining and technology in Socorro in Socorro county;

I. to the board of regents of New Mexico state university:

(1) twenty-five thousand dollars (\$25,000) to plan, design, construct and equip a skills lab for the nursing science program at the Grants branch campus of New Mexico state university in Cibola county;

(2) one hundred fifty thousand dollars (\$150,000) to purchase and install health equipment and an elevator at the Fidel activities center at the Grants branch campus of New Mexico state university in Cibola county;

(3) twenty thousand dollars (\$20,000) to plan, design, construct and equip a ropes challenge course for the outdoor adventure program at New Mexico state university in Las Cruces in Dona Ana county;

(4) two hundred thousand dollars (\$200,000) to design, construct and equip a hygienist classroom and instructional laboratory for the hygienist program at Dona Ana branch community college of New Mexico state university in Las Cruces in Dona Ana county;

(5) one hundred thirty thousand dollars (\$130,000) to plan and design the Native American cultural center at New Mexico state university in Las Cruces in Dona Ana county;

(6) twenty-five thousand dollars (\$25,000) to purchase equipment for the football program at New Mexico state university in Las Cruces in Dona Ana county;

(7) one hundred thousand dollars (\$100,000) to purchase equipment for KRWG-TV at New Mexico state university in Las Cruces in Dona Ana county;

(8) ten thousand dollars (\$10,000) to construct improvements to and equip the baseball and softball complexes at New Mexico state university in Las Cruces in Dona Ana county;

(9) one hundred ninety thousand dollars (\$190,000) to plan, design and construct improvements to the Aggie memorial stadium at New Mexico state university in Las Cruces in Dona Ana county;

(10) twenty-five thousand dollars (\$25,000) to purchase and equip a building for the Caballo soil and water conservation district in Hatch in Dona Ana county;

(11) forty-five thousand dollars (\$45,000) for installation of lights at the intramural fields at New Mexico state university in Las Cruces in Dona Ana county;

(12) one hundred fifty thousand dollars (\$150,000) to purchase and install information technology for the hotel, restaurant and tourism management department at New Mexico state university in Las Cruces in Dona Ana county;

(13) twenty-five thousand dollars (\$25,000) to purchase and install information technology for New Mexico state university in Las Cruces in Dona Ana county;

(14) twenty-five thousand dollars (\$25,000) to purchase equipment for the sports medicine program at New Mexico state university in Las Cruces in Dona Ana county;

(15) thirty thousand dollars (\$30,000) to plan, design, construct, equip and furnish a food product development laboratory at New Mexico state university in Las Cruces in Dona Ana county;

(16) seventy thousand dollars (\$70,000) to plan, design, construct and equip a facility and expand the frequency for KRUX radio station at New Mexico state university in Las Cruces in Dona Ana county;

(17) two million dollars (\$2,000,000) to plan, design, renovate and make improvements to the athletic facilities at New Mexico state university in Las Cruces in Dona Ana county;

(18) one hundred thousand dollars (\$100,000) to plan, design and construct improvements for the chili development project at New Mexico state university in Las Cruces in Dona Ana county;

(19) sixty-five thousand dollars (\$65,000) to purchase multimedia equipment for the Carlsbad branch campus of New Mexico state university in Carlsbad in Eddy county;

(20) fifty-five thousand dollars (\$55,000) for the Carlsbad branch to purchase equipment in conjunction with a community multimedia group in Carlsbad in Eddy county;

(21) one hundred thousand dollars (\$100,000) for repairs and improvements to facilities at the Carlsbad branch campus of New Mexico state university in Eddy county;

(22) fourteen thousand dollars (\$14,000) to purchase a roller chopper for the Deming soil and water conservation district in Luna county;

(23) two hundred thousand dollars (\$200,000) to conduct a comprehensive hydrogeologic study of the Sacramento mountains for the Otero soil and water conservation district in Otero county;

(24) two million dollars (\$2,000,000) to prepare the site for and plan, design, construct, equip and furnish a health sciences building at the Alamogordo branch campus of New Mexico state university in Otero county;

(25) fifty thousand dollars (\$50,000) to plan, design, purchase, install and equip improvements to the agricultural science center at New Mexico state university in Quay county;

(26) one hundred thousand dollars (\$100,000) to purchase equipment for the Arch Hurley conservancy district in Quay county;

(27) ninety thousand dollars (\$90,000) to purchase and install information technology and equipment at the state agriculture and future farmers of America offices for use statewide;

(28) ninety thousand dollars (\$90,000) to purchase a vehicle and equipment for the east Torrance soil and water conservation district in Torrance county;

(29) twenty-five thousand dollars (\$25,000) to purchase and install windbreak plantings for conservation along interstate 40 in the Lava soil and water conservation district in Milan in Cibola county;

(30) fifty thousand dollars (\$50,000) to purchase agricultural equipment, including a storage barn, for the agricultural science center of New Mexico state university in Clovis in Curry county;

(31) three thousand eight hundred fifty-five dollars (\$3,855) to purchase and install office and educational equipment at the soil and water conservation district building in Clovis in Curry county;

(32) one hundred thousand dollars (\$100,000) to plan, design, construct, furnish and equip renovations and expansion of Gardiner hall at New Mexico state university in Las Cruces in Dona Ana county;

(33) two hundred thousand dollars (\$200,000) for upgrading equipment and renovating the animation production facility at the creative media institute of New Mexico state university in Las Cruces in Dona Ana county;

(34) five hundred thousand dollars (\$500,000) to plan, design and construct the renovation of existing facilities at the creative media institute of New Mexico state university in Las Cruces in Dona Ana county;

(35) seventy-five thousand dollars (\$75,000) to equip and upgrade the dental clinic and related facilities at New Mexico state university Dona Ana branch community college in Las Cruces in Dona Ana county;

(36) twenty-five thousand dollars (\$25,000) for equipment for the Roundup newspaper at New Mexico state university in Las Cruces in Dona Ana county;

(37) twenty thousand dollars (\$20,000) to plan, design and construct improvements to the Penasco soil and water conservation district building in Artesia in Eddy county; and

(38) one hundred thousand dollars (\$100,000) to plan, design, construct, equip and pave the conservation education building and grounds for the Whitfield wildlife area in the Valencia soil and water conservation district in Valencia county;

J. to the governing board of San Juan college:

(1) two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish the renovation of the center for teaching excellence at San Juan college in Farmington in San Juan county;

(2) ninety-nine thousand one hundred forty-three dollars (\$99,143) to develop the site for, plan, design, construct, equip and furnish the outdoor learning center demonstration gardens at San Juan college in Farmington in San Juan county; and

(3) three hundred ten thousand dollars (\$310,000) to plan, design, construct, equip and furnish the outdoor learning center demonstration gardens at San Juan college in Farmington in San Juan county;

K. to the community college board of Santa Fe community college:

(1) one hundred thirty-five thousand dollars (\$135,000) to plan, design and renovate the allied health center project at Santa Fe community college in Santa Fe county;

(2) thirty thousand dollars (\$30,000) to plan, design, equip and furnish the media industries gallery at Santa Fe community college in Santa Fe county; and

(3) forty thousand dollars (\$40,000) to purchase and install information technology at Santa Fe community college in Santa Fe county;

L. to the board of regents of the university of New Mexico:

(1) four hundred fifty thousand dollars (\$450,000) to plan, design and construct heating, air conditioning and ventilation improvements at the Tow Diehm building at the university of New Mexico in Albuquerque in Bernalillo county;

(2) five hundred fifty-one thousand four hundred dollars (\$551,400) to plan, design and construct the Centennial engineering center at the school of engineering at the university of New Mexico in Albuquerque in Bernalillo county;

(3) fifty thousand dollars (\$50,000) to furnish, equip and purchase art, artifacts and rare documents for the Charlie Morrissey research hall at the African-American performing arts and exhibit hall at the state fairgrounds in Albuquerque in Bernalillo county;

(4) one hundred thousand dollars (\$100,000) to purchase and install diagnostic equipment for the cancer research and treatment center at the university of New Mexico in Albuquerque in Bernalillo county;

(5) four hundred thousand dollars (\$400,000) to resurface the track at the university of New Mexico in Albuquerque in Bernalillo county;

(6) two hundred fifty thousand dollars (\$250,000) for phase 2 improvements to the women's softball complex at the university of New Mexico in Albuquerque in Bernalillo county;

(7) five thousand dollars (\$5,000) for improvements, including paint and stucco, at Gurley hall on the university of New Mexico-Gallup campus in McKinley county;

(8) two hundred thousand dollars (\$200,000) to purchase, install and set up information technology equipment for e-mercado at the university of New Mexico for use statewide;

(9) one hundred ten thousand dollars (\$110,000) to plan, design and construct renovations to the Alfonso Ortiz center at the university of New Mexico in Albuquerque in Bernalillo county;

(10) twenty thousand dollars (\$20,000) to purchase and install information technology for the sign language interpreting program video language lab at the university of New Mexico language learning center in Albuquerque in Bernalillo county;

(11) fifty thousand dollars (\$50,000) for television and broadcast equipment for the athletic department at the university of New Mexico in Albuquerque in Bernalillo county;

(12) twenty-five thousand dollars (\$25,000) for an aquatic therapy and conditioning pool at the Tow Diehm trainers' room at the university of New Mexico in Albuquerque in Bernalillo county;

(13) fifty thousand dollars (\$50,000) to purchase equipment, including library resources and information technology, for the library at the law school at the university of New Mexico in Bernalillo county;

(14) one hundred fifty thousand dollars (\$150,000) to the student affairs department for Latin American student recruitment at the university of New Mexico in Albuquerque in Bernalillo county;

(15) one hundred fifty thousand dollars (\$150,000) to implement a college preparatory mentoring program for eighth graders in the Albuquerque public school district at the university of New Mexico special programs office in Albuquerque in Bernalillo county;

(16) fifty thousand dollars (\$50,000) for the center for regional studies to provide for graduate student scholarships, internships, fellowships, research grants, documentaries and library collections at the university of New Mexico in Albuquerque in Bernalillo county;

(17) sixty-five thousand dollars (\$65,000) to support the special programs office, including the natural high program, at the university of New Mexico in Albuquerque in Bernalillo county;

(18) twenty-one thousand dollars (\$21,000) to purchase information technology for the Native American law access project at the university of New Mexico in Albuquerque in Bernalillo county;

(19) one hundred thousand dollars (\$100,000) to renovate, repair, furnish and equip Hodgin hall, including purchase and installation of information technology, at the university of New Mexico in Albuquerque in Bernalillo county;

(20) two hundred fifty thousand dollars (\$250,000) to develop and implement comprehensive planning programs at the university of New Mexico in Albuquerque in Bernalillo county;

(21) twenty thousand dollars (\$20,000) for painting and stuccoing the Gurley hall commons area and arts wing at the Gallup campus of the university of New Mexico in Gallup in McKinley county; and

(22) twenty thousand dollars (\$20,000) to construct heating, ventilation and air conditioning improvements, including the installation of building controls, at Gurley hall on the Gallup campus of the university of New Mexico in McKinley county;

M. to the board of regents of western New Mexico university:

(1) fifty thousand dollars (\$50,000) to purchase a gas chromatograph mass spectrometer for the natural sciences department at western New Mexico university in Silver City in Grant county;

(2) one hundred forty-one thousand forty-eight dollars (\$141,048) to purchase and install equipment for the arts department at western New Mexico university in Silver City in Grant county;

(3) forty thousand dollars (\$40,000) for museum renovations at western New Mexico university in Silver City in Grant county;

(4) fifty thousand dollars (\$50,000) to plan, design and construct lighting for the western New Mexico university football field in Silver City in Grant county;

(5) sixty-five thousand dollars (\$65,000) to purchase, install, furnish and equip information technology for the Gallup campus of western New Mexico university in McKinley county; and

(6) twenty thousand dollars (\$20,000) to purchase a vehicle for the graduate studies center at the Gallup campus of western New Mexico university in McKinley county; and

N. to the board of regents of the New Mexico school for the blind and visually impaired, one hundred eighty-nine thousand dollars (\$189,000) to purchase land for, plan, design, construct and equip a facility to house the early childhood program at New Mexico school for the blind and visually impaired in Albuquerque in Bernalillo county.

Chapter 347 Section 54 Laws 2005

Section 54. STATE BUILDINGS PROJECTS--CAPITAL PROGRAM FUND--GENERAL FUND.--The following amounts are appropriated from the general fund to the capital program fund for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

1. five hundred thousand dollars (\$500,000) for renovations and mechanical upgrades to the old metropolitan court building in Albuquerque in Bernalillo county;

2. thirty thousand dollars (\$30,000) to equip and continue renovation of the New Mexico mining museum in Grants in Cibola county;

3. fifteen thousand dollars (\$15,000) to plan, design and construct road and drainage improvements, including paving, at the Fort Bayard medical center in Grant county;

4. fifty thousand dollars (\$50,000) for artificial turf for baseball fields near Fort Bayard in Grant county;
5. fifty thousand dollars (\$50,000) to plan, design and renovate the restoration of four historic buildings on the quadrangle at Fort Stanton in Lincoln county;
6. five hundred thousand dollars (\$500,000) to demolish two existing twenty-five-bed living units and a hazardous kitchen, to purchase or construct a new dorm living unit and kitchen, and provide for related expenditures at camp Sierra Blanca in Fort Stanton in Lincoln county;
7. two million dollars (\$2,000,000) for roof repairs, security enhancements, fire protection, mechanical upgrades and water and sewer line upgrades at the youth diagnostic detention and development center in Albuquerque in Bernalillo county and the New Mexico boys' school in Springer in Colfax county;
8. six hundred thousand dollars (\$600,000) for improvements to human services department facilities in Espanola, Hobbs and Farmington;
9. fourteen thousand four hundred dollars (\$14,400) to plan, design and construct renovations to the Willie Ortiz building, the state personnel office, in Santa Fe in Santa Fe county;
10. one million dollars (\$1,000,000) for emergency repairs and renovations at state-owned buildings statewide;
11. two million dollars (\$2,000,000) for facility repairs and equipment at correctional facilities statewide;
12. five hundred thousand dollars (\$500,000) for repairs and renovation of labor department facilities statewide;
13. fifty thousand dollars (\$50,000) to renovate and equip the theater at the Fort Bayard medical center in Grant county; and
14. ten thousand dollars (\$10,000) for improvements to the old state penitentiary building in Santa Fe county.

Chapter 347 Section 55 Laws 2005

Section 55. TOURISM DEPARTMENT--OPERATIONAL EXPENDITURES.--The following amounts are appropriated from the general fund to the tourism department for expenditure in fiscal years 2005 and 2006 for the following purposes:

1. one hundred twenty thousand dollars (\$120,000) for a peace conference to be held in Santa Fe and planned in cooperation with the King center in Atlanta, Georgia;

~~[2. fifty thousand dollars (\$50,000) to purchase state flag pins and renovate the Jean Cocteau theatre in Santa Fe in Santa Fe county;~~

~~3. one hundred thousand dollars (\$100,000) to operate the New Mexico film museum;]~~ and [*LINE-ITEM VETO*]

4. thirty-five thousand dollars (\$35,000) to contract with the children's museum of Washington, D.C., to bring its rolling rainforest exhibit to New Mexico.

Chapter 347 Section 56 Laws 2005

Section 56. ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--APPROPRIATION FROM GENERAL FUND [~~TO THE CLEAN ENERGY GRANTS FUND--APPROPRIATION FROM FUND~~] TO DEPARTMENT.--

A. Three million dollars (\$3,000,000) is appropriated from the general fund [~~to the clean energy grants fund for expenditure in fiscal year 2005 and subsequent fiscal years for capital improvements related to clean energy projects, including hydrogen fuel projects, energy efficiency renovations, renewable energy and clean fuel facilities to meet the requirements of the Advanced Energy Technologies Economic Development Act.~~

B. ~~Three million dollars (\$3,000,000) is appropriated from the clean energy grants fund] [*LINE-ITEM VETO*] to the energy, minerals and natural resources department for expenditure in fiscal year 2005 and subsequent fiscal years for capital improvements related to clean energy projects, including hydrogen fuel projects, energy efficiency renovations, renewable energy and clean fuel facilities [~~to meet the requirements of the Advanced Energy Technologies Economic Development Act].~~ [*LINE-ITEM VETO*]~~

Chapter 347 Section 57 Laws 2005

Section 57. WATER AND WASTEWATER FACILITY CONSTRUCTION LOAN FUND.--One million five hundred thousand dollars (\$1,500,000) is appropriated from the general fund to the water and wastewater facility construction loan fund for expenditure in fiscal years 2005 through 2010 to carry out the purposes of the fund.

Chapter 347 Section 58 Laws 2005

Section 58. MINERS' COLFAX MEDICAL CENTER--MINERS' TRUST FUND.--Thirty thousand dollars (\$30,000) is appropriated from the miners' trust fund to the board of trustees of miners' Colfax medical center for expenditure in fiscal years 2005

through 2010 to purchase and install medical equipment at the miners' Colfax medical center in Raton in Colfax county.

Chapter 347 Section 59 Laws 2005

Section 59. GAME AND FISH PROJECTS--DEPARTMENT OF GAME AND FISH--GAME PROTECTION FUND.--The following amounts are appropriated from the game protection fund to the department of game and fish for expenditure in fiscal years 2005 through 2010 for the following purposes:

1. two hundred seventy-five thousand dollars (\$275,000) to plan, design and improve the spillway of Bear Canyon dam in Grant county;
2. one hundred eighty thousand dollars (\$180,000) to design and construct covers to enclose the raceways at the Parkview hatchery in Rio Arriba county;
3. two million eight hundred fifty thousand dollars (\$2,850,000) to plan, design and improve the spillway of Lake Roberts dam in Silver City in Grant county;
4. one million two hundred thousand dollars (\$1,200,000) to plan, design, construct and equip, including acquiring land for, a warm-water fish hatchery, rearing station and educational center in Santa Rosa in Guadalupe county;
5. one hundred fifty thousand dollars (\$150,000) to plan, design and make improvements for the Jackson and Fenton Lake dams;
6. two hundred fifty thousand dollars (\$250,000) to assess all properties owned by the department of game and fish statewide to determine if infrastructure improvements are needed;
7. one hundred thousand dollars (\$100,000) to improve and update roads, trails, parking lots and toilet facilities at Colin Neblett, Rio Chama, Humphries, Red Rock and Heart Bar wildlife areas across the state;
8. three hundred thousand dollars (\$300,000) to plan, design, develop, construct and equip archery ranges statewide; and
9. seventy-five thousand dollars (\$75,000) to plan, design and make improvements to address water leakage at Clayton Lake dam and surrounding areas in Union county.

Chapter 347 Section 60 Laws 2005

Section 60. LAS CRUCES WORKFORCE DEVELOPMENT CENTER--EMPLOYMENT SECURITY DEPARTMENT FUND.--Two hundred twenty thousand dollars (\$220,000) is appropriated from the employment security department fund to the

labor department for expenditure in fiscal years 2005 through 2010 to expand and improve the Las Cruces workforce development center in Dona Ana county.

Chapter 347 Section 61 Laws 2005

Section 61. STATE LAND OFFICE PROJECTS--STATE LANDS MAINTENANCE FUND.--The following amounts are appropriated from the state lands maintenance fund to the state land office for expenditure in fiscal years 2005 through 2010 for the following purposes:

1. one hundred thirty-eight thousand dollars (\$138,000) to plan and replace windows in the state land office in Santa Fe county;
2. six hundred twenty-seven thousand dollars (\$627,000) to plan and provide asbestos abatement and upgrades to the physical plant equipment for the state land office in Santa Fe in Santa Fe county; and
3. seven hundred twenty-three thousand dollars (\$723,000) to plan, design, purchase and install a sprinkler system for fire suppression in the state land office in Santa Fe in Santa Fe county.

Chapter 347 Section 62 Laws 2005

Section 62. PERA BUILDING IMPROVEMENTS--APPROPRIATION FROM INCOME FUND TO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION.--The following amounts are appropriated from the income fund of the public employees retirement association to the public employees retirement association for expenditure in fiscal years 2005 through 2010 for the following purposes:

1. one hundred thousand dollars (\$100,000) to complete the replacement of and make improvements to the elevator hydraulic system at the public employees retirement association building in Santa Fe in Santa Fe county;
2. fifty thousand dollars (\$50,000) to purchase and replace the exterior window casings at the public employees retirement association building in Santa Fe in Santa Fe county;
3. two hundred fifty-two thousand five hundred dollars (\$252,500) to plan and replace all current lighting fixtures in the public employees retirement association building in Santa Fe in Santa Fe county;
4. two hundred fifty-two thousand five hundred dollars (\$252,500) to plan and remove inoperative cables at the public employees retirement association building in Santa Fe in Santa Fe county; and

5. six thousand three hundred dollars (\$6,300) to replace the roof on the public employees retirement association maintenance garage in Santa Fe in Santa Fe county.

Chapter 347 Section 63 Laws 2005

Section 63. TRANSPORTATION PROJECTS--STATE ROAD FUND.--The following amounts are appropriated from the state road fund to the department of transportation for expenditure in fiscal years 2005 through 2010 for the following purposes:

1. two hundred thousand dollars (\$200,000) to replace asphalt tanks in Capitan, Tularosa, Hobbs and Clovis in multiple counties;

2. eight hundred fifty thousand dollars (\$850,000) to plan, design, construct and equip a project and patrol office for district 5 in Bloomfield in San Juan county; and

3. one million two hundred thousand dollars (\$1,200,000) to acquire and install salt storage facilities statewide.

Chapter 347 Section 64 Laws 2005

Section 64. SHORT-TERM SEVERANCE TAX BONDS--STATE LABORATORY FACILITY.--In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2005 the state board of finance may issue and sell severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in an amount not exceeding seventeen million dollars (\$17,000,000) when the director of the property control division of the general services department certifies the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the capital program fund for land acquisition and the planning, designing, construction and equipping of a state laboratory facility in Bernalillo county for use by the department of health; provided that no severance tax bonds shall be issued pursuant to this section unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

A. the debt service on the severance tax bonds to be issued pursuant to this section;

B. the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

C. the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

Chapter 347 Section 65 Laws 2005

Section 65. SHORT-TERM SEVERANCE TAX BONDS--CENTENNIAL ENGINEERING CENTER AT THE UNIVERSITY OF NEW MEXICO.--In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2005, the state board of finance may issue and sell severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in an amount not exceeding three million dollars (\$3,000,000) when the board of regents of the university of New Mexico certifies the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the board of regents of the university of New Mexico to plan, design and construct the centennial engineering center at the school of engineering at the university of New Mexico in Albuquerque in Bernalillo county; provided that no severance tax bonds shall be issued pursuant to this section unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

A. the debt service on the severance tax bonds to be issued pursuant to this section;

B. the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

C. the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

Chapter 347 Section 66 Laws 2005

Section 66. SHORT-TERM SEVERANCE TAX BONDS--O'DONNELL HALL AT NEW MEXICO STATE UNIVERSITY.--In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2005 the state board of finance may issue and sell severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in an amount not exceeding three million dollars (\$3,000,000) when the board of regents of New Mexico state university certifies the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the board of regents of New Mexico state university for renovations and expansions at O'Donnell hall at New Mexico state university in Las Cruces in Dona Ana county; provided that no severance tax bonds shall be issued pursuant to this section

unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

A. the debt service on the severance tax bonds to be issued pursuant to this section;

B. the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

C. the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

Chapter 347 Section 67 Laws 2005

Section 67. SHORT-TERM SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL OUTLAY.--In addition to the bonds issued pursuant to Section 7-27-14 NMSA 1978 and notwithstanding the limitations of that section, in compliance with the Severance Tax Bonding Act, in fiscal year 2005, the state board of finance may issue and sell severance tax bonds with a term that does not extend beyond the fiscal year in which they are issued in an amount not exceeding sixty-two million dollars (\$62,000,000) when the public school capital outlay council certifies by resolution the need for the issuance of the bonds. The proceeds from the sale of the bonds are appropriated to the public school capital outlay fund for the purpose of making awards of grant assistance for correcting serious deficiencies in the roofs of public school facilities and for a roof repair and replacement initiative pursuant to the Public School Capital Outlay Act; provided that no severance tax bonds shall be issued pursuant to this section:

A. until all other severance tax bonds and supplemental severance tax bonds to be issued in fiscal year 2005 have been issued; and

B. unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

(1) the debt service on the supplemental severance tax bonds to be issued pursuant to this section;

(2) the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and

(3) the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

Chapter 347 Section 68 Laws 2005

Section 68. EAST MOUNTAIN HIGH SCHOOL PURCHASE BUS--CHANGE TO EDUCATIONAL TECHNOLOGY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 8 of Section 23 of Chapter 429 of Laws 2003 and reauthorized in Laws 2004, Chapter 126, Section 99 to purchase a bus for East Mountain charter high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and upgrade educational technology and related equipment and furnishings for that school.

Chapter 347 Section 69 Laws 2005

Section 69. HILAND THEATER PROJECT--CHANGE TO RENOVATIONS AND ACQUISITIONS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 3 of Section 13 of Chapter 126 of Laws 2004 for the Hiland theater shall not be expended for the original purpose but is changed to acquire and renovate a facility for the Hiland theater in Albuquerque in Bernalillo county.

Chapter 347 Section 70 Laws 2005

Section 70. LOMA LINDA COMMUNITY CENTER CONSTRUCT--EXPAND PURPOSE AND EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection B of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for construction of the Loma Linda community center in Albuquerque in Bernalillo county may include purchasing equipment, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 71 Laws 2005

Section 71. HIGHLAND HIGH SCHOOL IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection O of Section 16 of Chapter 23 of Laws 2000 (2nd S.S.) for improvements at Highland high school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2010.

Chapter 347 Section 72 Laws 2005

Section 72. HILAND THEATER PROJECTS--CHANGE TO RENOVATIONS AND ACQUISITIONS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriations to the local government division in Subsections 10 and 71 of Section 34 and Subsections 169 and 205 of Section 134 of Chapter 126 of Laws 2004 for various improvements at the Hiland theater shall not be expended for the original purposes but

is changed to acquire and renovate a facility for the Hiland theater in Albuquerque in Bernalillo county.

Chapter 347 Section 73 Laws 2005

Section 73. BARELAS MEMORIAL PLAZA--CHANGE TO INFILTRATOR DRAINS IN THE SOUTH VALLEY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 24 of Section 22 of Chapter 429 of Laws 2003 for the Barelvas memorial plaza in Albuquerque shall not be expended for the original purpose but is appropriated to the department of transportation for infiltrator drains to drain the shoulder of Riverside drive southwest at the intersection with Whiting road southwest, the shoulder of Riverside drive southwest between the Nashville road and La Vega court intersections and the shoulder of Tapia boulevard southwest north of the Arenal intersection, in the south valley of Bernalillo county.

Chapter 347 Section 74 Laws 2005

Section 74. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 23 of Section 34 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 75 Laws 2005

Section 75. CHILILI MULTIPURPOSE BUILDING--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The local government division project in Subsection J of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2003, Chapter 429, Section 64 to construct a multipurpose building in Chilili in Bernalillo county may include equipping and furnishing.

Chapter 347 Section 76 Laws 2005

Section 76. ALBUQUERQUE STATION PROJECT--EXPANDING LOCATION--SEVERANCE TAX BONDS.--The local government division project originally authorized in Subsection 24 of Section 22 of Chapter 110 of Laws 2002 and reauthorized in Laws 2003, Chapter 429, Section 65 for design and engineering related to developing passenger rail service for the Albuquerque station project and an economic development project is located in downtown Albuquerque in Bernalillo county.

Chapter 347 Section 77 Laws 2005

Section 77. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 25 of Section 34 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 78 Laws 2005

Section 78. JERRY CLINE MEMORIAL TENNIS COMPLEX CONSTRUCT--CHANGE TO JERRY CLINE PARK PLAYGROUND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection G of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for construction at the Jerry Cline memorial tennis complex in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install playground equipment at the Jerry Cline park in that county, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 79 Laws 2005

Section 79. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 29 of Section 13 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 80 Laws 2005

Section 80. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 21 of Section 13 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 81 Laws 2005

Section 81. NORTH VALLEY PERFORMING ARTS THEATER--CLARIFYING PROJECT--CAPITAL PROJECTS FUND.--The local government division project in Subsection 46 of Section 34 of Chapter 126 of Laws 2004 is for equipping a performing arts theater for persons with disabilities in the north valley of Albuquerque in Bernalillo county.

Chapter 347 Section 82 Laws 2005

Section 82. NORTH VALLEY SKATEBOARD PARK--EXPANDING LOCATION--SEVERANCE TAX BONDS.--The local government division project in Subsection 64 of Section 22 of Chapter 429 of Laws 2003 is to plan and design a skateboard park in the north valley of Albuquerque in Bernalillo county.

Chapter 347 Section 83 Laws 2005

Section 83. UNSER CHILDREN'S DISCOVERY CENTER AND CHILDREN'S MUSEUM--CHANGE LOCATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 22 of Section 13 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 84 Laws 2005

Section 84. PERFORMING ARTS THEATER FOR PERSONS WITH DISABILITIES--CHANGE PURPOSE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 48 of Section 34 of Chapter 126 of Laws 2004 for equipping a performing arts theater in Albuquerque shall not be expended for the original purpose but is changed to renovate and equip a performing arts theater for persons with disabilities in the north valley of Albuquerque in Bernalillo county.

Chapter 347 Section 85 Laws 2005

Section 85. SPEED HUMPS IN HOUSE DISTRICT 17--EXPAND LOCATION--SEVERANCE TAX BONDS.--The department of transportation project in Subsection 16 of Section 19 of Chapter 110 of Laws 2002 to construct speed humps in house district 17 in Albuquerque may be expended for speed humps in Bernalillo county.

Chapter 347 Section 86 Laws 2005

Section 86. SPEED BUMPS IN HOUSE DISTRICT 17--EXPAND LOCATION--EXTEND TIME--GENERAL FUND AND SEVERANCE TAX BONDS.--The department of transportation projects in Subsection H of Section 41 and Subsection L of Section 12 of Chapter 23 of Laws 2000 (2nd S.S.) for speed bumps in house district 17 in Albuquerque may be expended for speed bumps in Bernalillo county. The time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 87 Laws 2005

Section 87. NORTH VALLEY SKATE PARK IN ALBUQUERQUE--CHANGE PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS AND GENERAL FUND.--The unexpended balance of the appropriations to the department of transportation in

Subsection M of Section 12 and Subsection I of Section 41 of Chapter 23 of Laws 2000 (2nd S.S.) for landscaping on Griegos road shall not be expended for the original purpose but is appropriated to the local government division to plan and design a skateboard park in the north valley of Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 88 Laws 2005

Section 88. PASEO DE ESTRELLA PARK--CHANGE TO VISTA DEL NORTE PARK--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 51 of Section 34 of Chapter 126 of Laws 2004 for Paseo de Estrella park in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct Vista del Norte park in Albuquerque.

Chapter 347 Section 89 Laws 2005

Section 89. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 63 of Section 34 of Chapter 126 of Laws 2004 to acquire land for, plan, design and construct the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 90 Laws 2005

Section 90. HILAND THEATER PROJECT--CHANGE TO RENOVATIONS AND ACQUISITIONS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 67 of Section 22 of Chapter 429 of Laws 2003 for the Hiland theater shall not be expended for the original purpose but is changed to acquire and renovate a facility for the Hiland theater in Albuquerque in Bernalillo county.

Chapter 347 Section 91 Laws 2005

Section 91. SECOND JUDICIAL DISTRICT COURT ELECTRONIC MONITORING EQUIPMENT--CHANGE AGENCY--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the second judicial district court in Subsection B of Section 22 of Chapter 126 of Laws 2004 for electronic monitoring equipment and a satellite tracking device for domestic violence purposes is appropriated to the local government division for the same purpose for the Bernalillo county juvenile detention center.

Chapter 347 Section 92 Laws 2005

Section 92. QUEMADO COMMUNITY CENTER CONSTRUCTION--CHANGE TO UPGRADE EXISTING STRUCTURE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 65 of Section 22 of Chapter 110 of Laws 2002 to plan, design and construct a community center in Quemado in Catron county shall not be expended for the original purpose but is changed to upgrading an existing structure for the community center.

Chapter 347 Section 93 Laws 2005

Section 93. RAMAH CHAPTER OUTDOOR YOUTH RECREATION CENTER--CHANGE TO RENOVATIONS FOR RECREATION AREAS AT THE PINE HILL SCHOOL--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 5 of Section 21 of Chapter 429 of Laws 2003 to plan and design an outdoor youth recreation center for the Ramah chapter of the Navajo Nation in Cibola county shall not be expended for the original purpose but is changed to repair, renovate and expand youth recreation areas at Pine Hill school in that chapter in that county.

Chapter 347 Section 94 Laws 2005

Section 94. PUEBLO OF ACOMA SCHOOL VAN PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 10 of Section 131 of Chapter 126 of Laws 2004 to purchase a new van for after-school activities in the Pueblo of Acoma in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 95 Laws 2005

Section 95. MAXWELL MUNICIPAL SCHOOL DISTRICT BUS PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the public education department project in Subsection 153 of Section 37 of Chapter 126 of Laws 2004 for the purchase of a bus for the Maxwell municipal school district in Colfax county is extended through fiscal year 2006.

Chapter 347 Section 96 Laws 2005

Section 96. RATON CONVENTION CENTER ADDITION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection LLLLLLLLLL of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for an addition at the convention and community center in Raton in Colfax county is extended through fiscal year 2010.

Chapter 347 Section 97 Laws 2005

Section 97. MELROSE SWIMMING POOL IMPROVEMENTS--CHANGE TO REPAIRS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 146 of Section 22 of Chapter 429 of Laws 2003 for improvements to the Melrose swimming pool in Curry county shall not be expended for the original purpose but is changed to repairs for that swimming pool in that county.

Chapter 347 Section 98 Laws 2005

Section 98. MELROSE SWIMMING POOL RENOVATE AND UPGRADE--CHANGE TO REPAIRS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 152 of Section 34 of Chapter 126 of Laws 2004 to renovate and upgrade the municipal swimming pool in Melrose in Curry county shall not be expended for the original purpose but is changed to repairs for that swimming pool in that county.

Chapter 347 Section 99 Laws 2005

Section 99. CLOVIS HEAD START KINDERGARTEN PLAYGROUND EQUIPMENT--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The local government division project in Subsection 153 of Section 34 of Chapter 126 of Laws 2004 for playground equipment at the head start program in Clovis in Curry county may include fencing, surveillance monitoring, remodeling, playground expansion and foyer construction.

Chapter 347 Section 100 Laws 2005

Section 100. CLOVIS MUNICIPAL SCHOOL DISTRICT ADMINISTRATION BUILDING RENOVATION--CHANGE TO BELLA VISTA ELEMENTARY SCHOOL RENOVATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 136 of Section 23 of Chapter 110 of Laws 2002 to renovate the old administration building in the Clovis municipal school district in Curry county shall not be expended for the original purpose but is changed to renovate Bella Vista elementary school in that school district.

Chapter 347 Section 101 Laws 2005

Section 101. CLOVIS LA CASA HEALTH CENTER CONSTRUCTION--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The local government division project in Subsection 40 of Section 13 of Chapter 126 of Laws 2004 for construction of an addition to La Casa family health center in Clovis in Curry county may include designing and equipping a pharmacy at that health center.

Chapter 347 Section 102 Laws 2005

Section 102. CHURCH STREET WALKWAY--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The department of transportation project in Subsection 20 of Section 15 of Chapter 126 of Laws 2004 for planning, designing and constructing a walkway on Church street in Anthony in Dona Ana county may include road improvements.

Chapter 347 Section 103 Laws 2005

Section 103. SUNLAND PARK SWIMMING POOL--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection YY of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to acquire land, plan, design and construct a swimming pool in Sunland Park in Dona Ana county is extended through fiscal year 2010.

Chapter 347 Section 104 Laws 2005

Section 104. IMPROVEMENTS TO NUEVA PARK IN LA UNION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection FFF of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct improvements to Nueva park in La Union in Dona Ana county is extended through fiscal year 2010.

Chapter 347 Section 105 Laws 2005

Section 105. MESILLA PARK ELEMENTARY SCHOOL PLAYGROUND IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 142 of Section 23 of Chapter 110 of Laws 2002 to improve and equip the playground at Mesilla Park elementary school in the Las Cruces public school district in Dona Ana county is extended through fiscal year 2010.

Chapter 347 Section 106 Laws 2005

Section 106. ALTO DE LAS FLORES WATER SYSTEM IMPROVEMENTS--CHANGING RECIPIENT--CAPITAL PROJECTS FUND.--The department of environment project in Subsection 24 of Section 29 of Chapter 126 of Laws 2004 is for water system improvements for the Alto de las Flores mutual domestic water consumers association in San Miguel in Dona Ana county.

Chapter 347 Section 107 Laws 2005

Section 107. FARM AND RANCH HERITAGE MUSEUM EXHIBITS--CHANGE PURPOSE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the cultural affairs department in Subsection 7 of Section 9 of Chapter 429 of Laws 2003 to acquire a sketch by Peter Hurd for the farm and ranch heritage museum shall

not be expended for the original purpose but is changed to plan, design and construct permanent exhibits at the museum in Dona Ana county.

Chapter 347 Section 108 Laws 2005

Section 108. FARM AND RANCH HERITAGE MUSEUM BARN EXHIBITS--CHANGE PURPOSE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the cultural affairs department in Subsection 3 of Section 10 of Chapter 110 of Laws 2002 for a children's discovery barn and a beef and horse barn at the farm and ranch heritage museum shall not be expended for the original purpose but is changed to plan, design and construct exhibits for a sheep and goat barn and a beef and horse barn at the museum in Dona Ana county.

Chapter 347 Section 109 Laws 2005

Section 109. CARLSBAD HIGH SCHOOL CULINARY ARTS PROGRAM EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 147 of Section 23 of Chapter 110 of Laws 2002 to equip the culinary arts program at Carlsbad high school in the Carlsbad municipal school district in Eddy county is extended through fiscal year 2006.

Chapter 347 Section 110 Laws 2005

Section 110. LOVING COMMUNITY SERVICE CENTER--CHANGE TO RENOVATE LOVING COMMUNITY CENTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 130 of Section 22 of Chapter 110 of Laws 2002 to renovate the community service center in Loving in Eddy county shall not be expended for the original purpose but is changed to renovate the Loving community center.

Chapter 347 Section 111 Laws 2005

Section 111. CARLSBAD HIGH SCHOOL CULINARY ARTS PROGRAM EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 154 of Section 23 of Chapter 110 of Laws 2002 to equip the culinary arts program at Carlsbad high school in the Carlsbad municipal school district in Eddy county is extended through fiscal year 2006.

Chapter 347 Section 112 Laws 2005

Section 112. WATER WELL DRILLING--CHANGE PURPOSE FOR BAYARD WATER PRODUCTION SYSTEM--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 31 of Section 29 of Chapter 126 of Laws 2004 for the drilling of new water wells in Bayard in Grant county shall not be expended for the original purpose but is changed for project

development, rehabilitation and construction of water wells as part of the city of Bayard's water production system.

Chapter 347 Section 113 Laws 2005

Section 113. BAYARD WASTEWATER PROJECT--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The department of environment project in Subsection 32 of Section 29 of Chapter 126 of Laws 2004 for phase 2 improvements to the regional wastewater project in Bayard in Grant county is for any phase of the project and may include construction of a regional wastewater treatment plant.

Chapter 347 Section 114 Laws 2005

Section 114. HIDALGO COUNTY JAIL REPAIR--CHANGE TO JAIL CONSTRUCTION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 235 of Section 34 of Chapter 126 of Laws 2004 to repair the county jail in Hidalgo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish a jail in that county.

Chapter 347 Section 115 Laws 2005

Section 115. HOBBS STREETSCAPE AND DESIGN DOWNTOWN AREA--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The local government division project in Subsection 233 of Section 22 of Chapter 429 of Laws 2003 to plan and design the streetscape for the downtown area in Hobbs in Lea county may include construction.

Chapter 347 Section 116 Laws 2005

Section 116. CAPITAN PUBLIC LIBRARY CONSTRUCTION--CHANGE TO ATHLETIC FIELDS IN THE CAPITAN MUNICIPAL SCHOOL DISTRICT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division for the project in Subsection 235 of Section 22 of Chapter 429 of Laws 2003 to plan, design and construct a public library in Capitan in Lincoln county shall not be expended for the original purpose but is appropriated to the public education department to improve the athletic fields at the Capitan municipal school district in that county.

Chapter 347 Section 117 Laws 2005

Section 117. CARRIZO CANYON ROAD AND UNITED STATES HIGHWAY 70 INTERSECTION IMPROVEMENTS--CHANGE TO STATE ROAD 48--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 1 of Section 138 of Chapter 126 of Laws 2004 for road

improvements at the intersection of Carrizo Canyon road and United States highway 70 in Lincoln county shall not be expended for the original purpose but is changed to construct road improvements at the intersection of Carrizo Canyon road and state road 48, Sudderth drive, in that county.

Chapter 347 Section 118 Laws 2005

Section 118. CARRIZO CANYON ROAD AND UNITED STATES HIGHWAY 70 GEOMETRICS AND GRADE IMPROVEMENTS--CHANGE TO STATE ROAD 48--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 60 of Section 43 of Chapter 126 of Laws 2004 for geometrics and grade improvements at the intersection of Carrizo Canyon road and United States highway 70 in Ruidoso in Lincoln county shall not be expended for the original purpose but is changed to construct improvements at the intersection of Carrizo Canyon road and state road 48, Sudderth drive, in that county.

Chapter 347 Section 119 Laws 2005

Section 119. CHURCH ROCK CHAPTER AND MCKINLEY COUNTY BUILDING CONSTRUCTION--CHANGE OF PURPOSE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 11 of Section 33 of Chapter 126 of Laws 2004 to construct Church Rock chapter office facilities and McKinley county police, fire and emergency medical substations and a senior center in McKinley county shall not be expended for the original purpose but is changed to plan, design and prepare the site for those facilities at that chapter.

Chapter 347 Section 120 Laws 2005

Section 120. GALLUP DOMESTIC VIOLENCE EMERGENCY SHELTER--CHANGE TO CONSTRUCT SHELTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation for the local government division project in Subsection 245 of Section 22 of Chapter 429 of Laws 2003 to plan and design an emergency shelter for survivors of domestic violence in Gallup in McKinley county shall not be expended for the original purpose but is changed to construct that shelter in that county.

Chapter 347 Section 121 Laws 2005

Section 121. NEW MEXICO HIGHWAY 118 EXPANSION AND RIGHTS OF WAY--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The department of transportation project in Subsection 62 of Section 43 of Chapter 126 of Laws 2004 to plan, design and acquire rights of way to expand New Mexico highway 118 in the Church Rock chapter of the Navajo Nation in McKinley county may include construction.

Chapter 347 Section 122 Laws 2005

Section 122. TWIN LAKES SENIOR CENTER--EXPAND PURPOSE AND EXTEND TIME--SEVERANCE TAX BONDS.--The aging and long-term services department project in Subsection E of Section 4 of Chapter 23 of Laws 2000 (2nd S.S.) for phase 2 construction of Twin Lakes senior center in McKinley county may include renovations at the Mexican Springs senior center, and the time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 123 Laws 2005

Section 123. SMITH LAKE COMMUNITY BATHROOM ADDITIONS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection E of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to construct bathroom additions in the Smith Lake community in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 124 Laws 2005

Section 124. SMITH LAKE COMMUNITY BATHROOM ADDITIONS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection D of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to construct bathroom additions in the Smith Lake community in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 125 Laws 2005

Section 125. THOREAU CHAPTER PLAYGROUND EQUIPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 25 of Section 33 of Chapter 126 of Laws 2004 for playground equipment used by the head start program in the Thoreau chapter of the Navajo Nation in McKinley county is extended through fiscal year 2006.

Chapter 347 Section 126 Laws 2005

Section 126. BORREGO PASS SCHOOL--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 26 of Section 33 of Chapter 126 of Laws 2004 to purchase and install computers, printers and a local server for the Borrego Pass school in the Crownpoint chapter of the Navajo Nation in McKinley county is extended through fiscal year 2006.

Chapter 347 Section 127 Laws 2005

Section 127. IYANBITO SENIOR CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection F of Section 4 of Chapter 23 of Laws 2000 (2nd S.S.) for a senior center in Iyanbito in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 128 Laws 2005

Section 128. MORA SENIOR CENTER TRUCK PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 4 of Section 108 of Chapter 126 of Laws 2004 for the purchase of a food delivery truck for the Mora senior center in Mora county is extended through fiscal year 2006.

Chapter 347 Section 129 Laws 2005

Section 129. MORA FORMER COUNTY JAIL CONVERT TO OFFICE SPACE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection LLLL of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2002, Chapter 110, Section 76 and Laws 2002, Chapter 99, Section 70 to renovate the former county jail and convert it into office space in Mora county is extended through fiscal year 2010.

Chapter 347 Section 130 Laws 2005

Section 130. OVERNIGHT FAMILY VISITATION CENTER FOR CHILDREN AND INMATE MOTHERS--EXPAND PURPOSE AND EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriations to the property control division in Subsection A of Section 7 of Chapter 4 of Laws 1996 (1st S.S.) and to the capital program fund in Subsection A of Section 14 of Chapter 118 of Laws 1998 and reauthorized in Laws 2000 (2nd S.S.), Chapter 23, Section 57 for an overnight family visitation center for children and their inmate mothers at the New Mexico women's correctional facility in Grants may also be expended at the Camino Nuevo facility in Bernalillo county. The time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 131 Laws 2005

Section 131. OFFICE OF INCOME SUPPORT DIVISION RENOVATION--CHANGE TO LOUISE BROWN AND HARRIET SAMMONS BUILDING IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the property control division in Subsection F of Section 14 of Chapter 118 of Laws 1998 and reauthorized in Paragraph (3) of Subsection A of Section 53 of Chapter 99 of Laws 2002 for improvements at the office of the income support division of the human services department shall not be expended for the original purpose but is changed to construct a conference room in the lobby of the Louise Brown building in Bernalillo in Sandoval county.

Chapter 347 Section 132 Laws 2005

Section 132. SAN JUAN RIVER ENDANGERED FISH SPECIES RECOVERY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the interstate

stream commission project in Subsection B of Section 14 of Chapter 23 of Laws 2000 (2nd S.S.) for capital improvements on the San Juan river for endangered fish species recovery is extended through fiscal year 2009. Any unexpended balance remaining at the end of fiscal year 2009 shall revert to the severance tax bonding fund.

Chapter 347 Section 133 Laws 2005

Section 133. ALAMOGORDO HIGH SCHOOL BLEACHERS--CHANGE TO PUBLIC ADDRESS SYSTEM--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 30 of Section 14 of Chapter 126 of Laws 2004 for bleachers at Alamogordo high school in the Alamogordo public school district in Otero county shall not be expended for the original purpose but is changed to purchase and install a public address system at that school.

Chapter 347 Section 134 Laws 2005

Section 134. HOLLOMAN MIDDLE AND INTERMEDIATE SCHOOL RESURFACING--CHANGE TO PARKING LOT IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriations to the public education department in Subsections 31 and 32 of Section 14 of Chapter 126 of Laws 2004 for resurfacing the basketball court at Holloman intermediate school and resurfacing the parking and drop-off area at Holloman middle school in the Alamogordo public school district in Otero county shall not be expended for the original purposes but is changed to parking lot improvements at Holloman middle school and primary school in that school district.

Chapter 347 Section 135 Laws 2005

Section 135. OTERO COUNTY JUVENILE DETENTION FACILITY--CHANGE TO INMATE HOLDING FACILITY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 261 of Section 22 of Chapter 429 of Laws 2003 for a juvenile detention facility in Otero county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish an inmate holding facility in that county.

Chapter 347 Section 136 Laws 2005

Section 136. CLOUDCROFT ELEMENTARY AND MIDDLE SCHOOL REROOFING PROJECT--CHANGE TO HIGH SCHOOL ATHLETIC FACILITY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 33 of Section 14 of Chapter 126 of Laws 2004 for roof replacement on the Cloudcroft elementary and middle school in the Cloudcroft municipal school district in Otero county shall not be expended for the original purpose but is changed to construct improvements to the Cloudcroft high school athletic field in that school district.

Chapter 347 Section 137 Laws 2005

Section 137. ESPANOLA SENIOR CENTER KITCHEN EXPANSION AND EQUIPMENT--CHANGE TO REPAIR AND REPLACE ROOF--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 15 of Section 3 of Chapter 110 of Laws 2002 to expand and equip the kitchen facility of the Espanola senior center in Espanola in Rio Arriba county shall not be expended for the original purpose but is changed to repair and replace the roof at that senior center.

Chapter 347 Section 138 Laws 2005

Section 138. HERNANDEZ ELEMENTARY CLASSROOMS ADDITION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection EEEE of Section 16 of Chapter 23 of Laws 2000 (2nd S.S.) for additional classrooms at Hernandez elementary school in the Espanola school district in Rio Arriba county is extended through fiscal year 2010.

Chapter 347 Section 139 Laws 2005

Section 139. AGUA SANA WATER SYSTEM PROJECT PHASE 2--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection U of Section 8 of Chapter 23 of Laws 2000 (2nd S.S.) to construct and acquire land for phase 2 improvements to the Agua Sana regional water system project in Rio Arriba county is extended through fiscal year 2010.

Chapter 347 Section 140 Laws 2005

Section 140. ESPANOLA REREDOS AND RETABLOS PROJECT--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The local government division project in Subsection 290 of Section 34 of Chapter 126 of Laws 2004 for phase 2 of the reredos and retablos project located in the San Gabriel mission on the plaza de Espanola in Rio Arriba county may also include purchasing art and planning, designing and constructing a gazebo.

Chapter 347 Section 141 Laws 2005

Section 141. PORTALES MENTAL HEALTH RESOURCE PARKING LOT--CHANGE TO IMPROVEMENTS ON NORTH ABILENE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division for the project in Subsection 299 of Section 34 of Chapter 126 of Laws 2004 for improvements to the mental health resource parking lot in Portales in Roosevelt county shall not be expended for the original purpose but is appropriated to the department of transportation to construct improvements, including repaving, on north Abilene in Portales.

Chapter 347 Section 142 Laws 2005

Section 142. SHIPROCK VETERANS' MEMORIAL COMPLEX--TIME EXTENSION--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection Q of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) for the veterans' memorial complex in the Shiprock chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 143 Laws 2005

Section 143. SHIPROCK CHAPTER STREETLIGHT PROJECT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection H of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to make phase 5 improvements to the streetlights in the Shiprock chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 144 Laws 2005

Section 144. HOGBACK CHAPTER SITE DEVELOPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection G of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to make improvements, including a master plan, at the Hogback chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 145 Laws 2005

Section 145. SHIPROCK VETERANS' MEMORIAL COMPLEX--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection LL of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to construct, equip and furnish a veterans' memorial complex in Shiprock in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 146 Laws 2005

Section 146. SHIPROCK CHAPTER MANCOS CREEK POWERLINE EXTENSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection KK of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) for powerline extensions in the Mancos Creek area of the Shiprock chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 147 Laws 2005

Section 147. SAN JUAN CHAPTER POWERLINE EXTENSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department

project in Subsection R of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to construct powerline extensions in Fruitland in the San Juan chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 148 Laws 2005

Section 148. SHIPROCK NIZHONI PARK PHASE 2 DEVELOPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection O of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) for phase 2 developments at the Nizhoni park in Shiprock in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 149 Laws 2005

Section 149. SHIPROCK CHAPTER HOUSE ADDITION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection N of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct an addition to the Shiprock chapter house in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 150 Laws 2005

Section 150. SHIPROCK CHAPTER DOMESTIC VIOLENCE SHELTER EQUIPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs project in Subsection 34 of Section 33 of Chapter 126 of Laws 2004 to furnish and equip a domestic violence shelter in the Shiprock chapter of the Navajo Nation in San Juan county is extended through fiscal year 2006.

Chapter 347 Section 151 Laws 2005

Section 151. CRYSTAL CHAPTER WATERLINE EXTENSION--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection K of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) for a waterline extension in the Crystal chapter of the Navajo Nation in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 152 Laws 2005

Section 152. TWO GREY HILLS TOADLENA CHAPTER GRADER--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 37 of Section 33 of Chapter 126 of Laws 2004 for the purchase of a grader for the Two Grey Hills and Toadlena chapters of the Navajo Nation in San Juan county is extended through fiscal year 2006.

Chapter 347 Section 153 Laws 2005

Section 153. LAKE VALLEY CHAPTER BOYS' AND GIRLS' CLUB--CHANGE TO POWERLINE CONSTRUCTION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department for the project in Subsection 38 of Section 33 of Chapter 126 of Laws 2004 for a boys' and girls' club building in the Lake Valley chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to constructing a powerline for that chapter.

Chapter 347 Section 154 Laws 2005

Section 154. SAN MIGUEL COUNTY CLERK'S OFFICE ARCHIVING SYSTEM--EXPAND TO INCLUDE EQUIPMENT--SEVERANCE TAX BONDS.--The local government division project in Subsection 292 of Section 22 of Chapter 429 of Laws 2003 to upgrade the archiving system for the county clerk's office in San Miguel county may include equipment purchase and upgrades.

Chapter 347 Section 155 Laws 2005

Section 155. SANTO DOMINGO FIRE AND RESCUE AMBULANCE PURCHASE--CHANGE TO AMBULANCE EQUIPMENT PURCHASE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 45 of Section 33 of Chapter 126 of Laws 2004 to purchase ambulances for the Santo Domingo fire and rescue in Sandoval county shall not be expended for the original purpose but is changed to purchase ambulance equipment for that fire and rescue station.

Chapter 347 Section 156 Laws 2005

Section 156. ROADSIDE DRAINAGE AT THE PUEBLO OF SANTA ANA--CLARIFYING PROJECT--RUBBERIZED ASPHALT FUND--SPECIAL APPROPRIATIONS.--The department of transportation project in Subsection (27) of Section 5 of Chapter 76 of Laws 2003 is to provide roadside drainage for the Pueblo of Santa Ana in Sandoval county.

Chapter 347 Section 157 Laws 2005

Section 157. EDGEWOOD SENIOR CENTER PARKING AREA--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The aging and long-term services department project in Subsection 65 of Section 20 of Chapter 126 of Laws 2004 for a parking area at the Edgewood senior center in Santa Fe county may include planning, designing, constructing and renovating the senior center and parks and trails at the center.

Chapter 347 Section 158 Laws 2005

Section 158. BUS PURCHASE FOR SANTA FE, RIO ARRIBA AND SAN MIGUEL COUNTIES--EXTEND TIME AND CHANGE TO BUS PURCHASE FOR SANTA FE COUNTY--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 44 of Section 20 of Chapter 126 of Laws 2004 for a bus for use by senior centers in Santa Fe, Rio Arriba and San Miguel counties shall not be expended for that purpose but is changed to purchase a bus for the senior center in Santa Fe county, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 159 Laws 2005

Section 159. NAMBE HEAD START ATHLETIC IMPROVEMENTS--CLARIFYING PROJECT AND EXPANDING PURPOSE--SEVERANCE TAX BONDS.--The public education department project in Subsection 220 of Section 23 of Chapter 429 of Laws 2003 is for the purchase of land for, making improvements to and planning, designing, constructing and equipping tennis and basketball courts and a walking track for the Nambe head start campus in Nambe within the Pojoaque Valley public school district in Santa Fe county.

Chapter 347 Section 160 Laws 2005

Section 160. NAMBE HEAD START ATHLETIC IMPROVEMENTS--CLARIFYING PROJECT AND EXPANDING PURPOSE--CAPITAL PROJECTS FUND.-The public education department projects in Subsections 12 and 28 of Section 38 of Chapter 429 of Laws 2003 is for the purchase of land for, making improvements to and planning, designing, constructing and equipping tennis and basketball courts and a walking track for the Nambe head start campus in Nambe within the Pojoaque Valley public school district in Santa Fe county.

Chapter 347 Section 161 Laws 2005

Section 161. POJOAQUE RIVER CROSSING CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project in Subsection IIII of Section 12 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct a concrete river crossing where the road intersects with county road 84 in Pojoaque in Santa Fe county is extended through fiscal year 2010.

Chapter 347 Section 162 Laws 2005

Section 162. POJOAQUE COUNTY ROAD 84 CROSSING CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project in Subsection RR of Section 12 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct a concrete river crossing where the road intersects with county road 84 in Pojoaque in Santa Fe county is extended through fiscal year 2010.

Chapter 347 Section 163 Laws 2005

Section 163. EDGEWOOD MUNICIPAL BUILDING--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division projects in Subsections PPPPP and ZZZZZZZZZZZZ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for a municipal building in Edgewood in Santa Fe county is extended through fiscal year 2010.

Chapter 347 Section 164 Laws 2005

Section 164. BUS PURCHASE FOR SANTA FE, RIO ARRIBA AND SAN MIGUEL COUNTIES--EXTEND TIME AND CHANGE TO BUS PURCHASE FOR SANTA FE COUNTY--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 47 of Section 20 of Chapter 126 of Laws 2004 for a bus for use by senior centers in Santa Fe, Rio Arriba and San Miguel counties shall not be expended for that purpose but is changed to purchase a bus for the senior center in Santa Fe county, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 165 Laws 2005

Section 165. RIO ARRIBA, SAN MIGUEL AND SANTA FE COUNTIES SENIOR BUS PURCHASE--EXTEND TIME AND CHANGE TO SENIOR BUS PURCHASE FOR SANTA FE COUNTY--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 48 of Section 20 of Chapter 126 of Laws 2004 for the purchase of a bus for senior citizens in Rio Arriba, San Miguel and Santa Fe counties shall not be expended for the original purpose but is changed to purchase a bus for seniors in Santa Fe county, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 166 Laws 2005

Section 166. SANTA FE SENIOR BUS PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the aging and long-term services department project in Subsection 63 of Section 20 of Chapter 126 of Laws 2004 to purchase a bus for the division of senior services in Santa Fe in Santa Fe county is extended through fiscal year 2006.

Chapter 347 Section 167 Laws 2005

Section 167. ALAMO CHAPTER SOFTBALL FIELDS--CHANGE TO SOCORRO COUNTY WATER PROJECT AND EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department for the project in Subsection Z of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) for softball field improvements in Alamo in Socorro county shall not be expended for the original

purpose but is appropriated to the department of environment for water projects in Socorro county, and the time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 168 Laws 2005

Section 168. ALAMO NAVAJO COMMUNITY WATER LINE EXTENSION--CHANGE TO SOCORRO COUNTY WATER PROJECT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department for the project in Subsection 46 of Section 21 of Chapter 429 of Laws 2003 to purchase and install water line extensions in the Alamo Navajo community in Socorro county shall not be expended for the original purpose but is appropriated to the department of environment for water projects in that county.

Chapter 347 Section 169 Laws 2005

Section 169. ALAMO CHAPTER MINI-MART--CHANGE TO SOCORRO COUNTY WATER PROJECT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department for the project in Subsection 10 of Section 12 of Chapter 126 of Laws 2004 to plan, design and construct a mini-mart at the Alamo chapter of the Navajo Nation in Socorro county shall not be expended for the original purpose but is appropriated to the department of environment for water projects in that county.

Chapter 347 Section 170 Laws 2005

Section 170. ALAMO CHAPTER BOYS' AND GIRLS' CLUB RENOVATE--CHANGE TO SOCORRO COUNTY WATER PROJECT--CAPITAL PROJECTS FUND.-The unexpended balance of the appropriation to the Indian affairs department for the project in Subsection 71 of Section 33 of Chapter 126 of Laws 2004 to renovate the Alamo chapter house for a boys' and girls' club in the Alamo chapter of the Navajo Nation in Socorro county shall not be expended for the original purpose but is appropriated to the department of environment for water projects in that county.

Chapter 347 Section 171 Laws 2005

Section 171. FIRE ENGINE PURCHASE--CHANGE TO FIREFIGHTING EQUIPMENT STATEWIDE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 370 of Section 22 of Chapter 429 of Laws 2003 to purchase a fire engine for wildfires statewide shall not be expended for the original purpose but is appropriated to the energy, minerals and natural resources department to purchase equipment to fight wildfires statewide.

Chapter 347 Section 172 Laws 2005

Section 172. X-PRIZE PROJECT--EXTEND TIME--GENERAL FUND OPERATING RESERVE.--The time of expenditure for the economic development department project in Subsection (37) of Section 5 of Chapter 114 of Laws 2004 for the x-prize project space vehicle air show and competition is extended through fiscal year 2009. Any unexpended balance remaining at the end of fiscal year 2009 shall revert to the general fund operating reserve.

Chapter 347 Section 173 Laws 2005

Section 173. SPACEPORT SITE INFRASTRUCTURE--EXTEND TIME--GENERAL FUND OPERATING RESERVE.--The time of expenditure for the space commercialization division of the economic development department project in Laws 1998 (1st S.S.), Chapters 11 and 13 to provide matching funds not to exceed ten percent of the costs of designing and constructing roads, runways and infrastructure for a spaceport site, with contingency language, is extended through fiscal year 2009. Any unexpended balance remaining at the end of fiscal year 2009 shall revert to the general fund operating reserve.

Chapter 347 Section 174 Laws 2005

Section 174. TAOS SKI VALLEY MUNICIPAL COMPLEX CONSTRUCT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection BBBBBB of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to construct a municipal complex in Taos Ski Valley in Taos county is extended through fiscal year 2006.

Chapter 347 Section 175 Laws 2005

Section 175. PENASCO INDEPENDENT SCHOOL DISTRICT MULTIPURPOSE BUILDING RE-ROOF--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The public education department project in Subsection 184 of Section 23 of Chapter 110 of Laws 2002 to re-roof the multipurpose building in the Penasco independent school district in Taos county may include renovations to the interior of that building.

Chapter 347 Section 176 Laws 2005

Section 176. AMALIA AND COSTILLA SENIOR CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection M of Section 2 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct or purchase a senior center for Amalia and Costilla in Taos county is extended through fiscal year 2010.

Chapter 347 Section 177 Laws 2005

Section 177. TAOS COUNTY FILM COMMISSION THEATER--CHANGE PURPOSE FOR TAOS COMMUNITY AUDITORIUM--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 378 of Section 34 of Chapter 126 of Laws 2004 for a theater and operational base for the Taos county film commission shall not be expended for the original purpose but is changed to purchase, construct, furnish, equip and renovate the Taos community auditorium in Taos in Taos county.

Chapter 347 Section 178 Laws 2005

Section 178. ESTANCIA SENIOR CENTER PARKING AND SHED--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The aging and long-term services department project in Subsection 70 of Section 20 of Chapter 126 of Laws 2004 to improve the parking area and purchase a storage shed for the Estancia senior center in Torrance county may include planning, designing, constructing and renovating the Mountainair senior center in that county.

Chapter 347 Section 179 Laws 2005

Section 179. MOUNTAINAIR SENIOR CENTER IMPROVEMENTS--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The aging and long-term services department project in Subsection 75 of Section 4 of Chapter 429 of Laws 2003 for improvements to the Mountainair senior center in Torrance county may include planning, designing and constructing renovations to that center.

Chapter 347 Section 180 Laws 2005

Section 180. SOUTHERN NEW MEXICO CORRECTIONAL FACILITY WATER SYSTEM--CHANGE PURPOSE TO IMPROVEMENTS TO WATER SYSTEMS AT CORRECTIONAL FACILITIES STATEWIDE--CAPITAL PROGRAM FUND.--The unexpended balance of the appropriation to the property control division of the general services department in Paragraph (9) of Subsection B of Section 25 of Chapter 429 of Laws 2003 for improvements to upgrade the water system at southern New Mexico correctional facility in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the water and wastewater systems at correctional facilities statewide.

Chapter 347 Section 181 Laws 2005

Section 181. SOUTHERN NEW MEXICO CORRECTIONAL FACILITY SEWER LIFT STATION--EXPAND PURPOSE TO INCLUDE IMPROVEMENTS TO WASTEWATER SYSTEMS STATEWIDE--CAPITAL PROGRAM FUND.--The general services department project in Paragraph (10) of Subsection B of Section 25 of Chapter 429 of Laws 2003 for improvements to the sewer lift station at southern New Mexico correctional facility in Dona Ana county may include planning, designing and constructing improvements to wastewater systems at correctional facilities statewide.

Chapter 347 Section 182 Laws 2005

Section 182. BERNALILLO COUNTY METROPOLITAN COURT NEW BUILDING--EXTEND TIME--MAGISTRATE AND METROPOLITAN COURT CAPITAL FUND.--The time of expenditure for the magistrate and metropolitan court capital fund project in Subsection A of Section 8 of Chapter 5 of Laws 2000 for acquisition of real property for and the design, construction, furnishing and equipping of a new court building for the Bernalillo metropolitan court and of a parking facility for that court or to repay a loan from the New Mexico finance authority for any of these purposes is extended through fiscal year 2006.

Chapter 347 Section 183 Laws 2005

Section 183. BERNALILLO COUNTY METROPOLITAN COURTHOUSE CONSTRUCTION OVERRUN AND DESIGN--EXTEND TIME--MAGISTRATE AND METROPOLITAN COURT CAPITAL FUND.--The time of expenditure for the magistrate and metropolitan court capital fund project in Subsection (6) of Section 7 of Chapter 64 of Laws 2001 and reauthorized in Subsection (5) of Section 5 of Chapter 114 of Laws 2004 for courthouse construction overrun and design modification is extended through fiscal year 2006.

Chapter 347 Section 184 Laws 2005

Section 184. BERNALILLO COUNTY METROPOLITAN COURT AUDIO VIDEO AND DATA PROCESSING EQUIPMENT--EXTEND TIME--MAGISTRATE AND METROPOLITAN COURT CAPITAL FUND.--The time of expenditure for the magistrate and metropolitan court capital fund project in Subsection (3) of Section 5 of Chapter 4 of Laws 2002 (E.S.) and reauthorized in Subsection (6) of Section 5 of Chapter 114 of Laws 2004 to purchase audio video equipment, infrastructure for video arraignments and for the replacement of data processing equipment is extended through fiscal year 2006.

Chapter 347 Section 185 Laws 2005

Section 185. BERNALILLO COUNTY METROPOLITAN COURT NEW BUILDING--EXTEND TIME--MAGISTRATE AND METROPOLITAN COURT CAPITAL FUND.--The time of expenditure for the magistrate and metropolitan court capital fund project in Subsection B of Section 4 of Chapter 83 of Laws 2003 to complete construction, furnishing and equipping of the new court building for the Bernalillo county metropolitan court is extended through fiscal year 2006.

Chapter 347 Section 186 Laws 2005

Section 186. BERNALILLO COUNTY METROPOLITAN COURT NEW BUILDING--EXTEND TIME--NEW MEXICO FINANCE AUTHORITY REVENUE

BONDS.--The time of expenditure for the New Mexico finance authority revenue bond project in Subsection A of Section 1 of Chapter 45 of Laws 2003 for 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 is extended through fiscal year 2006.

Chapter 347 Section 187 Laws 2005

Section 187. ALBUQUERQUE PUBLIC SCHOOLS PROJECT--EAST MOUNTAIN HIGH SCHOOL BUS--CHANGE TO PORTABLE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 21 of Section 118 of Chapter 126 of Laws 2004 to purchase a bus for East Mountain high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase, renovate, furnish and equip portable buildings at that school.

Chapter 347 Section 188 Laws 2005

Section 188. MANZANO HIGH SCHOOL WOOD SHOP UPGRADES AND EDUCATIONAL TECHNOLOGY--CHANGE TO BALL FIELD UPGRADES--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 197 of Section 23 of Chapter 110 of Laws 2002 for upgrading the wood shops and for educational technology at Manzano high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to upgrade the ball fields at that school.

Chapter 347 Section 189 Laws 2005

Section 189. EAST MOUNTAIN HIGH SCHOOL AIR CONDITIONING--CHANGE TO EDUCATIONAL TECHNOLOGY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 201 of Section 23 of Chapter 110 of Laws 2002 and reauthorized in Laws 2003, Chapter 429, Section 208 to purchase and install air conditioning at East Mountain high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install educational technology for that school.

Chapter 347 Section 190 Laws 2005

Section 190. PARADISE HILLS LAND ACQUISITION FOR SOCCER AND LITTLE LEAGUE--CHANGE TO CONSTRUCT AND IMPROVE LITTLE LEAGUE FIELD AND FACILITIES--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 76 of Section 37 of Chapter 429 of Laws 2003 to acquire land in the Paradise Hills neighborhood of Bernalillo county to expand soccer and little league facilities shall not be expended for

the original purpose but is changed to improve the field and site and plan, design and construct a concession building and related facilities at the Paradise Hills little league field in that county.

Chapter 347 Section 191 Laws 2005

Section 191. PARADISE HILLS LAND ACQUISITION FOR SOCCER AND LITTLE LEAGUE--CHANGE TO CONSTRUCT AND IMPROVE LITTLE LEAGUE FIELD AND FACILITIES--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 3 of Section 12 of Chapter 385 of Laws 2003 to acquire land in the Paradise Hills neighborhood of Bernalillo county to expand soccer and little league facilities shall not be expended for the original purpose but is changed to improve the field and site and plan, design and construct a concession building and related facilities at the Paradise Hills little league field in that county.

Chapter 347 Section 192 Laws 2005

Section 192. CIBOLA HIGH SCHOOL SWIMMING POOL CONSTRUCTION--CHANGE TO TENNIS COURT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 214 of Section 23 of Chapter 110 of Laws 2002 to plan, design and construct a swimming pool at Cibola high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct a tennis court in that school district.

Chapter 347 Section 193 Laws 2005

Section 193. CIBOLA HIGH SCHOOL ATHLETIC BUS--CHANGE TO ATHLETIC EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 64 of Section 118 of Chapter 126 of Laws 2004 for the purchase of a bus for the athletic teams at West Mesa high school in the Albuquerque public school district in Bernalillo county is changed to purchase athletic equipment for that school. The expenditure period is extended through fiscal year 2006.

Chapter 347 Section 194 Laws 2005

Section 194. TAOS CHILDREN'S RESIDENTIAL TREATMENT FACILITY--CHANGE TO COLFAX COMMUNITY HEALTH SERVICES BUILDING--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 339 of Section 22 of Chapter 429 of Laws 2003 to plan and design a children's residential treatment facility in Taos county shall not be expended for the original purpose but is changed to plan, design and construct improvements and additions to the Taos Colfax community health services building in that county.

Chapter 347 Section 195 Laws 2005

Section 195. UNSER CHILDREN'S DISCOVERY CENTER AND RACING MUSEUM--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 62 of Section 134 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 196 Laws 2005

Section 196. OAKLAND AND BROWNING AREA TENNIS COURT AND PARKING AREA--CHANGE TO NORTH DOMINGO BACA DAM AND ALTAMONT LITTLE LEAGUE SITE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 33 of Section 22 of Chapter 429 of Laws 2003 to design and construct a tennis court and parking area at Oakland and Browning avenues shall not be expended for the original purpose but is changed to design and develop a tennis court at the north Domingo Baca dam and Altamont little league site in Bernalillo county.

Chapter 347 Section 197 Laws 2005

Section 197. SOUTH DOMINGO BACA EQUESTRIAN PARK LAND--CHANGE TO ALTAMONT LITTLE LEAGUE SITE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection ZZZZZZZ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to purchase land for the south Domingo Baca equestrian park shall not be expended for the original purpose but is changed for site improvements at the Altamont little league site in Bernalillo county. The expenditure period is extended through fiscal year 2010.

Chapter 347 Section 198 Laws 2005

Section 198. ADULT COMMUNITY MENTAL HEALTH BUILDING--CHANGE TO AMY BIEHL CHARTER SCHOOL--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division for the project in Subsection 428 of Section 22 of Chapter 429 of Laws 2003 for a building for an adult community mental health program in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, equip and furnish Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county.

Chapter 347 Section 199 Laws 2005

Section 199. GRIEGOS AND COMANCHE ROAD LANDSCAPING--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection NNNNNNNN of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to landscape Griegos and Comanche roads may include design and construction of trail improvements and connection points in senate district 13 in Bernalillo county. The expenditure period is extended through fiscal year 2010.

Chapter 347 Section 200 Laws 2005

Section 200. EAST MOUNTAIN HIGH SCHOOL IMPROVE--CHANGE TO THE PURCHASE AND UPGRADE OF EDUCATIONAL TECHNOLOGY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 260 of Section 23 of Chapter 110 of Laws 2002 to make improvements at East Mountain high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and upgrade educational technology for that school.

Chapter 347 Section 201 Laws 2005

Section 201. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 188 of Section 134 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 202 Laws 2005

Section 202. UNIVERSITY OF NEW MEXICO POLITICAL SCIENCE DEPARTMENT--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The university of New Mexico project in Paragraph (7) of Subsection H of Section 120 of Chapter 126 of Laws 2004 to renovate and repair the political science department facilities at the main campus of the university of New Mexico in Albuquerque in Bernalillo county may include purchase of equipment, including information technology.

Chapter 347 Section 203 Laws 2005

Section 203. UNIVERSITY OF NEW MEXICO PHILOSOPHY DEPARTMENT--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The university of New Mexico project in Paragraph (6) of Subsection H of Section 120 of Chapter 126 of Laws 2004 to renovate and repair philosophy department facilities at the main campus of the university of New Mexico in Albuquerque in Bernalillo county may include the purchase of equipment, including information technology.

Chapter 347 Section 204 Laws 2005

Section 204. SECOND JUDICIAL DISTRICT COURT ELECTRONIC MONITORING EQUIPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the second judicial district court project in Subsection 2 of Section 128 of Chapter 126 of Laws 2004 for electronic monitoring equipment and a satellite tracking device for domestic violence purposes is extended through fiscal year 2006.

Chapter 347 Section 205 Laws 2005

Section 205. NORTH VALLEY PERFORMING ARTS THEATER--CLARIFYING PROJECT--SEVERANCE TAX BONDS.--The local government division project in Subsection 252 of Section 117 of Chapter 126 of Laws 2004 is for equipping a performing arts theater for persons with disabilities in the north valley of Albuquerque in Bernalillo county.

Chapter 347 Section 206 Laws 2005

Section 206. INDIAN PUEBLO CULTURAL CENTER SECURITY SYSTEM--EXTEND TIME--SEVERANCE TAX BONDS AND CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department projects in Subsection 31 of Section 115 and Subsection 41 of Section 131 of Chapter 126 of Laws 2004 to purchase and install a security system for the Indian pueblo cultural center in Albuquerque in Bernalillo county is extended through fiscal year 2006.

Chapter 347 Section 207 Laws 2005

Section 207. SANTA FE RECREATIONAL FIELDS--CHANGE TO OUR LADY'S ASSUMPTION SCHOOL EDUCATIONAL TECHNOLOGY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally authorized in Subsection 294 of Section 23 of Chapter 110 of Laws 2002 and reauthorized to the local government division in Laws 2004, Chapter 126, Section 172 for improvements at Santa Fe recreational fields shall not be expended for the reauthorized purpose but is appropriated to the public education department for educational technology at Our Lady's Assumption school in Albuquerque in Bernalillo county.

Chapter 347 Section 208 Laws 2005

Section 208. SANTA FE RECREATIONAL FIELDS--CHANGE TO HOLY GHOST SCHOOL EDUCATIONAL TECHNOLOGY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally authorized in Subsection 295 of Section 23 of Chapter 110 of Laws 2002 and reauthorized to the local government division in Laws 2004, Chapter 126, Section 173 for improvements at Santa Fe recreational fields shall not be expended for the reauthorized purpose but is appropriated to the public education department for educational technology at Holy Ghost school in Albuquerque in Bernalillo county.

Chapter 347 Section 209 Laws 2005

Section 209. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 267 of Section 134 of Chapter 126 of Laws 2004 to plan, design and construct the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 210 Laws 2005

Section 210. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 257 of Section 117 of Chapter 126 of Laws 2004 to plan, design and construct the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 211 Laws 2005

Section 211. UNSER CHILDREN'S DISCOVERY CENTER CONSTRUCT--CHANGE LOCATION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 289 of Section 134 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the Unser children's discovery center and racing museum in Albuquerque is changed for that same purpose in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 347 Section 212 Laws 2005

Section 212. HILAND THEATER PROJECTS--CHANGE TO RENOVATIONS AND ACQUISITIONS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriations to the local government division in Subsections 5, 53, 270, 275, 303, 312, 320 and 347 of Section 22 of Chapter 110 of Laws 2002 for various improvements at the Hiland theater shall not be expended for the original purposes but is changed to acquire and renovate a facility for the Hiland theater in Albuquerque in Bernalillo county.

Chapter 347 Section 213 Laws 2005

Section 213. ROY E. DISNEY CENTER FOR PERFORMING ARTS EQUIPMENT--CLARIFYING FUND--GENERAL FUND.--The appropriation to the cultural affairs department made in Subsection 5 of Section 5 of Chapter 385 of Laws 2003 and reauthorized in Laws 2004, Chapter 126, Section 176 for equipment for the Roy E. Disney center for performing arts at the national Hispanic cultural center in Albuquerque in Bernalillo county is from the general fund.

Chapter 347 Section 214 Laws 2005

Section 214. ELFEGO BACA MEMORIAL LAND PURCHASE--CHANGE TO ELFEGO BACA MUSEUM CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 415 of Section 22 of Chapter 110 of Laws 2002 and reauthorized in Laws 2003, Chapter 429, Section 160 to purchase land for the Elfego Baca memorial in Reserve in Catron county shall not be expended for the original or reauthorized purpose but is changed to plan, design and construct the Elfego Baca museum in that county.

Chapter 347 Section 215 Laws 2005

Section 215. ELFEGO BACA MEMORIAL LAND PURCHASE--CHANGE TO ELFEGO BACA MUSEUM CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 21 of Section 117 of Chapter 126 of Laws 2004 to purchase land for the Elfego Baca memorial in Reserve in Catron county shall not be expended for the original purpose but is changed to plan, design and construct the Elfego Baca museum in that county.

Chapter 347 Section 216 Laws 2005

Section 216. ELFEGO BACA MEMORIAL LAND PURCHASE--CHANGE TO ELFEGO BACA MUSEUM CONSTRUCTION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 21 of Section 134 of Chapter 126 of Laws 2004 to purchase land for the Elfego Baca memorial in Reserve in Catron county shall not be expended for the original purpose but is changed to plan, design and construct the Elfego Baca museum in that county.

Chapter 347 Section 217 Laws 2005

Section 217. PENASCO FIRE DEPARTMENT RADIO EQUIPMENT IMPROVEMENTS--CHANGE TO ANTENNA REPLACEMENT AND STATION IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 149 of Section 117 of Chapter 126 of Laws 2004 for radio antenna replacement and improvements to the emergency fire radio for the Penasco volunteer fire department in Chaves county shall not be expended for the original purpose but is changed to antenna replacement and fire station improvements for that fire department.

Chapter 347 Section 218 Laws 2005

Section 218. PENASCO FIRE DEPARTMENT RADIO EQUIPMENT IMPROVEMENTS--CHANGE TO ANTENNA REPLACEMENT AND STATION IMPROVEMENTS--CAPITAL PROJECTS FUND.--The unexpended balance of the

appropriation to the local government division in Subsection 133 of Section 134 of Chapter 126 of Laws 2004 for radio antenna replacement and improvements to the emergency fire radio for the Penasco volunteer fire department in Chaves county shall not be expended for the original purpose but is changed to antenna replacement and fire station improvements for the fire department.

Chapter 347 Section 219 Laws 2005

Section 219. DUNKEN VOLUNTEER FIRE DEPARTMENT FUEL STORAGE SYSTEM, EQUIPMENT AND EXPANSION--CHANGE TO DRILL AND PLUMB WATER WELL AND EXPANSION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division for the project in Subsection 153 of Section 117 of Chapter 126 of Laws 2004 for a fuel storage system, equipment and expansion for the Dunken volunteer fire department in Chaves county shall not be expended for the original purpose but is changed to drill and plumb a water well and expand the building for the fire department.

Chapter 347 Section 220 Laws 2005

Section 220. DUNKEN VOLUNTEER FIRE DEPARTMENT FUEL STORAGE SYSTEM, EQUIPMENT AND EXPANSION--CHANGE TO DRILL AND PLUMB WATER WELL AND EXPANSION--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division for the project in Subsection 139 of Section 134 of Chapter 126 of Laws 2004 for a fuel storage system, equipment and expansion for the Dunken volunteer fire department in Chaves county shall not be expended for the original purpose but is changed to drill and plumb a water well and expand the building for the fire department.

Chapter 347 Section 221 Laws 2005

Section 221. GRANTS CULTURAL AND PERFORMING ARTS FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection QQQQQQQQ of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for renovation and an addition to the cultural and performing arts facility in Grants in Cibola county is extended through fiscal year 2010.

Chapter 347 Section 222 Laws 2005

Section 222. GRANTS TRAIN DEPOT RAIL SPUR--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection WWWWWWWW of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for fencing and relocation of a rail spur at the old Grants train depot in Cibola county is extended through fiscal year 2010.

Chapter 347 Section 223 Laws 2005

Section 223. PUEBLO OF ACOMA AMBULANCE PURCHASES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 12 of Section 115 of Chapter 126 of Laws 2004 to purchase three new ambulances for the Pueblo of Acoma in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 224 Laws 2005

Section 224. GRANTS STREET DEPARTMENT EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 86 of Section 117 of Chapter 126 of Laws 2004 to purchase equipment for the street department in Grants in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 225 Laws 2005

Section 225. GRANTS CEMETERY LAND AND IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 87 of Section 117 of Chapter 126 of Laws 2004 to purchase land for and make improvements to the cemetery in Grants in Cibola county is extended through fiscal year 2010.

Chapter 347 Section 226 Laws 2005

Section 226. GRANTS WATER DEPARTMENT EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 88 of Section 117 of Chapter 126 of Laws 2004 to purchase equipment for the water department in Grants in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 227 Laws 2005

Section 227. CIBOLA COUNTY SHERIFF'S DEPARTMENT FURNITURE AND VEHICLES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 91 of Section 117 of Chapter 126 of Laws 2004 for furniture and vehicles for the sheriff's department in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 228 Laws 2005

Section 228. CIBOLA COUNTY JAIL EQUIPMENT AND VEHICLES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 92 of Section 117 of Chapter 126 of Laws 2004 to purchase equipment and vehicles for the county jail in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 229 Laws 2005

Section 229. GRANTS ELECTRONIC MESSAGE SIGN--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 94 of Section 117 of Chapter 126 of Laws 2004 to purchase and install an electronic message sign in Grants in Cibola county is extended through fiscal year 2006.

Chapter 347 Section 230 Laws 2005

Section 230. SPRINGER MUNICIPAL SCHOOL DISTRICT ACTIVITY BUS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 336 of Section 23 of Chapter 110 of Laws 2002 to purchase an activity bus for the Springer municipal school district in Colfax county is extended through fiscal year 2006.

Chapter 347 Section 231 Laws 2005

Section 231. RATON CONVENTION AND COMMUNITY CENTER ATRIUM--CHANGE PURPOSE TO IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 371 of Section 22 of Chapter 110 of Laws 2002 for an atrium at the convention and community center in Raton in Colfax county shall not be expended for the original purpose but is changed to repair, improve and renovate the Raton convention center.

Chapter 347 Section 232 Laws 2005

Section 232. RATON CONVENTION AND COMMUNITY CENTER ADDITION--CHANGE PURPOSE TO IMPROVEMENTS AND EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection LLLLLLLLLL of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for an addition at the convention and community center in Raton in Colfax county shall not be expended for the original purpose but is changed to repair, improve and renovate the Raton convention center. The expenditure period is extended through fiscal year 2010.

Chapter 347 Section 233 Laws 2005

Section 233. HEAD START PLAYGROUND EQUIPMENT PURCHASE--CHANGE TO LIFE SAVER FOOD BANK IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 137 of Section 117 of Chapter 126 of Laws 2004 for improvements and playground equipment for the head start program in Clovis in Curry county shall not be expended for the original purpose but is changed to construct renovations and improvements for the Life Saver food bank in that county.

Chapter 347 Section 234 Laws 2005

Section 234. RIO GRANDE THEATER RENOVATION--CHANGE TO PLAZA PROJECT--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division for the project in Subsection 87 of Section 134 of Chapter 126 of Laws 2004 for renovations of the Rio Grande theater in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to acquire land for and plan, design and construct the Dona Ana village plaza in that county.

Chapter 347 Section 235 Laws 2005

Section 235. RADIUM SPRINGS COMMUNITY PARK--CHANGE TO SOCCER FIELDS AND PLAYGROUND EQUIPMENT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 102 of Section 117 of Chapter 126 of Laws 2004 for the community recreational park in Radium Springs in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and construct soccer fields and acquire playground equipment in that city.

Chapter 347 Section 236 Laws 2005

Section 236. STATEWIDE VETERINARY MOBILE SURGERY CLINIC--CHANGE TO CONSTRUCTION OF AN EXPANSION TO THE DONA ANA COUNTY ANIMAL SHELTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 100 of Section 117 of Chapter 126 of Laws 2004 for the purchase of a veterinary mobile surgery clinic for Las Cruces in Dona Ana county for use statewide shall not be expended for the original purpose but is changed to construct an expansion of the animal shelter for that city in that county.

Chapter 347 Section 237 Laws 2005

Section 237. RADIUM SPRINGS COMMUNITY PARK GAZEBO--CHANGE TO SKATE PARK--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 103 of Section 117 of Chapter 126 of Laws 2004 for a gazebo in the Radium Springs community recreational park shall not be expended for the original purpose but is changed to plan, design and construct a skate park in Radium Springs in Dona Ana county.

Chapter 347 Section 238 Laws 2005

Section 238. GADSDEN HIGH SCHOOL MUSIC DEPARTMENT EQUIPMENT AND PORTABLE BUILDING PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in

Subsection 150 of Section 118 of Chapter 126 of Laws 2004 to purchase equipment and a portable building for the music department at Gadsden high school in the Gadsden independent school district in Dona Ana county is extended through fiscal year 2006.

Chapter 347 Section 239 Laws 2005

Section 239. BERINO STREETLIGHT INSTALLATION--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The local government division project in Subsection 211 of Section 134 of Chapter 126 of Laws 2004 to install streetlights in Berino in Dona Ana county may include improvements for Berino park.

Chapter 347 Section 240 Laws 2005

Section 240. ANTHONY COMMUNITY PARK AND MULTIPURPOSE CENTER--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The local government division project in Subsection 210 of Section 134 of Chapter 126 of Laws 2004 for the community park and multipurpose center in Anthony in Dona Ana county may include land procurement and phase 1 planning for the Valley community library in Anthony.

Chapter 347 Section 241 Laws 2005

Section 241. BENAVIDES SENIOR CENTER EQUIPMENT PURCHASE--CHANGE TO PARKING LOT EXPAND--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 13 of Section 124 of Chapter 126 of Laws 2004 for equipping Benavides senior center in Dona Ana county shall not be expended for the original purpose but is changed to expand the handicapped parking lot at that facility in that county.

Chapter 347 Section 242 Laws 2005

Section 242. CHAMBERINO BALL PARK--CHANGE TO ACCESS ROADS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division for the project in Subsection 222 of Section 117 of Chapter 126 of Laws 2004 for ball park improvements in Chamberino in Dona Ana county shall not be expended for the original purpose but is appropriated to the department of transportation to survey, design, purchase, develop and construct alternative access roads to that village.

Chapter 347 Section 243 Laws 2005

Section 243. SAN MIGUEL COMMUNITY SUPPORT FACILITIES--CHANGE TO SAN MIGUEL RECREATIONAL PARK AND SUPPORT FACILITIES--CAPITAL PROJECTS FUND AND GENERAL FUND.--The unexpended balance of the

appropriations to the local government division in Subsection 99 of Section 37 of Chapter 429 of Laws 2003 and in Subsection 35 of Section 12 of Chapter 385 of Laws 2003 for community support facilities in San Miguel in Dona Ana county shall not be expended for the original purpose but is changed to acquiring land for and planning, designing and constructing a community recreational park and support facilities in San Miguel.

Chapter 347 Section 244 Laws 2005

Section 244. SAN MIGUEL COMMUNITY SUPPORT FACILITIES--CHANGE TO SAN MIGUEL RECREATIONAL PARK AND SUPPORT FACILITIES--CAPITAL PROJECTS FUND AND SEVERANCE TAX BONDS.--The unexpended balance of the appropriations to the local government division in Subsection 213 of Section 134 and Subsection 220 of Section 117 of Chapter 126 of Laws 2004 to acquire land for, plan, design and construct a community center in San Miguel in Dona Ana county shall be expended for that purpose at a community recreational park and support facilities in San Miguel.

Chapter 347 Section 245 Laws 2005

Section 245. ALTO DE LAS FLORES WATER SYSTEM IMPROVEMENTS--CHANGING RECIPIENT--SEVERANCE TAX BONDS.--The department of environment project in Subsection 29 of Section 113 of Chapter 126 of Laws 2004 is for water system improvements for the Alto de las Flores mutual domestic water consumers association in San Miguel in Dona Ana county.

Chapter 347 Section 246 Laws 2005

Section 246. FARM AND RANCH HERITAGE MUSEUM EXHIBITS--CHANGE PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the cultural affairs department in Subsections 6 and 8 of Section 5 of Chapter 385 of Laws 2003 to purchase art by Peter Hurd for the farm and ranch heritage museum shall not be expended for the original purpose but is changed to plan, design and construct exhibits at the museum.

Chapter 347 Section 247 Laws 2005

Section 247. NEW MEXICO STATE UNIVERSITY ATHLETIC IMPROVEMENTS--CHANGE TO SAM GRAFF PARK--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally authorized in Subsection 399 of Section 22 of Chapter 110 of Laws 2002 and reauthorized to the board of regents of New Mexico state university for the project in Laws 2003, Chapter 429, Section 199 for athletic facility improvements shall not be expended for the original or reauthorized purpose but is appropriated to the local government division to plan, design and construct the Sam Graff park in Las Cruces in Dona Ana county.

Chapter 347 Section 248 Laws 2005

Section 248. RECREATIONAL AND BICYCLE TRAILS AT "A" MOUNTAIN PARK IN LAS CRUCES--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The New Mexico state university project in Paragraph (6) of Subsection E of Section 120 of Chapter 126 of Laws 2004 for infrastructure for recreational and bicycle trails at "A" mountain park in Las Cruces in Dona Ana county may include creation of parking areas and signage, site improvements to limit access and site remediation.

Chapter 347 Section 249 Laws 2005

Section 249. CARLSBAD HIGH SCHOOL CULINARY ARTS EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 353 of Section 23 of Chapter 110 of Laws 2002 to equip the culinary arts program at Carlsbad high school in the Carlsbad municipal school district in Eddy county is extended through fiscal year 2006.

Chapter 347 Section 250 Laws 2005

Section 250. METAL BUILDING FOR GRANT COUNTY FAIRGROUNDS--CHANGE PURPOSE TO RENOVATIONS AND IMPROVEMENTS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 74 of Section 37 of Chapter 429 of Laws 2003 to construct and equip a metal building for the Grant county fairgrounds shall not be expended for the original purpose but is changed to renovate and improve the fairgrounds.

Chapter 347 Section 251 Laws 2005

Section 251. SANTA ROSA SCHOOLS--EQUIPMENT FOR HIGH SCHOOL METAL AND WOOD SHOP--CHANGE TO EDUCATIONAL TECHNOLOGY AND LIBRARY SHELVING--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection ZZZZZ of Section 16 of Chapter 23 of Laws 2000 (2nd S.S.) for equipment at the metal and wood shop at the high school in the Santa Rosa consolidated school district in Guadalupe county shall not be expended for the original purpose but is changed to purchase and install educational technology and library shelving in that school district. The time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 252 Laws 2005

Section 252. LORDSBURG WATER SUPPLY EQUIPMENT--CHANGE PURPOSE TO WATER SUPPLY SYSTEM--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 37 of Section 29 of Chapter 126 of Laws 2004 to purchase equipment to

reduce the fluoride in the water supply in Lordsburg in Hidalgo county shall not be expended for the original purpose but is changed to plan, design and construct a water supply system to reduce the fluoride in the water supply in Lordsburg. The time of expenditure is extended through fiscal year 2010.

Chapter 347 Section 253 Laws 2005

Section 253. LORDSBURG HEALTH CLINIC--CHANGE PURPOSE FOR HIDALGO MEDICAL COMPLEX AND CLINIC--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 5 of Section 10 of Chapter 385 of Laws 2003 to pave the access to the health clinic in Lordsburg shall not be expended for the original purpose but is changed to plan, design, renovate and construct the access, parking and landscaping at the Hidalgo medical complex and clinic in Hidalgo county.

Chapter 347 Section 254 Laws 2005

Section 254. CAPITAN PUBLIC LIBRARY--CHANGE TO ATHLETIC COMPLEX FOR SCHOOL DISTRICT--SEVERANCE TAX BONDS AND CAPITAL PROJECTS FUND.--The unexpended balance of the appropriations to the local government division for the projects in Subsection 379 of Section 22 and Subsection 73 of Section 37 of Chapter 429 of Laws 2003 for the Capitan public library shall not be expended for the original purpose but is appropriated to the public education department to plan, design and construct community athletic fields and a complex in the Capitan municipal school district in Lincoln county.

Chapter 347 Section 255 Laws 2005

Section 255. CAPITAN BASEBALL AND SOFTBALL COMPLEX--CHANGE AGENCY AND EXPAND PURPOSE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 1 of Section 117 of Chapter 126 of Laws 2004 to design and build a community baseball and softball complex in Capitan in Lincoln county is appropriated to the public education department and may include designing and building other athletic facilities.

Chapter 347 Section 256 Laws 2005

Section 256. CAPITAN BASEBALL AND SOFTBALL COMPLEX--CHANGE AGENCY AND EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 3 of Section 134 of Chapter 126 of Laws 2004 to design and build a community baseball and softball complex in Capitan in Lincoln county is appropriated to the public education department and may include designing and building other athletic facilities.

Chapter 347 Section 257 Laws 2005

Section 257. COLUMBUS WASTEWATER LINE EXTENSIONS--CHANGE TO WASTEWATER SYSTEM IMPROVEMENTS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation made to the department of environment in Subsection 45 of Section 29 of Chapter 126 of Laws 2004 for wastewater line extensions in Columbus in Luna county shall not be expended for the original purpose but is changed to make wastewater system improvements in Columbus.

Chapter 347 Section 258 Laws 2005

Section 258. NAVAJO VETERANS' AFFAIRS BUILDING AND CROWNPOINT CHILD SUPPORT MODULAR--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection NN of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to purchase and install a modular office building for the child support program in Crownpoint in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 259 Laws 2005

Section 259. NAVAJO VETERANS' AFFAIRS BUILDING AND CROWNPOINT CHILD SUPPORT MODULAR--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection C of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to purchase a building for the department of Navajo veterans' affairs in Crownpoint in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 260 Laws 2005

Section 260. GALLUP COMMUNITY-BASED PROGRAM PURCHASE EQUIPMENT--CHANGE TO PURCHASE VEHICLE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 230 of Section 134 of Chapter 126 of Laws 2004 to purchase equipment for a community-based program for children with developmental delays or disabilities and children at risk for developmental delays in Gallup in McKinley county shall not be expended for the original purpose but is changed to purchase a vehicle for that community-based program.

Chapter 347 Section 261 Laws 2005

Section 261. ZUNI PUEBLO BOOKMOBILE PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 27 of Section 131 of Chapter 126 of Laws 2004 to purchase a bookmobile for the Pueblo of Zuni in McKinley county is extended through fiscal year 2006.

Chapter 347 Section 262 Laws 2005

Section 262. TOHATCHI CHAPTER MOTOR GRADER PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 15 of Section 33 of Chapter 126 of Laws 2004 for the purchase of a motor grader for the Tohatchi chapter of the Navajo Nation in McKinley county is extended through fiscal year 2006.

Chapter 347 Section 263 Laws 2005

Section 263. MANUELITO CHAPTER WATER AND WASTEWATER DISPOSAL--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection HH of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to construct a community water supply and waste disposal facilities in Manuelito in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 264 Laws 2005

Section 264. COYOTE CANYON RECREATION BUILDING--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection YY of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to plan and design a recreation building in Coyote Canyon in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 265 Laws 2005

Section 265. ROCK SPRINGS MULTIPURPOSE BUILDING--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection E of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to design and construct a multipurpose building at the Rock Springs chapter of the Navajo Nation in McKinley county is extended through fiscal year 2010.

Chapter 347 Section 266 Laws 2005

Section 266. WORKERS' COMPENSATION ADMINISTRATION OFFICE BUILDINGS--CHANGE LOCATION--WORKERS' COMPENSATION ADMINISTRATION FUND.--The unexpended balance of the general services department project in Laws 2002, Chapter 110, Section 49 for office buildings for the workers' compensation administration in Las Cruces in Dona Ana county and Farmington in San Juan county is changed for offices in Las Cruces in Dona Ana county and Las Vegas in San Miguel county.

Chapter 347 Section 267 Laws 2005

Section 267. NAVAJO NATION VETERANS' VEHICLE PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 21 of Section 131 of Chapter 126 of Laws 2004 to

purchase and equip vehicles for the Navajo Nation veterans' transportation system in San Juan and McKinley counties is extended through fiscal year 2006.

Chapter 347 Section 268 Laws 2005

Section 268. NAVAJO NATION VETERANS' VEHICLE PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 1 of Section 33 of Chapter 126 of Laws 2004 to purchase and equip vehicles for the Navajo Nation veterans' transportation system in San Juan and McKinley counties is extended through fiscal year 2006.

Chapter 347 Section 269 Laws 2005

Section 269. PUEBLO OF SAN JUAN SENIOR CENTER--CHANGE TO EIGHT NORTHERN INDIAN PUEBLOS COUNCIL--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 11 of Section 108 of Chapter 126 of Laws 2004 to purchase equipment for the senior center at the Pueblo of San Juan in Rio Arriba county shall not be expended for the original purpose but is appropriated to the Indian affairs department to purchase equipment for the eight northern Indian pueblos council in that county. The time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 270 Laws 2005

Section 270. FIRST JUDICIAL DISTRICT COURTHOUSE AND LAND--EXPAND PURPOSE--SEVERANCE TAX BONDS AND CAPITAL PROJECTS FUND.--The local government division projects in Subsection 214 of Section 117 and Subsection 204 of Section 134 of Chapter 126 of Laws 2004 to plan, design and construct a courthouse in the first judicial district in Espanola in Rio Arriba county may include land acquisition.

Chapter 347 Section 271 Laws 2005

Section 271. ESPANOLA TRAFFIC SIGNAL--CHANGE TO ELECTRONIC SIGN--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 124 of Section 19 of Chapter 110 of Laws 2002 to install a traffic signal in Espanola shall not be expended for the original purpose but is changed to purchase and install an electronic sign in Espanola in Rio Arriba county.

Chapter 347 Section 272 Laws 2005

Section 272. PORTALES MENTAL HEALTH RESOURCES PARKING LOT--CHANGE TO STREET IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division for the project in Subsection 128 of Section 117 of Chapter 126 of Laws 2004 for improvements to the

mental health resource parking lot in Portales in Roosevelt county shall not be expended for the original purpose but is appropriated to the department of transportation for improvements to streets and curbs in Portales.

Chapter 347 Section 273 Laws 2005

Section 273. FLORA VISTA WATER LINE CONSTRUCTION--CHANGE TO PURCHASE AND INSTALL SECURITY EQUIPMENT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment for the project in Subsection 66 of Section 14 of Chapter 429 of Laws 2003 for construction of a water line for the Flora Vista water users association in San Juan county shall not be expended for the original purpose but is appropriated to the local government division to purchase and install security equipment at the district courthouse in Aztec and the juvenile justice complex in Farmington.

Chapter 347 Section 274 Laws 2005

Section 274. AZTEC MUNICIPAL SCHOOL DISTRICT SPORTS COMPLEX--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The public education department project in Subsection 90 of Section 136 of Chapter 126 of Laws 2004 for renovations to the sports complex in the Aztec municipal school district in San Juan county may include construction.

Chapter 347 Section 275 Laws 2005

Section 275. SHIPROCK VETERANS' MEMORIAL COMPLEX--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection LL of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) for the veterans' memorial complex in Shiprock in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 276 Laws 2005

Section 276. SHEEP SPRINGS TOURISM FACILITY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection J of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) to plan, design and construct a tourism facility in Sheep Springs in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 277 Laws 2005

Section 277. SHEEP SPRINGS TOURISM FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection W of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) to plan,

design and construct a tourism facility in Sheep Springs in San Juan county is extended through fiscal year 2010.

Chapter 347 Section 278 Laws 2005

Section 278. PECOS ELEMENTARY SCHOOL--CHANGE TO BASEBALL AND SOFTBALL FIELD IMPROVEMENTS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the public education department in Subsection 76 of Section 136 of Chapter 126 of Laws 2004 for the baseball field at Pecos elementary school in the Pecos independent school district in San Miguel county shall not be expended for the original purpose but is changed to make improvements to the existing little league baseball and softball fields in that school district.

Chapter 347 Section 279 Laws 2005

Section 279. SAN MIGUEL COUNTY PASSENGER VAN FOR SENIORS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 5 of Section 108 of Chapter 126 of Laws 2004 for a passenger van for seniors in San Miguel county is extended through fiscal year 2006.

Chapter 347 Section 280 Laws 2005

Section 280. PECOS VALLEY MEDICAL CENTER CAPITAL IMPROVEMENTS AND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection GGGGGGGGGG of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) for capital improvements and purchase of equipment for the Pecos Valley medical center in San Miguel county is extended through fiscal year 2010.

Chapter 347 Section 281 Laws 2005

Section 281. BERNAL COMMUNITY CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection HHHHHHHHHH of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) to improve the community center in Bernal in San Miguel county is extended through fiscal year 2010.

Chapter 347 Section 282 Laws 2005

Section 282. SANTA ANA SOCCER FIELD CONSTRUCTION--CHANGE TO PLAYGROUND EQUIPMENT AND RECREATION FACILITIES IMPROVEMENTS--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 4 of Section 131 of Chapter 126 of Laws 2004 for planning, designing and constructing a soccer field for the Pueblo of Santa Ana in

Sandoval county shall not be expended for the original purpose but is changed to construct improvements to playground equipment and outdoor recreation facilities in that pueblo.

Chapter 347 Section 283 Laws 2005

Section 283. WEST CAPITOL COMPLEX AND NEA BUILDING AND RELOCATING STATE AGENCIES--EXTEND TIME--PROPERTY CONTROL RESERVE FUND.--The time of expenditure for the capital program fund project in Laws 2000 (2nd S.S.), Chapter 23, Section 33 and reauthorized in Laws 2002, Chapter 99, Section 54 for a new office building at the west capitol complex and to purchase and improve the NEA building and relocate state agencies in Santa Fe in Santa Fe county is extended through fiscal year 2007. Any unexpended balance remaining at the end of fiscal year 2007 shall revert to the property control reserve fund.

Chapter 347 Section 284 Laws 2005

Section 284. SANTA FE COUNTY SENIOR SERVICES BUS PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 3 of Section 108 of Chapter 126 of Laws 2004 to purchase a bus for the division of senior services in Santa Fe in Santa Fe county is extended through fiscal year 2006.

Chapter 347 Section 285 Laws 2005

Section 285. SANTA FE COUNTY RECOVERING ALCOHOLICS CENTER STRUCTURE--EXPAND PURPOSE--CAPITAL PROJECTS FUND.--The local government division project in Subsection 193 of Section 134 of Chapter 126 of Laws 2004 for purchasing a modular structure for a recovering alcoholics center in Santa Fe county may include the purchase of modular structures.

Chapter 347 Section 286 Laws 2005

Section 286. RIO ARRIBA, SAN MIGUEL AND SANTA FE COUNTIES SENIOR BUS PURCHASE--EXTEND TIME AND CHANGE TO BUS PURCHASE FOR SANTA FE COUNTY ONLY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 8 of Section 108 of Chapter 126 of Laws 2004 for the purchase of a bus for senior citizens in Rio Arriba, San Miguel and Santa Fe counties shall not be expended for that purpose but is changed to purchase a bus for seniors in Santa Fe county only, and the time of expenditure is extended through fiscal year 2006.

Chapter 347 Section 287 Laws 2005

Section 287. SANTA FE SENIOR BUS PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 14 of Section 108 of Chapter 126 of Laws 2004 to purchase a bus for the division of senior services in Santa Fe in Santa Fe county is extended through fiscal year 2006.

Chapter 347 Section 288 Laws 2005

Section 288. SANTA FE CIVIC AUTHORITY CHILD CARE AND TEACHER RESOURCE CENTER--CHANGE TO A COMMUNITY CENTER ON GALLEGOS LANE--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 253 of Section 134 of Chapter 126 of Laws 2004 for a child care and teacher resource center shall not be expended for the original purpose but is changed to plan, design and construct a community center on Gallegos lane in Santa Fe in Santa Fe county.

Chapter 347 Section 289 Laws 2005

Section 289. SOCORRO PLAYGROUND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 89 of Section 117 of Chapter 126 of Laws 2004 to purchase playground equipment for the recreation facilities and miniparks in Socorro in Socorro county is extended through fiscal year 2006.

Chapter 347 Section 290 Laws 2005

Section 290. TAOS COUNTY ROAD EQUIPMENT PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 55 of Section 117 of Chapter 126 of Laws 2004 to purchase road equipment for Taos county is extended through fiscal year 2006.

Chapter 347 Section 291 Laws 2005

Section 291. AMALIA AND COSTILLA SENIOR CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection B of Section 2 of Chapter 2 of Laws 1999 (1st S.S.) to plan, design and construct or purchase a senior center for Amalia and Costilla in Taos county is extended through fiscal year 2010.

Chapter 347 Section 292 Laws 2005

Section 292. PICURIS PUEBLO BIOMASS EQUIP PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 11 of Section 12 of Chapter 126 of Laws 2004 for

purchasing equipment for the biomass project at the Pueblo of Picuris in Taos county is extended through fiscal year 2006.

Chapter 347 Section 293 Laws 2005

Section 293. BOSQUE FARMS LIBRARY ADDITION--CHANGE TO LIBRARY UPGRADES--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 526 of Section 22 of Chapter 110 of Laws 2002 to construct an addition for the library in Bosque Farms in Valencia county shall not be expended for the original purpose but is changed to upgrading the library, including air conditioning, handicap doors, counters and a drinking fountain.

Chapter 347 Section 294 Laws 2005

Section 294. GENERAL SERVICES DEPARTMENT--EXTEND TIME--STATEWIDE PROCUREMENT PRACTICES PROJECT.--

A. The period of time for expending the eight million eleven thousand dollars (\$8,011,000) appropriated from the general fund operating reserve to the general services department in Section 147 of Chapter 126 of Laws 2004 is extended through June 30, 2006. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund operating reserve. Notwithstanding the provisions of Section 147 of Chapter 126 of Laws 2004, the savings realized from the effort funded in that section for fiscal year 2005 shall be captured pursuant to a savings capture plan developed and implemented by the department of finance and administration for credit to the general fund; provided that savings shall not be captured from:

(1) savings from appropriations other than state general fund appropriations;

(2) an agency whose savings generated from general fund appropriations is ten thousand dollars (\$10,000) or less;

(3) an agency that has demonstrated the need to reallocate the savings to other parts of its operating budget; and

(4) a one-time procurement for which an appropriation was specifically made.

B. The department of finance and administration shall make a report on all savings realized under this effort compared with the savings actually captured and credited to the general fund.

Chapter 347 Section 295 Laws 2005

Section 295. COLLEGE AND UNIVERSITY PROJECTS--GENERAL FUND.--
The following amounts are appropriated from the general fund to the following institutions of higher education for expenditure in fiscal years 2005 through 2010, unless otherwise provided in Section 2 of this act, for the following purposes:

A. to the governing board of the Luna vocational-technical institute, five hundred thousand dollars (\$500,000) to plan, design, construct, equip and furnish phase 2 of the Santa Rosa satellite building in Guadalupe county;

B. to the board of regents of western New Mexico university, five hundred thousand dollars (\$500,000) for infrastructure renovations and expansions at the main campus in Silver City in Grant county;

C. to the board of regents of New Mexico institute of mining and technology, five hundred thousand dollars (\$500,000) to construct, equip and furnish the Joseph A. Fidel student services center at the main campus in Socorro in Socorro county; and

D. to the board of regents of eastern New Mexico university, five hundred thousand dollars (\$500,000) for infrastructure renovations and deferred maintenance, including energy efficiency renovations and critical heating, ventilation and air conditioning system improvements, at the main campus in Portales in Roosevelt county.

Chapter 347 Section 296 Laws 2005

Section 296. PROJECT SCOPE--EXPENDITURES.--If an appropriation for a project authorized in this act is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation. Expenditures shall not be made for purposes other than those specified in the appropriation.

Chapter 347 Section 297 Laws 2005

Section 297. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

Chapter 347 Section 298 Laws 2005

Section 298. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SUBSTITUTE FOR HOUSE BILL 885, AS AMENDED

WITH EMERGENCY CLAUSE

WITH CERTIFICATE OF CORRECTION

Approved April 8, 2005

LAWS 2005, CHAPTER 348

AN ACT

RELATING TO HIGHER EDUCATION; PROHIBITING DENIAL OF ADMISSION OR ELIGIBILITY FOR EDUCATION BENEFITS ON ACCOUNT OF IMMIGRATION STATUS.

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

Chapter 348 Section 1 Laws 2005

Section 1. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"NONDISCRIMINATION POLICY FOR ADMISSION TO ANY PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTION--NONDISCRIMINATION IN ELIGIBILITY FOR EDUCATION BENEFITS.--

A. A public post-secondary educational institution shall not deny admission to a student on account of the student's immigration status.

B. Any tuition rate or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico."

SENATE BILL 582, AS AMENDED

Approved April 8, 2005

LAWS 2005, CHAPTER 349

AN ACT

RELATING TO GAMING; AUTHORIZING THE GAMING CONTROL BOARD TO REGULATE BINGO AND RAFFLE ACTIVITIES; ESTABLISHING A TAX RATE FOR MANUFACTURERS, DISTRIBUTORS AND COMMERCIAL LESSORS OF BINGO AND RAFFLE EQUIPMENT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 349 Section 1 Laws 2005

Section 1. Section 60-2B-3 NMSA 1978 (being Laws 1981, Chapter 259, Section 3, as amended) is amended to read:

"60-2B-3. DEFINITIONS.--As used in the Bingo and Raffle Act:

A. "charitable organization" means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress or other condition of public concern in New Mexico and which has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act and which has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501 (c) of the United States Internal Revenue Code of 1954, as amended or renumbered;

B. "chartered branch, lodge or chapter of a national or state organization" means any branch, lodge or chapter which is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose in New Mexico and which has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act;

C. "commercial lessor" means an entity that leases space to a qualified organization;

D. "distributor" means a person who supplies equipment to a qualified organization but does not manufacture equipment;

E. "educational organization" means any organization within the state, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction and which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

F. "fraternal organization" means any organization within the state, except college and high school fraternities, not for pecuniary profit, which is a branch, lodge or chapter of a national or state organization and exists for the common business, brotherhood or other interests of its members and which has existed in New Mexico for

three years immediately prior to making application for a license under the Bingo and Raffle Act;

G. "labor organization" means any organization, not for pecuniary profit, within the state, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work and which has existed in New Mexico for that purpose and has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act;

H. "qualified organization" means any bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members which has been in existence in New Mexico continuously for a period of three years immediately prior to the making of an application for a license under the Bingo and Raffle Act and which has had, during the entire three-year period, a dues-paying membership engaged in carrying out the objects of the corporation or organization. A voluntary firemen's organization is a qualified organization and a labor organization is a qualified organization for the purpose of the Bingo and Raffle Act if it uses the proceeds from a game of chance solely for scholarship or charitable purposes;

I. "environmental organization" means any organization primarily concerned with the protection and preservation of the natural environment and which has existed in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

J. "religious organization" means any organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place, which organization, church, body of communicants, group or society has been so gathered or united in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

K. "veterans' organization" means any organization within the state or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

L. "voluntary firemen's organization" means any organization for firefighting within the state, not for pecuniary profit, established by the state or any of its political subdivisions, which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

M. "dues-paying membership" means those members of an organization who pay regular monthly, annual or other periodic dues or who are excused from paying such dues by the charter, articles of incorporation or bylaws of the organization and those who contribute voluntarily to the corporation or organization to which they belong for the support of the corporation or organization;

N. "equipment" means:

(1) with respect to bingo or lotto:

(a) the receptacle and numbered objects drawn from it;

(b) the master board upon which the numbered objects are placed as drawn;

(c) the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them;

(d) the board or signs, however operated, used to announce or display the numbers or designations as they are drawn;

(e) the public address system; and

(f) all other articles essential to the operation, conduct and playing of bingo or lotto; and

(2) with respect to a raffle, implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence or right to participate in raffles;

O. "game of chance" means that specific kind of game of chance commonly known as bingo or lotto in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and that specific kind of game of chance commonly known as a raffle which is conducted by drawing for prizes or the allotment of prizes by chance or by the selling of shares, tickets or rights to participate in the game;

P. "gross receipts" means receipts from the sale of shares, tickets or rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge, the sale of equipment or supplies and all other miscellaneous receipts;

Q. "lawful purposes" means educational, charitable, patriotic, religious or public-spirited purposes, which terms are defined to be the benefiting of an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by

assisting them in establishing themselves in life, by erecting or maintaining public buildings or works, by providing legal assistance to peace officers or firemen in defending civil or criminal actions arising out of the performance of their duties or by otherwise lessening the burden of government. These terms include the erection, acquisition, improvement, maintenance, insurance or repair of property, real, personal or mixed, if the property is used for one or more of the purposes stated in this subsection;

R. "lawful use" means the devotion of the entire net proceeds of a game of chance exclusively to lawful purposes;

S. "licensee" means any qualified organization to which a license has been issued by the licensing authority;

T. "licensing authority" means the gaming control board;

U. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to equipment for use or play in New Mexico or for sale or distribution outside of New Mexico;

V. "member" means an individual who has qualified for membership in a qualified organization pursuant to its charter, articles of incorporation, bylaws, rules or other written statement;

W. "net proceeds" means the receipts less the expenses, charges, fees and deductions as are specifically authorized under the Bingo and Raffle Act;

X. "occasion" means a single gathering or session at which a series of successive bingo or lotto games are played;

Y. "person" means a natural person, firm, association, corporation or other legal entity; and

Z. "premises" means any room, hall, enclosure or outdoor area used for the purpose of playing a game of chance."

Chapter 349 Section 2 Laws 2005

Section 2. Section 60-2B-4 NMSA 1978 (being Laws 1981, Chapter 259, Section 4, as amended) is amended to read:

"60-2B-4. LICENSING AUTHORITY--POWERS--DUTIES--HEARINGS--
APPEALS.--

A. The licensing authority has the powers and duties as follows:

(1) to grant or refuse licenses under the Bingo and Raffle Act. In addition, the licensing authority has the power, on its own motion based on reasonable grounds or on complaint made and after investigation by the licensing authority or by the special investigations division of the department of public safety and public hearing at which the licensee shall be afforded an opportunity to be heard, to assess administrative fines to the licensee and to suspend or revoke any license issued by the licensing authority for any violation by the licensee or any officer, director, agent, member or employee of the licensee of the provisions of that act or any rule authorized under that act. Notice of suspension or revocation, as well as notice of the hearing, shall be given by certified mail to the licensee at the address contained in the license. Any license may be temporarily suspended for a period not to exceed thirty days pending any prosecution, investigation or public hearing;

(2) to supervise the administration of the Bingo and Raffle Act and to adopt, amend and repeal rules governing the holding, operating and conducting of games of chance, the rental of premises and the purchase of equipment to the end that games of chance shall be held, operated and conducted only by licensees for the purposes and in conformity with the constitution of New Mexico and the provisions of that act;

(3) to hear and determine at public hearings all complaints against any licensee and to administer oaths and issue subpoenas to require the presence of persons and production of papers, books and records necessary to the determination of any hearing held;

(4) to keep records of all actions and transactions of the licensing authority;

(5) to prepare and transmit annually, in the form and manner prescribed by the licensing authority pursuant to the provisions of law, a report accounting to the governor and the legislature for the efficient discharge of all responsibilities assigned by law or directive to the licensing authority;

(6) to issue publications of the licensing authority intended for circulation in quantity outside the executive branch in accordance with fiscal rules promulgated by the licensing authority;

(7) to adopt rules establishing a system of licensing governing commercial lessors, distributors, manufacturers and qualified organizations;

(8) to adopt rules establishing a system of permits for all individuals employed or engaged in the conduct of games of chance or the manufacture or distribution of equipment;

(9) to adopt rules establishing reasonable amounts for expenses;
and

(10) to develop, adopt and promulgate all rules necessary to implement and administer the provisions of the Bingo and Raffle Act.

B. Proceedings brought against a licensee for a violation of the Bingo and Raffle Act shall be brought by the licensing authority by serving, in the manner provided in the rules of civil procedure, a complaint upon the licensee and notifying the licensee of the place and date, not less than twenty days after the date of service, at which a hearing shall be held. The complaint shall set forth, in the manner of complaints in civil action, the violations of the Bingo and Raffle Act or the rules of the licensing authority that the licensing authority alleges the licensee has committed. The licensing authority or the department of public safety may stop the operation of a game of chance pending hearing, in which case the hearing shall be held within ten days after notice.

C. The licensing authority shall cause the notice of hearing to be served personally upon an officer of the licensee or the member in charge of the conduct of the game of chance or to be sent by registered or certified mail to the licensee at the address shown in the license.

D. When proceedings are brought against a licensee for a violation of the Bingo and Raffle Act, the licensing authority shall hear the matter and make written findings in support of its decision. The licensee shall be informed immediately of the decision and, in the event of a suspension or revocation, the effective date of the suspension or revocation.

E. For the first violation by a licensee of the Bingo and Raffle Act, the licensing authority may assess an administrative fine of not to exceed one thousand dollars (\$1,000). For a second or subsequent violation by the licensee of that act, the licensing authority may assess an administrative fine of not to exceed two thousand five hundred dollars (\$2,500). The amount of the administrative fine shall be determined by the severity and nature of the violation of the Bingo and Raffle Act and by the number of prior violations of that act.

F. When a license is ordered suspended or revoked, the licensee shall surrender the license to the licensing authority on or before the effective date of the suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not.

G. Upon the finding of a violation of the Bingo and Raffle Act or the rules that would warrant the suspension or revocation of a license, the licensing authority, in addition to any other penalties that may be imposed, may declare the violator ineligible to conduct a game of chance and to apply for a license under that act for a period not exceeding twelve months. The declaration of ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization or an organization otherwise affiliated with the violator when in the opinion of the licensing authority the circumstances of the violation warrant that action.

H. Upon receipt by a licensee of a complaint signed by the licensing authority and notice of a hearing, the licensee shall answer, in the manner of civil actions, the complaint and inform the licensing authority whether oral argument is desired and whether the licensee desires to produce witnesses.

I. At the request of any party and for good cause shown, the licensing authority shall issue subpoenas for the attendance of witnesses and the production of books, records and other documents, but in no case shall a subpoena be made returnable more than five days after service.

J. Whenever oral testimony of witnesses is taken at the hearing, the licensing authority shall have a certified reporter present to prepare a record of the proceedings. The original transcript shall be filed with the licensing authority. Any party is entitled to secure a copy from the reporter at the party's own expense.

K. Hearings may be convened by the licensing authority from time to time at the request of any party, but only for good cause shown. Hearings shall be held and concluded with reasonable dispatch and without unnecessary delay. The licensing authority shall decide any matter within thirty days of the hearing.

L. Upon the determination of any matter heard, the licensing authority shall state its findings. All parties shall be notified by the licensing authority of the action of the licensing authority and shall be furnished a copy of the findings.

M. Applicants for a license or the licensee may be represented by counsel.

N. Any person appearing before the licensing authority in a representative capacity shall be required to show his authority to act in that capacity.

O. No person shall be excused from testifying or producing any book or document in any investigation or hearing when ordered to do so by the licensing authority upon the ground that testimony or documentary evidence required of the person may tend to incriminate or subject the person to penalty or forfeiture, but no person may be prosecuted, punished or subjected to any penalty or forfeiture on account of any matter or thing concerning which the person, under oath, testified or produced documentary evidence, except that the person shall not be exempt from prosecution or punishment for any perjury committed by the person in the person's testimony.

P. If a person subpoenaed to attend in any investigation or hearing fails to obey the command of the subpoena without reasonable cause or if a person in attendance in any investigation or hearing refuses, without lawful cause, to be examined or to answer a legal or pertinent question or to exhibit any book, account, record or other document when ordered to do so by the representative of the licensing authority holding the hearing or by either the licensing authority or the department of public safety performing the investigation, the licensing authority may apply to any judge of the

district court, upon proof by affidavit of the facts, for an order returnable in not less than five nor more than ten days directing the person to show cause before the judge why the person should not comply with the subpoena or order.

Q. Upon return of the order, the judge before whom the matter comes for hearing shall examine the person under oath. If the judge determines after giving the person an opportunity to be heard that the person refused without lawful excuse to comply with the subpoena of the licensing authority or refused without lawful authority to comply with the order of the licensing authority or the department of public safety holding the investigation, the judge may order the person to comply with the subpoena or order forthwith, and any failure to obey the order of the judge may be punished as a contempt of the district court.

R. Every witness is entitled to be paid for attendance or attendance and travel by the party on whose behalf he is subpoenaed, at the rates prescribed by law, before being required to testify.

S. The decision of the licensing authority in suspending or revoking any license under the Bingo and Raffle Act shall be subject to review. A licensee aggrieved by a decision of the licensing board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

T. No proceeding to vacate, reverse or modify any final order rendered by the licensing authority shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the licensing authority, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute his bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of his obligation as a licensee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings."

Chapter 349 Section 3 Laws 2005

Section 3. Section 60-2B-9 NMSA 1978 (being Laws 1981, Chapter 259, Section 9, as amended) is amended to read:

"60-2B-9. REPORTS REQUIRED--CRITERIA.--

A. On April 15, July 15, October 15 and January 15 of each year, the licensee shall file with the licensing authority upon forms prescribed by the licensing authority a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during that period from games of chance, the expenses incurred or paid and a brief description of the classification of the expenses, the name and address of each person to whom has been paid two hundred fifty dollars

(\$250) or more and the purpose of the expenditure, the net proceeds derived from each game of chance and the uses to which the net proceeds have been or are to be applied. It is the duty of each licensee to maintain and keep the books and records necessary to substantiate the particulars of each report.

B. If a licensee fails to file reports within the time required or if the reports are not properly verified or not fully, accurately and truthfully completed, any existing license may be suspended until the default has been corrected.

C. All money collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of bingo shall be deposited in a special account of the licensee which shall contain only such money. All expenses for the game shall be withdrawn from the account by consecutively numbered checks duly signed by specified officers of the licensee and payable to a specific person or organization. There shall be written on the check the nature of the expense for which the check is drawn. No check shall be drawn to "cash" or a fictitious payee.

D. No part of the net profits, after they have been given over to another organization, shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of games of bingo by the donor organization.

E. No item of expense shall be incurred or paid in connection with holding, operating or conducting any game of chance pursuant to any license except bona fide expenses of a reasonable amount as determined by the licensing authority. Expenses may be incurred only for the following purposes:

- (1) the purchase of goods, wares and merchandise furnished;
- (2) payment for services rendered that are reasonably necessary for repairs of equipment, operating or conducting the game of bingo;
- (3) for rent if the premises are rented or for janitorial services if not rented;
- (4) for accountant's fees;
- (5) for license fees; and
- (6) for utilities."

Chapter 349 Section 4 Laws 2005

Section 4. A new section of the Bingo and Raffle Act is enacted to read:

"BINGO AND RAFFLE TAX.--

A. A bingo and raffle tax equal to three percent of the net proceeds of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization pursuant to the Bingo and Raffle Act.

B. No other state or local gross receipts tax shall apply to a qualified organization's gross receipts or net proceeds generated by a game of chance authorized by the Bingo and Raffle Act.

C. The tax imposed pursuant to this section shall be submitted monthly to the taxation and revenue department on or before the twenty-fifth day of the month following the month in which the gross receipts or net proceeds that are taxable were generated by the taxpayer.

D. The taxation and revenue department shall administer the tax imposed in this section pursuant to the Tax Administration Act.

E. For purposes of this section, "gross receipts" means the total amount of money or the value of consideration received from selling, leasing or otherwise transferring equipment or leasing premises for use by or for a qualified organization for offering games of chance pursuant to the Bingo and Raffle Act."

Chapter 349 Section 5 Laws 2005

Section 5. Section 60-2B-13 NMSA 1978 (being Laws 1981, Chapter 259, Section 13) is amended to read:

"60-2B-13. EXEMPTIONS.--Nothing in the Bingo and Raffle Act shall be construed to apply to:

A. a drawing or a prize at a fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions, or for the benefit of a church situated in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that church or charitable purpose, provided the fair or fiesta has been held on an annual basis for not less than two years immediately preceding and for a period of not more than fourteen consecutive calendar days in each year; or

B. bingo or a raffle held by a group or organization as defined in Section 60-2B-3 NMSA 1978 that holds bingo or a raffle only once during three consecutive calendar months and not exceeding four occasions in one calendar year."

Chapter 349 Section 6 Laws 2005

Section 6. Section 60-2E-7 NMSA 1978 (being Laws 1997, Chapter 190, Section 9, as amended) is amended to read:

Chapter 349 Section 7 Laws 2005

"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 and the Bingo and Raffle Act. It has the duty to fulfill all responsibilities assigned to it pursuant to those acts, 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 and the Bingo and Raffle Act;

(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act and the Bingo and Raffle 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 a 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 that 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."

SENATE BILL 370, AS AMENDED

Approved April 8, 2005

LAWS 2005, CHAPTER 350

AN ACT

RELATING TO GAMING; INCREASING THE HOURS OF GAMING MACHINE OPERATION AT PREMISES OF RACETRACK GAMING OPERATOR LICENSEES; INCREASING THE GAMING TAX.

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

Chapter 350 Section 1 Laws 2005

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 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. On days when gaming machines are permitted to be operated, a racetrack gaming operator licensee may offer gaming machines for operation for up to eighteen hours per day; provided that the total number of hours in which gaming machines are operated does not exceed one hundred twelve hours in a one-week period beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following Tuesday. A racetrack gaming operator licensee may offer gaming machines for play at any time during a day; provided that the total hours of operation in each day from just after midnight of the previous day until midnight of the current day does not exceed eighteen hours. A racetrack gaming operator licensee shall determine, within the limitations imposed by this subsection, the hours it will offer gaming machines for operation each day and shall notify the board in writing of those hours.

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."

Chapter 350 Section 2 Laws 2005

Section 2. 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-six 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. 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 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."

Chapter 350 Section 3 Laws 2005

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.

SENATE BILL 837

Approved April 8, 2005

LAWS 2005, CHAPTER 351

AN ACT

RELATING TO FINANCE; AUTHORIZING MUNICIPALITIES TO IMPOSE FEES FOR USE OF A MUNICIPAL EVENT CENTER AND TO IMPOSE A SURCHARGE ON REVENUES ARISING FROM ACTIVITIES AT A MUNICIPAL EVENT CENTER;

PERMITTING MUNICIPALITIES TO ISSUE REVENUE BONDS; PROVIDING LEGAL REMEDIES; CREATING AN EXEMPTION FROM THE GOVERNMENTAL GROSS RECEIPTS TAX FOR MUNICIPAL EVENT CENTER RECEIPTS; ENACTING A NEW SECTION OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; ENACTING THE MUNICIPAL EVENT CENTER FUNDING ACT; PROVIDING DISTRIBUTIONS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 351 Section 1 Laws 2005

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--MUNICIPAL EVENT CENTER SURCHARGE.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cultural affairs department in an amount equal to one percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act."

Chapter 351 Section 2 Laws 2005

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--EVENT CENTER 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 or services sold at or related to a municipal event center or related to activities occurring at the event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act."

Chapter 351 Section 3 Laws 2005

Section 3. SHORT TITLE.--Sections 3 through 11 of this act may be cited as the "Municipal Event Center Funding Act".

Chapter 351 Section 4 Laws 2005

Section 4. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the costs of acquiring land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining municipal event centers have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern municipal event centers are essential in retaining and attracting cultural, educational, entertainment and sporting events to municipalities and the state and are essential for the economic development and prosperity of municipalities and the state; and

(3) even after using local financial resources, municipalities need additional means to provide complete funding for functional and modern municipal event centers.

B. The purpose of the Municipal Event Center Funding Act is to provide an additional method of accessing the capital markets to meet the need for a complete funding package for functional and modern municipal event centers.

Chapter 351 Section 5 Laws 2005

Section 5. DEFINITIONS.--As used in the Municipal Event Center Funding Act:

A. "bonds" means revenue bonds issued by a municipality to pay for some or all of the costs of acquiring land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a municipal event center;

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 Municipal Event Center Funding Act;

C. "debt service payments" means rentals, receipts, fees or other charges paid to a municipality for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

D. "event center revenues" means rentals, receipts, fees or other charges imposed by and paid to a municipality pursuant to the Municipal Event Center Funding

Act for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

E. "event center surcharge" means a surcharge to be included in each vendor contract 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 municipal event center or related to activities occurring at the event center;

F. "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;

G. "municipal event center" means an event center providing seating for a minimum of four thousand people, including land, buildings and related improvements, primarily designed and intended for cultural, educational, entertainment and sporting events, but does not include a civic or convention center;

H. "municipality" means a political subdivision of the state, organized and operating under a home-rule charter or the Municipal Code;

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 municipal event center; 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 municipal event center.

Chapter 351 Section 6 Laws 2005

Section 6. AUTHORIZATION OF SURCHARGE AND OTHER FEES--USE OF PROCEEDS--TRANSFER.--

A. A municipality in which a municipal event center is located may establish by ordinance an event center surcharge of not less than five percent of each vendor contract entered into by that municipality. As otherwise established by that municipality, the event center surcharge may be any percentage greater than five percent of each vendor contract entered into by the municipality.

B. A municipality shall include an event center surcharge in the terms of each vendor contract into which it enters. A chief executive officer of a municipality shall sign each vendor contract into which that municipality enters.

C. A municipality may establish charges and fees deemed necessary by the governing body or the chief executive officer for the use, operation or management of a municipal event center by a person, corporation or other entity.

D. From the proceeds of the event center surcharge, an amount equal to two percent of each vendor contract entered into by the municipality shall be transferred monthly by the municipality that established the event center surcharge to the tax administration suspense fund.

E. A municipality shall establish a fund for construction, renovation, operation, equipment, maintenance and improvement of a municipal event center for deposit of all event center revenues and event center surcharge proceeds that exceed the required debt service payments, except for event center surcharge proceeds transferred to the tax administration suspense fund pursuant to this section. Money in the fund may be used to pay:

(1) debt service payments;

(2) costs of operating a municipal event center during the life of the bonds issued by the municipality pursuant to the Municipal Event Center Funding Act;

(3) costs of constructing, renovating, equipping, maintaining or improving that municipal event center; or

(4) costs of collecting or administering the event center surcharge.

Chapter 351 Section 7 Laws 2005

Section 7. COLLECTION OF EVENT CENTER SURCHARGE--REMITTANCE TO MUNICIPALITY.--

A. Upon the sale of a product or service subject to the event center surcharge, a vendor shall collect the event center surcharge from the purchaser of that product or service on behalf of the municipality and shall act as a trustee for the surcharge receipts. A purchaser of a product or service subject to the event center surcharge shall be charged separately for the event center surcharge from the cost of the product or service, 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. Receipts from the event center surcharge shall be remitted by a vendor to the treasurer of the municipality in which the municipal event center at which the vendor sold the product or service is located no later than the tenth day of the month following the collection of the surcharge.

B. A treasurer of a municipality shall deposit municipal event center revenues and event center surcharge receipts in a separate account and act as trustee

of the revenue on behalf of bondholders pursuant to the Municipal Event Center Funding Act so long as any bonds remain outstanding.

Chapter 351 Section 8 Laws 2005

Section 8. AUDITS.--A municipality shall provide by ordinance a method to audit or otherwise ensure that vendors subject to the event center surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

Chapter 351 Section 9 Laws 2005

Section 9. ENFORCEMENT--PENALTIES.--

A. An action to enforce the imposition and collection of an event center 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. A judgment issued by a district court requiring event center surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a municipality.

Chapter 351 Section 10 Laws 2005

Section 10. ISSUANCE OF BONDS.--

A. A municipality may issue revenue bonds, in accordance with the procedures set forth in Sections 3-31-3 through 3-31-7 NMSA 1978, to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a municipal event center.

B. Revenue bonds issued by a municipality may be secured by event center revenues, event center surcharge receipts or gross receipts tax revenues distributed to that municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978.

C. An action shall not be brought questioning the legality of the pledge of event center revenues, event center surcharge receipts or gross receipts tax revenues, bonds issued pursuant to the Municipal Event Center Funding Act, issuance of those bonds, an event center surcharge included in a vendor contract or any other matter concerning the bonds after thirty days from the date of publication of the ordinance authorizing issuance of the bonds and the pledging of event center receipts, event center surcharge receipts or gross receipts tax revenues of a municipality to make debt service payments.

D. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the event center surcharge or any bonds secured by a pledge of the event center revenues, event center surcharge receipts or gross receipts tax revenues, unless the bonds have been paid in full or provisions have been made for full payment.

Chapter 351 Section 11 Laws 2005

Section 11. CUMULATIVE AND COMPLETE AUTHORITY.--The Municipal Event Center Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a municipal event center, establishing and collecting event center revenues and the event center surcharge and completing the acts authorized pursuant to that act, and shall be regarded as supplemental and additional to powers conferred by other laws of the state and shall constitute full authority for the exercise of powers granted pursuant to the Municipal Event Center Funding Act.

Chapter 351 Section 12 Laws 2005

Section 12. LIBERAL INTERPRETATION.--The Municipal Event Center Funding Act shall be liberally construed to carry out its purpose.

Chapter 351 Section 13 Laws 2005

Section 13. SEVERABILITY.--If any part or application of the Municipal Event Center Funding Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 351 Section 14 Laws 2005

Section 14. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 440, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 8, 2005

LAWS 2005, SENATE JOINT RESOLUTION 6

A JOINT RESOLUTION

PROPOSING THAT OWNERSHIP OF PROPERTY USED FOR AIRPORT RUNWAYS AT CONCHAS LAKE STATE PARK IN SAN MIGUEL COUNTY AND NAVAJO LAKE STATE PARK IN SAN JUAN COUNTY BE RETURNED TO THE DEPARTMENT OF TRANSPORTATION.

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 and of over one hundred thousand dollars (\$100,000) in value; and

WHEREAS, in April 1979, the department of transportation deeded land at Conchas Lake state park in San Miguel county to the property control division of the general services department for use as an airport runway; and

WHEREAS, the property in San Miguel county is described as:

"A certain tract of land situated in the Pablo Montoya Grant, San Miguel County, New Mexico, more particularly described as follows:

Beginning at the Northwest corner of said tract, which is a point on the southerly right-of-way line of State Road 104 at station 127959.38, whence the United States Corps of Engineers Boundary Marker No. 2 bears N 36° 27' E, 226.33 feet, thence S 24° 19' E, 600.00 feet to a point, thence S 77° 26' E, 4900.30 feet to the Northeast corner, thence S 12° 34' W, 400.00 feet to the Southeast corner, thence N 77° 26' W, 6433.06 feet to the Southwest corner, a point on the southerly right-of-way line of State Road 104, thence N 65° 41' E along the southerly right-of-way line of State Road 104, 1466.07 feet to the point of beginning, and containing 62.132 acres more or less.

Together with the following described avigation [sic] easement, to-wit:

Beginning at the Northwest corner of said tract which is a point on the easterly boundary of the Department of Aviation, State of New Mexico, fee simple title property, described above, whence the Northeast corner of the Department of Aviation, State of New Mexico, fee simple title property, described above, bears N 12° 34' E, 50.00 feet, thence S 77° 26' E, 900.00 feet to the Northeast corner, thence S 12° 34' W, 300.00 feet to the southeast corner, thence N 77° 26' W, 900.00 to the southwest corner, a point on the East boundary of the Department of Aviation, State of New Mexico, fee simple title property, described above, thence N 12° 34' E, 300.00 feet to the point of beginning and containing 6.198 acres more or less, located within the Pablo Montoya Grant, San Miguel County, New Mexico."; and

WHEREAS, in January 1982, the department of transportation deeded land at Navajo Lake state park in San Juan county to the property control division of the general services department for use as an airport runway; and

WHEREAS, the property in San Juan county is described as:

"The United States of American [sic] executed a patent to the Department of Aviation, State of New Mexico, for airport purposes, dated June 26, 1969, covering a portion of the surface rights of lands more particularly described as follows, to-wit:

"Lots five, six, seven, nine, ten, eleven, twelve, thirteen, and fourteen of section 14; and lots one, two, three, four, and the south half of the south- west quarter of section 15, in township thirty North of range eight West of the New Mexico Principal meridian, New Mexico, containing a total of 560.08 acres, according to the approved plats of survey thereof on file in the Bureau of Land Management, Department of the Interior."; and

WHEREAS, the properties are operated by the state parks division of the energy, minerals and natural resources department; and

WHEREAS, the state parks division and the property control division are not able to properly maintain the runways; and

WHEREAS, the department of transportation is able to maintain these runways if the property is under jurisdiction of the department of transportation; and

WHEREAS, it is in the best interest of the state to have properly maintained runways at these state parks;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the transfer from the property control division of the general services department to the aviation division of the department of transportation of property containing the runways at the Conchas Lake state park in San Miguel county and the Navajo Lake state park in San Juan county be ratified and approved; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the general services department, the energy, minerals and natural resources department, the department of transportation, the economic development department and the department of game and fish

LAWS 2005, SENATE JOINT RESOLUTION 17

A JOINT RESOLUTION

GRANTING PRIOR APPROVAL TO THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO SELL OR TRADE CERTAIN LAND IN SANTA FE COUNTY TO THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION FOR THE PURPOSE OF HOUSING THE ASSOCIATION AND ITS EMPLOYEES.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of the legislature prior to 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 anticipates the acquisition of the building currently owned by the public employees retirement association for use by the state for additional office space; and

WHEREAS, the public employees retirement association desires real estate to be used for the construction or alteration of an office building to house the association and its employees; and

WHEREAS, the property control division currently owns the following real property in Santa Fe county:

the "Galisteo property" located southeast of the intersection of St. Francis Drive and St. Michael's Drive;

the "labor department property" located on the corner of DeVargas street and Sandoval street; and

the "west capitol campus" located between Siringo road and Cerrillos road to the south and north and adjacent, on the west, to Camino Carlos Rey; and

WHEREAS, the property control division is currently looking to acquire certain other properties in Santa Fe county;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the property control division of the general services department be authorized to sell or trade one of the described properties, or such other property, located in Santa Fe county, as agreed to between the parties, to the retirement board of the public employees retirement association; and

BE IT FURTHER RESOLVED that the purchase price or trade value be negotiated between the parties, reviewed by the capitol buildings planning commission and approved by the secretary of general services and the retirement board of the public employees retirement association; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the property control division of the general services department, the co-chairs of the capitol buildings planning commission and the retirement board of the public employees retirement association.

LAWS 2005, HOUSE JOINT RESOLUTION 16

A JOINT RESOLUTION

GRANTING PRIOR APPROVAL TO THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO LEASE LAND AT THE LOS LUNAS

MEDICAL CENTER TO VALENCIA COUNTY FOR THE PURPOSE OF
CONSTRUCTING A NEW COURTHOUSE.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any lease of state-owned property for more than twenty-five years; and

WHEREAS, House Joint Resolution 14 of the first session of the forty-third legislature authorized the property control division of the general services department to lease for up to forty years all or part of real property at the Los Lunas medical center to the town of Los Lunas, Valencia county or the Los Lunas school district under certain conditions; and

WHEREAS, the master use plan required by House Joint Resolution 14 of the first session of the forty-third legislature is being implemented; and

WHEREAS, the following described property, consisting of approximately six and eight-tenths acres, at the Los Lunas medical center has been identified as an appropriate location to construct a new county courthouse:

A certain parcel of land being identified as a portion of Tract 108 as the same is shown and designated on Middle Rio Grande Conservancy District Property Map Number 69, and on a plat entitled "THE LOS LUNAS HOSPITAL AND TRAINING SCHOOL FIRE DISTRICT" filed in the office of the County Clerk of Valencia County, New Mexico in Volume C11, Folio 122 on August 3, 1978, situate within the San Clemente Land Grant, Projected Section 21, Township 7 North, Range 2 East, New Mexico Principal Meridian, Valencia County, New Mexico and being more particularly described by metes and bounds as follows:

Beginning at the southwest corner of the parcel herein described, a point on curve on the northerly right-of-way line of New Mexico State Road Number 6, as the same is shown and designated on New Mexico State Highway Commission Right-of-Way Map, New Mexico Project No. IM-025-4(90)204, TPO- 1335(10)32 dated May 31, 1994, whence USC&GS brass cap stamped Luna-Gallery Reference Mark No. 2 bears N 63° 35' 45" W, a distance of 476.00 feet; thence,

N 18° 17' 10" E, a distance of 524.77 feet to the northwest corner of the parcel herein described; thence,

S 71° 40' 47" E, a distance of 176.11 feet to a point on curve; thence,

Southeasterly, a distance of 125.01 feet along the arc of a curve bearing to the left (said arc having a radius of 403.79 feet and a chord which bears S 14° 12' 15" E, a distance of 124.51 feet) to a point of compound curvature; thence,

Southeasterly, a distance of 269.62 feet along the arc of a curve bearing to the left (said arc having a radius of 1683.60 feet and a chord which bears S 27° 39' 40" E, a distance of 269.33 feet) to a point on curve; thence,

S 51° 48' 18" E, a distance of 195.01 feet to the northeast corner of the parcel herein described; thence,

S 05° 15' 59" W, a distance of 239.04 feet to a point; thence,

S 38° 11' 42" W, a distance of 146.71 feet to a point on said northerly right-of-way line of New Mexico State Road Number 6; thence,

continuing along said northerly right-of-way line of New Mexico State Road Number 6:

N 51° 48' 18" W, a distance of 20.00 feet to a point; thence,

S 38° 11' 42" W, a distance of 15.00 feet to a point; thence,

N 51° 48' 18" W, a distance of 508.55 feet to a point of curvature; thence,

Northwesterly, a distance of 127.87 feet along the arc of a curve bearing to the left (said arc having a radius of 1707.02 feet and a chord which bears N 53° 57' 25" W, a distance of 127.83 feet) to a point on curve and the southwest corner and point of beginning of the parcel herein described and containing 6.8606 acres more or less; and

WHEREAS, the town of Los Lunas, Valencia county, the Los Lunas school district, the department of health and the general services department have agreed that the location should be used for a county courthouse; and

WHEREAS, the general services department has agreed that it would be in the best interest of the state for the property control division to lease the described property at the Los Lunas medical center to Valencia county for a period of ninety-nine years for the purpose of constructing a new county courthouse;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that, notwithstanding the provisions of House Joint Resolution 14 of the first session of the forty- third legislature, the property control division of the general services department is authorized to lease the described property at the Los Lunas medical center for a period not exceeding ninety-nine years to Valencia county for the sole purpose of constructing a new county courthouse; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department, the board of county commissioners of Valencia county and the thirteenth judicial district court.

OFFICIAL ROSTER OF THE STATE OF NEW MEXICO

UNITED STATES SENATORS

Jeff Bingaman, Democrat, Silver City

Pete V. Domenici, Republican, Albuquerque

UNITED STATES REPRESENTATIVES

Heather Wilson, Republican, 1st Congressional District - Albuquerque

Steve Pearce, Republican, 2nd Congressional District - Picacho

Tom Udall, Democrat, 3rd Congressional District - Santa Fe

STATE OFFICIALS

Bill Richardson, Democrat	Governor
Diane D. Denish, Democrat	Lieutenant Governor
Rebecca Vigil-Giron, Democrat	Secretary of State
Domingo P. Martinez, Democrat	State Auditor
Robert E. Vigil, Democrat	State Treasurer
Patricia A. Madrid, Democrat	Attorney General
Patrick H. Lyons, Republican	Commissioner of Public Lands
Jason A. Marks	Public Regulation Commissioner, District 1
David W. King, Republican	Public Regulation Commissioner, District 2
Ben R. Lujan, Democrat	Public Regulation Commissioner, District 3
Lynda M. Lovejoy, Democrat	Public Regulation Commissioner, District 4
E. Shirley Baca, Democrat	Public Regulation Commissioner, District 5

JUSTICES OF THE SUPREME COURT

Richard C. Bosson, Chief Justice

Pamela B. Minzner

Patricio M. Serna

Petra Jimenez Maes

Edward L. Chavez

JUDGES OF THE COURT OF APPEALS

James J. Wechsler, Chief Judge

A. Joseph Alarid

Lynn Pickard

Michael D. Bustamante

Jonathan B. Sutin

Cynthia A. Fry

Celia Foy Castillo

Ira Robinson

Roderick T. Kennedy

Michael E. Vigil

DISTRICT COURTS

DISTRICT JUDGES

FIRST JUDICIAL DISTRICT

Santa Fe, Los Alamos & Rio Arriba 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	Tim Garcia	Santa Fe
Division VI	Stephen Pfeffer	Santa Fe
Division VII	Daniel Sanchez	Santa Fe

SECOND JUDICIAL DISTRICT

Bernalillo County

Division I	Marie A. Baca	Albuquerque
Division II	James F. Blackmer	Albuquerque
Division III	Tommy Jewell	Albuquerque
Division IV	Linda M. Vanzi	Albuquerque
Division V	Ted C. Baca	Albuquerque
Division VI	Neil C. Candelaria	Albuquerque
Division VII	John J. Romero, Jr.	Albuquerque
Division VIII	Ross C. Sanchez	Albuquerque
Division IX	Mark A. Macaron	Albuquerque
Division X	Theresa Baca	Albuquerque
Division XI	Ernest J. Romero	Albuquerque
Division XII	Wendy E. York	Albuquerque
Division XIII	Valerie A. Huling	Albuquerque
Division XIV	J. Michael Kavanaugh	Albuquerque
Division XV	Richard J. Knowles	Albuquerque
Division XVI	Robert L. Thompson	Albuquerque
Division XVII	Nan G. Nash	Albuquerque
Division XVIII	Denise Barela-Shepherd	Albuquerque
Division XIX	Albert S. "Pat" Murdoch	Albuquerque
Division XX	William F. Lang	Albuquerque
Division XXI	Angela A. Jewell	Albuquerque
Division XXII	Deborah Davis Walker	Albuquerque

Division XXIII

Geraldine E. Rivera

Albuquerque

THIRD JUDICIAL DISTRICT

Doña Ana County

Division I

Robert E. Robles

Las Cruces

Division II

Stephen Bridgforth

Las Cruces

Division III

Florencio "Larry" Ramirez

Las Cruces

Division IV

Jerald A. Valentine

Las Cruces

Division V

Silvia E. Cano-Garcia

Las Cruces

Division VI

Grace B. Duran

Las Cruces

Division VII

Douglas R. Driggers

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

Lea, Eddy & Chaves Counties

Division I

Jay W. Forbes

Carlsbad

Division II

Alvin F. Hones

Roswell

Division III

William A. McBee

Lovington

Division IV

Don Maddox

Lovington

Division V

James L. Shuler

Carlsbad

Division VI

William P. Lynch

Roswell

Division VII

Gary L. Clingman

Lovington

Division VIII

Charles C. Currier, III

Roswell

SIXTH JUDICIAL DISTRICT

Grant, Hidalgo & Luna Counties

Division I	Henry R. Quintero	Silver City
Division II	Gary M. Jeffreys	Deming
Division III	J. C. Robinson	Silver City

SEVENTH JUDICIAL DISTRICT

Catron, Sierra, Socorro & Torrance Counties

Division I	Edmund H. Kase, III	Socorro
Division II	Thomas G. Fitch	Socorro
Division III	Kevin R. Sweaza	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 K. Quinn	Clovis
Division II	Joe Parker	Clovis
Division III	Ted Hartley	Clovis, Portales

TENTH JUDICIAL DISTRICT

Quay, DeBaca, & Harding Counties

Division I	Ricky D. Purcell	Tucumcari
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ELEVENTH JUDICIAL DISTRICT

McKinley & San Juan Counties

Division I	William C. Birdsall	Aztec
Division II	Joseph L. Rich	Gallup

Division III	Sandra A. Price	Aztec
Division IV	John Arthur Dean, Jr.	Farmington
Division V	Grant Foutz	Gallup
Division VI	Thomas J. Hynes	Aztec

TWELFTH JUDICIAL DISTRICT

Lincoln & Otero Counties

Division I	Jerry H. Ritter, Jr.	Alamogordo
Division II	James Waylon Counts	Alamogordo
Division III	Karen Parsons	Carrizozo
Division IV	Frank K. Wilson	Alamogordo

THIRTEENTH JUDICIAL DISTRICT

Cibola, Sandoval & Valencia Counties

Division I	John W. Pope	Los Lunas
Division II	George P. Eichwald	Bernalillo
Division III	William "Bill" Sanchez	Los Lunas
Division IV	Camille E. Olguin	Grants
Division V	Louis P. McDonald	Bernalillo
Division VI	Violet C. Otero	

DISTRICT ATTORNEYS

First Judicial District	Henry R. Valdez	Santa Fe, Rio Arriba & Los Alamos
Second Judicial District	Kari E. Brandenburg	Bernalillo
Third Judicial District	Susana Martinez	Doña Ana
Fourth Judicial District	Richard D. Flores	Guadalupe, Mora & San Miguel
Fifth Judicial District	Terry Haake	Chaves, Eddy & Lea
Sixth Judicial District	Mary Lynne Newell	Grant, Hidalgo & Luna

Seventh Judicial District	Clint Wellborn	Catron, Sierra, Socorro & Torrance
Eighth Judicial District	Donald A. Gallegos	Colfax, Union & Taos
Ninth Judicial District	Matthew E. Chandler	Curry & Roosevelt
Tenth Judicial District	Ronald W. Reeves	Quay, DeBaca & Harding
Eleventh Judicial District	Lyndy D. Bennett	Division 1: McKinley & San Juan
	Karl Gillson	Division 2: McKinley & San Juan
Twelfth Judicial District	Scot D. Key	Lincoln & Otero
Thirteenth Judicial District	Lemuel L. Martinez	Sandoval, Valencia & Cibola

STATE SENATORS SERVING IN THE FORTY-SEVENTH LEGISLATURE

STATE OF NEW MEXICO

FIRST SESSION

CONVENED JANUARY 18, 2005

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
1	San Juan	William E. Sharer	Farmington
2	San Juan	Steven P. Neville	Aztec
3	McKinley & San Juan	John Pinto	Tohatchi
4	Cibola & McKinley	Lidio G. Rainaldi	Gallup
5	Los Alamos, Rio Arriba & Santa Fe	Richard C. Martinez	Española
6	Los Alamos, Rio Arriba, Santa Fe & Taos	Carlos R. Cisneros	Questa
7	Colfax, Curry, Harding, Quay, San Miguel, Taos & Union	Clinton D. Harden, Jr.	Clovis
8	Guadalupe, Mora, San Miguel, Santa Fe & Torrance	Pete Campos	Las Vegas
9	Sandoval	Steve Komadina	Corrales
10	Bernalillo & Sandoval	John C. Ryan	Albuquerque

11	Bernalillo	Linda M. Lopez	Albuquerque
12	Bernalillo	Gerald Ortiz y Pino	Albuquerque
13	Bernalillo	Dede Feldman	Albuquerque
14	Bernalillo & Valencia	James G. Taylor	Albuquerque
15	Bernalillo	H. Diane Snyder	Albuquerque
16	Bernalillo	Cisco McSorley	Albuquerque
17	Bernalillo	Shannon Robinson	Albuquerque
18	Bernalillo	Mark Boitano	Albuquerque
19	Bernalillo, Sandoval, Santa Fe & Torrance	Sue Wilson Beffort	Sandia Park
20	Bernalillo	William H. Payne	Albuquerque
21	Bernalillo & Sandoval	Kent L. Cravens	Albuquerque
22	Bernalillo, Cibola, McKinley, Rio Arriba & Sandoval	Leonard Tsosie	Crownpoint
23	Bernalillo & Sandoval	Joseph J. Carraro	Albuquerque
24	Santa Fe	Nancy Rodriguez	Santa Fe
25	Santa Fe	John T. L. Grubestic	Santa Fe
26	Bernalillo	Bernadette M. Sanchez	Albuquerque
27	Chaves, Curry, De Baca & Roosevelt	Stuart Ingle	Portales
28	Catron, Grant & Socorro	Ben D. Altamirano	Silver City
29	Valencia	Michael S. Sanchez	Belen
30	Cibola, Socorro & Valencia	Joseph A. Fidel	Grants
31	Doña Ana	Cynthia Nava	Las Cruces
32	Chaves, Eddy, Lincoln & Otero	Timothy Z. Jennings	Roswell
33	Chaves & Lincoln	Rod Adair	Roswell
34	Eddy & Otero	Vernon D. Asbill	Carlsbad

35	Hidalgo, Luna & Sierra	John Arthur Smith	Deming
36	Doña Ana	Mary Jane M. Garcia	Doña Ana
37	Doña Ana & Sierra	Leonard Lee Rawson	Las Cruces
38	Doña Ana	Mary Kay Papen	Las Cruces
39	Los Alamos, Mora, Sandoval, San Miguel, Santa Fe & Taos	Phil A. Griego	San Jose
40	Doña Ana & Otero	Dianna J. Duran	Tularosa
41	Eddy & Lea	Carroll H. Leavell	Jal
42	Chaves, Curry, Eddy, Lea & Roosevelt	Gay G. Kernan	Hobbs

STATE REPRESENTATIVES SERVING IN THE FORTY-SEVENTH LEGISLATURE

STATE OF NEW MEXICO

FIRST SESSION

CONVENED JANUARY 18, 2005

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
1	San Juan	Thomas C. Taylor	Farmington
2	San Juan	Richard P. Cheney	Farmington
3	San Juan	Sandra L. Townsend	Aztec
4	San Juan	Ray Begaye	Shiprock
5	McKinley & San Juan	Irvin Harrison	Gallup
6	Cibola & McKinley	George J. Hanosh	Grants
7	Valencia	Kandy Cordova	Belen
8	Valencia	Fred Luna	Los Lunas
9	McKinley & San Juan	Patricia A. Lundstrom	Gallup
10	Bernalillo & Valencia	Henry "Kiki" Saavedra	Albuquerque
11	Bernalillo	Rick Miera	Albuquerque

12	Bernalillo	Ernest H. Chavez	Albuquerque
13	Bernalillo	Daniel P. Silva	Albuquerque
14	Bernalillo	Miguel P. Garcia	Albuquerque
15	Bernalillo	Teresa A. Zanetti	Albuquerque
16	Bernalillo	Harriet I. Ruiz	Albuquerque
17	Bernalillo	Edward C. Sandoval	Albuquerque
18	Bernalillo	Gail C. Beam	Albuquerque
19	Bernalillo	Sheryl Williams Stapleton	Albuquerque
20	Bernalillo	Ted Hobbs	Albuquerque
21	Bernalillo	Mimi Stewart	Albuquerque
22	Bernalillo, Sandoval & Santa Fe	Kathy A. McCoy	Cedar Crest
23	Bernalillo & Sandoval	Eric A. Youngberg	Albuquerque
24	Bernalillo	Janice E. Arnold-Jones	Albuquerque
25	Bernalillo	Danice R. Picraux	Albuquerque
26	Bernalillo	Al Park	Albuquerque
27	Bernalillo	Lorenzo A. Larrañaga	Albuquerque
28	Bernalillo	Jimmie C. Hall	Albuquerque
29	Bernalillo	Thomas A. Anderson	Albuquerque
30	Bernalillo	Justine Fox-Young	Albuquerque
31	Bernalillo	Greg Payne	Albuquerque
32	Luna	Dona G. Irwin	Deming
33	Doña Ana	Joni Marie Gutierrez	Las Cruces
34	Doña Ana	Mary Helen Garcia	Las Cruces
35	Doña Ana	Antonio Lujan	Las Cruces
36	Doña Ana	Andy Nuñez	Hatch

37	Doña Ana	William "Ed" Boykin	Las Cruces
38	Grant, Hidalgo & Sierra	Dianne Hamilton	Silver City
39	Grant & Hildago	Manuel G. Herrera	Bayard
40	Mora, Rio Arriba, San Miguel, Santa Fe & Taos	Nick L. Salazar	San Juan Pueblo
41	Rio Arriba, Sandoval & Taos	Debbie A. Rodella	San Juan Pueblo
42	Taos	Roberto J. Gonzales	Taos
43	Los Alamos, Sandoval & Santa Fe	Jeannette O. Wallace	Los Alamos
44	Sandoval	Jane E. Powdrell-Culbert	Corrales
45	Santa Fe	Jim R. Trujillo	Santa Fe
46	Santa Fe	Ben Lujan	Santa Fe
47	Santa Fe	Peter F. Wirth	Santa Fe
48	Santa Fe	Luciano "Lucky" Varela	Santa Fe
49	Catron, Socorro & Valencia	Don L. Tripp	Socorro
50	Bernalillo, Santa Fe & Torrance	Rhonda S. King	Stanley
51	Otero	Gloria C. Vaughn	Alamogordo
52	Doña Ana	Joseph Cervantes	Las Cruces
53	Doña Ana & Otero	Terry T. Marquardt	Alamogordo
54	Eddy & Otero	Joe M Stell	Carlsbad
55	Eddy	John A. Heaton	Carlsbad
56	Lincoln & Otero	W. C. "Dub" Williams	Glencoe
57	Chaves, Lincoln & Otero	Daniel R. Foley	Roswell
58	Chaves	Candy Spence Ezzell	Roswell
59	Chaves, Lincoln & Otero	Avon W. Wilson	Roswell
60	Sandoval	Thomas E. Swisstack	Rio Rancho

61	Lea	Donald L. Whitaker	Eunice
62	Lea	Donald E. Bratton	Hobbs
63	Curry, De Baca, Guadalupe & Roosevelt	Jose A. Campos	Santa Rosa
64	Curry	Anna M. Crook	Clovis
65	Bernalillo, McKinley, Rio Arriba, James Roger Madalena & Sandoval		Jemez Pueblo
66	Chaves, Eddy, Lea & Roosevelt	Keith J. Gardner	Roswell
67	Curry, Harding, Quay, Roosevelt, San Miguel & Union	Brian K. Moore	Clayton
68	Colfax, Guadalupe, Mora, San Miguel & Taos	Hector H. Balderas	Wagon Mound
69	Cibola, McKinley & San Juan	W. Ken Martinez	Grants
70	San Miguel & Torraine	Richard D. Vigil	Ribera